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Monday
September 18, 1995

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[Two Sessions]

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WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
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WHEN: September 20 at 9:00 am
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1413 and 1421

RINS 0560–AD76, 0560–AD37, 0560–AD87, 0560–AD60, and 0560–AD61

1995 Wheat and Feed Grain Acreage Reduction Programs, 1995 Oilseed Price Support Rates, and 1994 Wheat and Feed Grain Farmer-Owned Reserve Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) issued proposed rules with respect to the 1995 Production Adjustment Programs for Wheat on April 6, 1994, and for Feed Grains on August 4, 1994. Accordingly, this final rule amends 7 CFR Parts 1413 and 1421 to set forth: the acreage reduction program (ARP) percentages for the 1995 crops of corn, wheat, grain sorghum, barley, and oats; the determination that a paid land diversion (PLD) program will not be implemented for the 1995 crops of wheat and feed grains; the determination that producers of malting barley must, as a condition of eligibility for feed grain loans, purchases, and payments, comply with requirements of the ARP for the 1995 crop of barley; and the 1995-crop price support rates for wheat, corn, grain sorghum, barley, oats, and rye. In addition, this final rule amends 7 CFR Part 1421 to set forth the 1995-crop price support rates for oilseeds and to set forth determinations with respect to the entry of 1994-crop wheat and 1994-crop feed grains may into the farmer-owned reserve (FOR).

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Consolidated Farm Service Agency, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–4418.

SUPPLEMENTARY INFORMATION:

Final Regulatory Impact Analysis

The Final Regulatory Impact Analyses describing the options considered in developing this rule and the impact of the implementation of each option is available on request from the above-named individual.

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are as follows:

Titles	Numbers
Commodity Loans and Purchases	10.051
Feed Grain Production Stabilization	10.055
Wheat Production Stabilization	10.058

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this final rule because the CCC is required by sections 107B(o) and 105B(o) of the Agricultural Act of 1949, as amended (the 1949 Act), to publish a notice of proposed rulemaking with respect to certain provisions of this rule. Final Regulatory Flexibility Analyses for the 1995 Wheat and Feed Grain ARPs were prepared as part of the Final Regulatory Impact Analyses. Copies of these analyses are available from the above-named individual.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Environmental Evaluation

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

Executive Order 12372

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

Paperwork Reduction Act

The amendments to 7 CFR parts 1413 and 1421 set forth in this final rule do not contain new information collections that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 35). Information collections were previously cleared under OMB control numbers 0560–0092 and 0560–0129.

Background

This final rule amends 7 CFR parts 1413 and 1421 to set forth determinations with respect to: The 1995 Price Support and Production Adjustment Programs for Wheat and Feed Grains; the 1995 price support rates for oilseeds; and the entry of 1994-crop wheat and feed grains into the FOR. General descriptions of the statutory basis for the 1995 Wheat and Feed Grain Program determinations in this final rule were set forth at 59 FR 16149 (April 6, 1994) and at 59 FR 39707 (August 4, 1994), respectively.

1995 Wheat Program

The public was asked to comment on whether the 1995 wheat ARP percentage should be set at 0 percent, 5 percent, or 10 percent or another percentage between 0 and 15 percent. Comments received during the comment period are summarized below.

A total of 62 respondents commented on the ARP level. Table 1 shows a breakdown of the comments received by type of respondent.

TABLE 1.—SUMMARY OF COMMENTS ON 1995 WHEAT ARP LEVELS, BY RESPONDENT TYPE

Respondent	Suggested ARP percentage							
	No ARP	0%	5%	10%	12%	15%	Other >15%	Total
Farm Organizations	.....	14	2	1	.....	2	1	20
Agri-businesses	.....	11	.....	.....	.....	.....	.....	11
Individual Producers	3	10	1	5	1	9	2	31
Total	3	35	3	6	.....	12	2	62

Respondents favoring lower ARP percentages indicated that they favored lower ARP percentages for the following reasons: (1) wheat-sector net income is higher with lower ARP levels; (2) the U.S. needs to maintain production in the face of high imports; (3) the U.S. needs to send a message to our competitors that the U.S. will not unilaterally reduce production and abandon world markets; (4) payment acres are higher; and (5) idling acres under the Conservation Reserve Program and annual programs hurt rural economic activity. Respondents favoring higher ARP percentages noted that higher ARP levels: (1) result in higher wheat prices; (2) result in lower Government costs; (3) reduce the risk of stock-building; and (4) help maintain crop rotations.

After considering these comments, on June 1, 1994, the Secretary of Agriculture (the Secretary) announced a 1995 ARP of zero percent. The Secretary was authorized to make adjustments in the 1995 ARP percentage no later than July 31, 1994. No change was made because estimated 1995 wheat supplies did not change significantly (up about 1 percent) from the May 1994 supply estimates. The Secretary determined that a zero-percent ARP for wheat would provide the highest income for producers, maintain U.S. competitiveness in world markets, and signal to domestic and foreign customers that the U.S. will be a reliable supplier.

Table 2 compares supply and demand estimates under three different ARP options based on May 1994 estimates (the estimates used to make the June 1 and July 31, 1994, ARP decision).

TABLE 2.—COMPARISON OF 1995 WHEAT SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Supply and Demand Variable	1995 ARP Options		
	0 percent	5 percent	10 percent
Participation (percent of total base acreage)	86	85	84
Planted Acreage (mil. ac.)	71.8	70.0	67.8
Production (mil. bu.)	2,406	2,347	2,272
Domestic Use (mil. bu.)	1,242	1,227	1,207
Exports (mil. bu.)	1,200	1,190	1,175
Ending Stocks 8/31 (mil. bu.)	659	627	590
Average Market Price ($ per bu.)	2.95	3.00	3.08
Deficiency Payments (mil. $)	1,937	1,712	1,464
Net Income to Wheat Producers (mil. $)	5,547	5,302	5,086

The 1949 Act provides that an ARP of not more than 15 percent may be implemented if the ending stocks-to-use (s/u) ratio for the previous marketing year is equal to or less than 40 percent. When the 1995 ARP was announced, the S/U for the 1994 marketing year was estimated to be 25.8 percent. Section 1104 of the Agricultural Reconciliation Act of 1990 provides for a minimum 5-percent ARP for the 1995 crop of wheat unless the 1994/95 wheat ending s/u ratio is less than 34 percent. Because the 1994/95 wheat s/u ratio was less than 34 percent, the 5-percent ARP minimum does not apply. ARP levels above 10 percent were not considered because expected 1995-crop supplies would fall to unacceptable levels. A PLD will not be implemented for 1995 wheat because it is unnecessary given the supply and use conditions which led to an ARP of zero percent.

1995 Feed Grain Program

The 1949 Act provides that an ARP of zero to 12.5 percent may be implemented if the corn ending s/u ratio for the previous marketing year is equal to or less than 25 percent. The corn ending s/u for the 1994/95 marketing year was estimated to be 18.9 percent when the 1995 ARP levels were announced on September 30 and 23.3 percent on November 15, 1994. In the case of grain sorghum and barley, the 1949 Act provides for ARP percentages from zero to 20 percent. Section 1104 of the Agricultural Reconciliation Act of 1990 provides for a minimum 7.5 percent ARP for the 1995 crop of corn unless the 1994/95 corn ending s/u ratio is less than 20 percent. Because the 1994/95 corn s/u ratio estimated on September 30 was below 20 percent, the 7.5-percent minimum ARP does not apply.

The public was asked to comment on the appropriate 1995 ARP percentage for corn, grain sorghum, and barley and on whether or not malting barley producers, as a condition of eligibility for feed grain loans, purchases, and payments, should be exempt from complying with requirements of the feed grain ARP. The statutory range for establishing the 1995 ARP percentages, based on the supply and demand estimates published in the proposed rule, was zero to 12.5 percent for corn and zero to 20 percent for grain sorghum and barley. The oats ARP percentage is statutorily mandated at zero percent.

Comments received during the specified comment period are summarized as follows:

A total of 1,474 respondents commented on the ARP percentages, including 1,399 from a producer survey collected by the Nebraska Corn Development, Utilization and Marketing

Board at Harvest Husker Days. Fourteen hundred and fifty-five of the respondents commented on the corn ARP percentage, 33 of the respondents commented on the grain sorghum ARP percentage, and 28 of the respondents commented on the barley ARP percentage. Table 3 shows a breakdown of the comments received on the corn, grain sorghum, and barley ARP percentage by type of respondent.

TABLE 3.—SUMMARY OF COMMENTS ON THE 1995 FEED GRAIN ARP LEVELS, BY COMMODITY AND RESPONDENT TYPE

Respondent	Suggested ARP percentage					
	0%	5%	7.5%	10%	12.5%	>12.5%
Corn:						
Farm Organizations	0	1	3	1	2	0
Agri-businesses	9	1	0	0	2	0
Individual/Producers	134	261	407	87	448	86
Others	0	0	1	1	11	0
Total	143	263	411	89	463	86
Grain Sorghum:						
Farm Organizations	2	0	0	1	1	0
Agri-businesses	6	0	0	0	1	0
Individual/Producers	3	0	0	3	5	7
Others	0	0	0	1	3	0
Total	11	0	0	5	10	7
Barley:						
Farm Organizations	5	0	0	1	1	0
Agri-businesses	6	0	0	0	1	0
Individual/Producers	4	0	0	1	5	2
Others	0	0	0	0	1	1
Total	15	0	0	2	8	3

Fifty-six percent of the respondents (a majority of producer comments) favored a corn ARP of 7.5 percent or less. In general, most farm organization and agri-business respondents favored an ARP level of 7.5 percent or less.

Respondents favoring the lower ARP percentages noted that the U.S. needs to produce more to take advantage of export opportunities and confirmed USDA's analysis that a lower ARP level results in higher producer incomes. Advocates for a zero-percent barley ARP indicated the need for adequate supplies to aggressively implement the Export Enhancement Program for barley.

Respondents favoring higher ARP percentages commented that feed grain supplies would be lower, prices would be higher, and Government costs would be lower.

Three respondents commented on whether or not malting barley producers should be exempt from the 1995 ARP requirement for barley. One respondent favored and two respondents opposed the malting barley exemption.

After considering these comments, the Secretary announced on September 30, 1994, an ARP level of 7.5 percent for corn, and zero percent for grain sorghum, barley, and oats, and that malting barley producers would not be exempt from complying with the 1995 Barley ARP requirements.

Malting barley producers will not be exempted from complying with the barley ARP requirement because exempting them would increase the complexity of the program and increase program outlays.

The Secretary was authorized to make adjustments in the 1995 ARP percentages no later than November 15, 1994. On November 15, 1994, the Secretary announced that the initially announced ARP levels would not be changed. A change was not warranted because 1994 feed grain supplies had increased only 6 percent and the prospects for larger feed grain demand had improved since the September announcement.

The Secretary determined that a 7.5-percent ARP for corn and zero-percent ARP's for grain sorghum and barley would maintain adequate supplies of quality feed and food for all markets.

Table 4 shows four different 1995 Feed Grain ARP options that were considered when determining the final 1995 ARP percentages.

TABLE 4.—1995 FEED GRAIN ARP OPTIONS

Crop	1995 ARP options			
	1	2	3	4
	Percentages			
Corn	0	5	7.5	12.5
Grain Sorghum	0	0	0	5
Barley	0	0	0	5

Tables 5 through 7 compare the supply and demand estimates of four different 1995 ARP options based on September 1994 estimates for corn, grain sorghum, and barley.

TABLE 5.—COMPARISON OF 1995 CORN SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Supply and Demand Variable	1995 ARP options			
	0	5	7.5	12.5
Participation (percent of the total base acreage)	81	77	75	71
Planted Acreage (mil. ac.)	79.5	78.0	77.0	75.0
Production (mil. bu.)	8,980	8,815	8,705	8,470
Domestic Use (mil. bu.)	7,315	7,275	7,250	7,200
Exports (mil. bu.)	1,650	1,625	1,615	1,590
Ending Stocks 8/31 (mil. bu.)	1,621	1,521	1,446	1,286
Average Market Price ($ per bu.)	2.20	2.25	2.28	2.36
Deficiency Payments (mil. $)	3,081	2,508	2,225	1,633
Net Income to Corn Producers (mil. $)	11,266	10,935	10,786	10,580

TABLE 6.—COMPARISON OF 1995 GRAIN SORGHUM SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Supply and demand variable	1995 ARP options			
	0	0	0	5
Participation (percent of the total base acreage)	80	80	79	76
Planted Acreage (mil. ac.)	10.2	10.1	10.0	9.8
Production (mil. bu.)	605	600	600	585
Domestic Use (mil. bu.)	408	403	403	398
Exports (mil. bu.)	200	200	200	195
Ending Stocks 8/31 (mil. bu.)	94	94	94	89
Average Market Price ($ per bu.)	2.00	2.05	2.08	2.16
Deficiency Payments (mil. $)	300	275	257	196
Net Income to Sorghum Producers (mil. $)	710	716	724	688

TABLE 7.—COMPARISON OF 1995 BARLEY SUPPLY AND DEMAND ESTIMATES UNDER VARIOUS ARP OPTIONS

Supply and demand variable	1995 ARP options			
	0	0	0	5
Participation (percent of the total base acreage)	79	79	79	78
Planted Acreage (mil. bu.)	7.3	7.3	7.3	7.1
Production (mil. bu.)	395	395	395	385
Domestic Use (mil. bu.)	385	385	385	385
Exports (mil. bu.)	65	65	65	65
Ending Stocks 5/31 (mil. bu.)	129	129	129	124
Average Market Price ($ per bu.)	2.10	2.15	2.18	2.23
Deficiency Payments (mil. $)	155	140	135	113
Net Income to Barley Producers (mil. $)	563	568	575	562

1994-crop Wheat and Feed Grains FOR Program

Section 110 of the 1949 Act sets forth the statutory authority for the FOR program for wheat and feed grains. It provides that the determination of whether there will be entry of a crop into the FOR will be announced by December 15 of the year in which the crop of wheat was harvested and, in the case of feed grains, March 15 of the year following the year in which the crop of corn was harvested.

Entry into the FOR is triggered based upon prices and s/u ratios. Section 110 of the 1949 Act generally provides that the Secretary may make extended loans available to producers of wheat or feed grains if either of the following conditions is met:

(A) *Price Condition:* The Secretary determines that the average market price for wheat or corn, respectively, for the 90-day period prior to the announcement is less than 120 percent of the current loan rate for wheat or corn, respectively; or

(B) *S/U Condition:* As of the announcement date, the Secretary estimates that the s/u ratio on the last day of the current marketing year will be:

(i) in the case of wheat, more than 37.5 percent; and

(ii) in the case of corn, more than 22.5 percent.

Section 110 of the 1949 Act, also provides that the Secretary shall make extended loans available to producers of wheat or feed grains if both of the afore-noted conditions are met for wheat and feed grains, respectively. If neither the price nor the s/u condition is met, the Secretary has no authority to make extended loans available to producers of wheat or feed grains.

In accordance with section 110 of the 1949 Act, if the Secretary makes extended loans available to producers of wheat or feed grains, the Secretary must specify the maximum quantity of wheat or feed grains to be stored under this program that the Secretary determines appropriate to promote the orderly marketing of the commodities. The maximum quantities of wheat may not be established at less than 300 million bushels, nor more than 450 million bushels. The maximum quantities of feed grains may not be established at less than 600 million bushels, nor more than 900 million bushels. Section 110 of the 1949 Act also provides that the Secretary may require producers to repay FOR loans if it is determined that these supplies are required to meet

urgent domestic and international needs.

On November 3, 1994, the CCC authorized up to 900 million bushels of corn, grain sorghum, barley, and oats to be stored under the FOR program. At the time of the decision, the estimated corn S/U ratio at the end of the 1994/95 marketing year was 18.9 percent, the 90-day average market price of corn was $2.16 per bushel, and 120 percent of the 1994 price support rate for corn was $2.27 per bushel. Entry of the 1994-crop of feed grains into the FOR was allowed because the price condition was met (the 90-day average market price of corn was less than 120 percent of the 1994 price support rate for corn) and the prospects for a large 1994 corn crop had caused corn prices to decline significantly through the summer and early fall of 1994. Corn cash prices declined from around $2.70 per bushel in late June to around $2.00 per bushel at harvest.

On June 23, 1995, in accordance with section 110(e) of the 1949 Act, the CCC announced that 1994-crop feed grains may not be pledged as collateral for FOR loans and that all existing 1994 crop feed grain FOR loans were called because the 1995/96 supply and demand outlook for feed grains had tightened significantly since authorizing the FOR entry for 1994-crop feed grain loans in November 1994. Stronger than expected corn export demand for 1994/95 and 1995/96, higher than expected feed use in 1994/95, and prospects for a smaller 1995 corn crop due to unexpected weather-related problems are all contributing factors. Recent excessive rains in major corn-producing states caused the 1995 corn production estimate to be lowered from 8.6 billion bushels in May 1995 to 7.9 billion bushels in June 1995—just one month later. Total use estimates were also lowered by 500 million bushels since May 1995, reflecting lower estimated supply estimates and rising feed costs. Corn ending stocks for 1995/96 are projected at 748 million bushels, 789 million bushels below November 1994 projections and the lowest level since 1975/76. This tightened supply situation is expected to increase feeding costs for livestock and poultry producers. A further tightening of supplies will likely cause liquidation of livestock herds, reducing feed use in subsequent crop years.

As with corn, June estimates of 1995/95 supplies and ending stocks for the other feed grains are lower compared to November estimates and are at or near historically low levels.

On December 13, 1994, the Secretary announced that 1994-crop wheat would not be eligible for the FOR because neither the s/u condition nor the price condition had been met. At the time of the decision, the estimated wheat s/u ratio at the end of the 1994/95 marketing year was 21.1 percent, the 90-day average market price of wheat was $3.74 per bushel, and 120 percent of the 1994 price support rate for wheat was $3.10 per bushel.

1995 Oilseeds Price Support Rates

Section 205 of the 1949 Act provides that the price support rate for the 1995 crop of soybeans shall not be less than $4.92 per bushel and for the 1995 crop of sunflower seed, canola, rapeseed, safflower, mustard seed, and flaxseed shall not be less than $0.087 per pound.

Acreage Reduction Percentages

In accordance with sections 107B(e)(1) and 105B(e)(1) of the 1949 Act, the ARP has been established with respect to the 1995 crop of corn at 7.5 percent, and with respect to the 1995 crops of wheat, grain sorghum, barley, and oats at zero percent. Accordingly, producers of corn will be required to reduce their 1995 acreage of corn for harvest by 7.5 percent from the established corn crop acreage base for a farm to be eligible for price support loans, purchase, and payments. Producers will not be required to reduce their 1995 acreage of grain sorghum, barley and oats for harvest from the established feed grain crop acreage base for a farm in order to be eligible for price support loans, purchase, and payments for the respective feed grain.

Paid Land Diversion

In accordance with sections 107B(e)(5) and 105B(e)(5) of the 1949 Act, a PLD program will not be implemented for the 1995 crops of wheat and feed grains.

Malting Barley Exemption

In accordance with section 105B(e)(2)(G) of the 1949 Act, producers of malting barley shall, as a condition of eligibility of feed grain loans, purchases and payments, comply with the requirements of the zero-percent ARP for the 1995 crop of barley.

Price Support Rates

In accordance with sections 107B(a) and 105B(a) of the 1949 Act, the price support rates have been established with respect to the 1995 crops of wheat at $2.58 per bushel, corn at $1.89 per bushel, grain sorghum at $1.80 per bushel, barley at $1.54 per bushel, oats at $0.97 per bushel, and rye at $1.61 per bushel.

List of Subjects

7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, 7 CFR parts 1413 and 1421 are amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraphs (a)(1)(iii) and (a)(1)(iv) and adding paragraph (a)(1)(v),

B. Revising paragraphs (a)(2)(iii)(C) and (a)(2)(iv) and adding paragraph (a)(2)(v),

C. Republishing paragraph (d)(5) introductory text, and adding paragraphs (d)(5)(i) and (d)(5)(ii), and

D. Revising paragraph (e):

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(1) * * *

(iii) 1993 wheat, 0 percent;

(iv) 1994 wheat, 0 percent; and

(v) 1995 wheat, 0 percent.

(2) * * *

(iii) * * *

(C) Barley and oats, 0 percent;

(iv) For the 1994 crop: corn, grain sorghum, barley, and oats, 0 percent; and

(v) For the 1995 crop: corn—7.5 percent; grain sorghum, barley, and oats—0 percent.

* * * * *

(d) * * *

(5) For the 1995 crop:

(i) Shall not be made available to producers of wheat and

(ii) Shall not be made available to producers of feed grains.

* * * * *

(e) With respect to the 1991, 1992, 1993, 1994 and 1995 crop years, in order to receive feed grain loans, purchases, and payments in accordance with this part and part 1421 of this title, producers of malting barley must

comply with the acreage reduction requirements of this part.

* * * * *

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.7 is amended by adding paragraphs (b)(1)(v), (b)(2)(v), (b)(3)(v), (b)(4)(v), (b)(5)(v), (b)(6)(v), (b)(9)(v), and (b)(10)(v):

§ 1421.7 Adjustment of basic support rates.

* * * * *

(b) * * *

(1) * * *

(v) 1995 Wheat— $2.58 per bushel;

(2) * * *

(v) 1995 Corn—$1.89 per bushel;

(3) * * *

(v) 1995 Barley—$1.54 per bushel;

(4) * * *

(v) 1995 Oats—$0.97 per bushel;

(5) * * *

(v) 1995 Grain sorghum—$1.80 per bushel;

(6) * * *

(v) 1995 Rye—$1.61 per bushel;

* * * * *

(9) * * *

(v) 1995 Soybeans—$4.92 per bushel;

(10) * * *

(v) 1995 Canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed—$0.087 per pound.

* * * * *

5. Section 1421.217 is amended by adding paragraph (e):

§ 1421.217 Reserve entry.

* * * * *

(e) No quantity of 1994-crop wheat or 1994-crop feed grains may be stored under the provisions of section 110 of the Agricultural Act of 1949, as amended.

Signed at Washington, DC, on September 8, 1995.

Richard O. Newman,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–23030 Filed 9–15–95; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Parts 102 and 114

[Docket No. 93–136–2]

Viruses, Serums, Toxins, and Analogous Products; State-Federal Licensure of Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning State-Federal licensing of veterinary biological products. The effect of the amendment is that a Federally licensed establishment will not be allowed to produce the same veterinary biological product under both a State and Federal product license. Autogenous biologics will not be subject to the same requirement in that a Federally licensed establishment may hold both State and Federal product licenses for autogenous biologics, but must choose to produce each specific serial of such biologic under either a State or Federal product license. No autogenous biologic may be produced at the same time under both a Federal and State license. The amendment is necessary in order to ensure the integrity of the Federal licensing system and the safety of biological products produced in Federally licensed establishments.

We are also removing outdated sections from the regulations referring to interim establishment licenses and exemption procedures that were permitted during the 5-year transition period to attain Federal licensure under the 1985 amendments to the Virus-Serum-Toxin Act.

EFFECTIVE DATE: October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), licenses veterinary biological products under the Virus-Serum-Toxin Act (21 U.S.C. 151–159, hereinafter, the Act), as amended by the Food Security Act of 1985. Veterinary biologics licensed by APHIS include products such as vaccines, antitoxins, viruses, diagnostics, and autogenous biologics (vaccines, bacterins, and toxoids) which are normally used in the herd of origin (the herd from which the disease causing microorganism is derived) to immunize animals against infectious disease.

Under the Act, veterinary biological products are licensed on the basis of their purity, safety, potency, and efficacy. The 1985 amendments to the Act exempt certain products from the requirement that they be produced pursuant to an unsuspended and unrevoked Federal license. Such products include those which are prepared solely for distribution within the State of production pursuant to a license granted by such State under a program approved by the Administrator of APHIS.

The regulations in 9 CFR part 102 contain Federal licensing provisions for biological products. The regulations in 9 CFR part 114 prescribe conditions under which an unlicensed product may be prepared in a USDA-licensed establishment.

On March 6, 1995, we published in the **Federal Register** (60 FR 12162–12165, Docket No. 93–136–1) a proposal to amend parts 102 and 114.

We proposed to amend part 102 by removing the outdated reference to Federal interim licenses in § 102.1 and by removing § 102.4(h), which refers to outdated provisions. We also proposed minor editorial changes to § 102.4(b)(3) and § 102.6 (introductory paragraph and paragraph (a)) to reflect organizational changes within APHIS.

We also proposed to amend part 114 by removing outdated provisions for interim licenses and certain exemption procedures that were used in implementing the 5-year transition to Federal licensure under the 1985 amendments to the Virus-Serum-Toxin Act. In addition, we proposed to amend part 114 to establish the conditions that must be maintained when a State-licensed veterinary biological product is produced in an establishment holding a U.S. Veterinary Biologics Establishment License.

Under the proposed amendments, a Federally licensed establishment would not be allowed to produce the same veterinary biological product under both a State and Federal product license. Autogenous biologics would not be subject to the same requirement in that a Federally licensed establishment could hold both State and Federal product licenses for autogenous biologics, but would have to choose to produce each specific serial of such biologic under either a State or Federal product license. No autogenous biologic

could be produced at the same time under both a Federal and State license.

We solicited comments concerning our proposal for 60 days ending May 5, 1995. We did not receive any comments. The proposed rule provides the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule removes outdated sections from the regulations in §§ 102.1 and 102.4(h) and § 114.2 (b) and (d). These sections refer to outdated provisions related to the implementation of the 1985 amendments to the Virus-Serum-Toxin Act. These provisions expired on June 30, 1991.

This rule also establishes conditions applicable to some 100 producers to prepare a biological product under either a State or USDA product license in a USDA licensed establishment. An exception is provided for autogenous biologics. The amendment will not have an adverse economic impact on these producers of biologics since it still allows the production of both State and Federally licensed products in Federally-licensed establishments. Therefore, it is not anticipated that the amendment will have an economic impact on producers or small businesses.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

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

List of Subjects

9 CFR Part 102

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 114

Animal biologics, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 102 and 114 are amended as follows:

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for part 102 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 102.1 is revised to read as follows:

§ 102.1 Licenses issued by the Administrator.

Each establishment qualified to prepare biological products under the Virus-Serum-Toxin Act shall hold an unexpired and unrevoked U.S. Veterinary Biologics Establishment License issued by the Administrator and a U.S. Veterinary Biological Product License for each product prepared in such establishment unless the product is subject to the provisions of 9 CFR parts 103 or 106 of this subchapter.

§ 102.4 [Amended]

3. In § 102.4, paragraph (b)(3), the words ''Veterinary Services'' are removed and the words ''Animal and Plant Health Inspection Service'' are added in their place.

4. In § 102.4, paragraph (h) is removed.

§ 102.6 [Amended]

5. In § 102.6, in the introductory paragraph and paragraph (a), the term ''Deputy'' is removed.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

6. The authority citation for part 114 is revised to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

7. In § 114.2, paragraphs (b) and (d) are removed; paragraph (c) is redesignated as paragraph (b) and revised; and a new paragraph (c) is added to read as follows:

§ 114.2 Products not prepared under license.

* * * * *

(b) Except as provided in 9 CFR part 103, a biological product shall not be prepared in a licensed establishment unless the person to whom the establishment license is issued holds an unexpired, unsuspended, and unrevoked product license issued by the Administrator to prepare such biological product, or unless the products prepared are subject to the provisions of § 107.2 of this subchapter.

(c) A biological product produced in a USDA-licensed establishment shall be produced under a U.S. Veterinary Biological Product License or a license granted by a State under § 107.2 (referred to as a State biological product license and the products prepared pursuant thereto as State-licensed biological products, including autogenous biologics), but not under both a U.S. Veterinary Biological Product License and a State biological product license. Before a U.S. Veterinary Biological Product License (including a conditional license) is issued, the licensee shall relinquish its State license for that product: *Provided*, That autogenous biologics shall not be subject to this provision when they are prepared in accordance with the provisions of paragraph (c)(5) of this section.

(1) State-licensed biological products (including autogenous biologics) shall only be distributed or shipped intrastate, must not bear a U.S. Veterinary Biologics Establishment License Number, and must not otherwise be represented in any manner as having met the requirements for a U.S. Veterinary Biological Product license. Labeling of State- and USDA-licensed biological products produced in the same establishment must be distinctly different in color and design.

(2) All biological products in USDA-licensed establishments, whether licensed by USDA or by the State, shall be prepared only in locations indicated in legends filed in accordance with 9 CFR part 108. A description of each State-licensed product must be filed with the Animal and Plant Health Inspection Service as part of the blueprint legends and must be sufficient for Animal and Plant Health Inspection Service to determine any risk to the production of other products in the licensed establishment and to determine that adequate procedures are followed

to prevent contamination during production.

(3) Records in such establishments must be maintained in accordance with §§ 116.1 and 116.2 of this subchapter and shall include all products licensed by the State or USDA.

(4) Reports prescribed in § 116.5 of this subchapter for USDA-licensed establishments shall be submitted for all veterinary biological products in the establishment.

(5) Under the following conditions, an autogenous biologic may be produced in a USDA-licensed establishment under either a State or U.S. Veterinary Biological Product License:

(i) When a culture of microorganisms, isolated from a herd in a State, is received at a USDA-licensed establishment that is in the same State but that holds both a State and a U.S. Veterinary Biological Products License for autogenous biologics, the isolate shall be designated by the licensee for use in the production of an autogenous biological product under either the State product license, or the U.S. Veterinary Biological Product License: *Provided,* That the isolate meets the requirements of the respective regulatory authority for an autogenous biologic. If, after producing the product pursuant to one license, the licensee elects to produce an autogenous biologic from the same isolate under provisions of the other license, the licensee may do so only with the approval of the other licensing authority.

(ii) The true name of a State-licensed autogenous biologic shall specify the State of licensure: e.g.

'' _____ Autogenous Bacterin''
(State)

or _____ Autogenous Vaccine''.
(State)

Done in Washington, DC, this 11th day of September 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–23032 Filed 9–15–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 95–AWP–16]

Establishment of Class D Airspace Area, Chandler Municipal Airport, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class D airspace area at Chandler Municipal Airport, AZ. This action will provide adequate airspace for instrument flight rules (IFR) operations at Chandler Municipal Airport, Chandler, AZ.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On June 15, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area at Chandler Municipal Airport, Chandler, AZ. (60 FR 31423). The effect of this action is to provide adequate Class D airspace for aircraft executing an instrument approach procedure at Chandler Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class D airspace area at Chandler Municipal Airport, AZ. This action will provide adequate Class D airspace for aircraft executing instrument approach procedures at Chandler Municipal Airport, Chandler, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP AZ D Chandler Municipal Airport, AZ [New]

Chandler Municipal Airport, AZ
(Lat. 33°16′09″N, long. 111°48′40″W)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4-mile radius of Chandler Municipal Airport, excluding the portion within the Williams-Gateway Airport, AZ, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on August 24, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–23099 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–ASO–13]

Amendment to Class E Airspace; Brewton, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Brewton, AL, to accommodate a VOR RWY 6 Standard Instrument Approach Procedure (SIAP) for the Brewton Municipal Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, January 4, 1996.

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

SUPPLEMENTARY INFORMATION:

History

On July 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class E airspace at Brewton, AL (60 FR 36370). This action would provide adequate Class E airspace for IFR operations at Brewton Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Brewton, AL, to accommodate a VOR RWY 6 SIAP and for IFR operations at the Brewton Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significantly regulatory action'' under Executive Order 12866; (2) is not a ''significantly rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 16, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO AL E5 Brewton, AL [Revised]

Brewton Municipal Airport, AL
(Lat. 31°03′05″N, long. 87°04′05″ W)
Crestview, FL, VORTAC
(Lat. 30°49′34″N, long. 86°40′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Brewton Municipal Airport and within 4 miles each side of the Crestview, FL, VORTAC 304° radial, extending from the 7-mile radius to 15 miles northwest of the VORTAC.

* * * * *

Issued in College Park, Georgia, on September 1, 1995.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–23095 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AWP–22]

Establishment of Class E Airspace; Placerville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Placerville Airport, Placerville, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 5 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Placerville Airport, Placerville, CA.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Placerville Airport, Placerville, CA. (60 FR 36372). The development of a GPS SIAP at Placerville Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Placerville, CA. The development of a GPS SIAP at Placerville Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 5 SIAP at Placerville Airport, Placerville, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.09C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Placerville, CA [New]

Placerville Airport, CA
(Lat. 38°43′27″ N, long. 120°45′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Placerville Airport.

* * * * *

Issued in Los Angeles, California, on September 1, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–23098 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28326; Amdt. No. 1684]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA from documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 9260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

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

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

The FAA has determined that this regulation only involves an established

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on September 8, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23 [Amended]

§ 97.25 [Amended]

§ 97.27 [Amended]

§ 97.29 [Amended]

§ 97.31 [Amended]

§ 97.33 [Amended]

§ 97.35 [Amended]

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

** * * Effective November 9, 1995*

Russellville, AR, Russellville Muni, GPS RWY 25, Orig
Carlsbad, CA, McClellan-Palomar, NDB RWY 24, Amdt 3, Cancelled
Perry, GA, Perry-Houston County, VOR or GPS–A, Amdt 5
Perry, GA, Perry-Houston County, LOC RWY 36, Amdt 1
Perry, GA, Perry-Houston County, NDB or GPS RWY 36, Amdt 3
Des Moines, IA, Des Moines Intl, VOR OR GPS RWY 23, Amdt 1
Des Moines, IA, Des Moines Intl, NDB OR GPS RWY 31R, Amdt 18
Des Moines, IA, Des Moines Intl. ILS RWY 13L, Amdt 6
Des Moines, IA, Des Moines Intl, ILS RWY 31R, Amdt 19
Des Moines, IA, Des Moines Intl, RADAR–1, Amdt 17
Newton, IA, Newton Muni, VOR OR GPS RWY 14, Amdt 9
Newton, IA, Newton Muni, VOR OR GPS RWY 32, Amdt 9
Newton, IA, Newton Muni, ILS RWY 32, Amdt 1
Chicago, IL, Lansing Muni, GPS RWY 27, Orig
Michigan City, IN, Michigan City Muni, GPS RWY 20, Orig
Nantucket, MA, Nantucket Memorial, VOR OR GPS RWY 24, Amdt 13
Nantucket, MA, Nantucket Memorial, LOC BC RWY 6 Amdt 8
Nantucket, MA, Nantucket Memorial, NDB RWY 24, Amdt 11
Nantucket, MA, Nantucket Memorial, ILS RWY 24, Amdt 15
Newburyport, MA, Plum Island, VOR OR GPS RWY 10, Amdt 5
Norwood, MA, Norwood Memorial, LOC RWY 35, Amdt 7
Norwood, MA, Norwood Memorial, NDB RWY 35, Amdt 7
Cadillac, MI, Wexford County, GPS RWY 25, Orig
Eveleth, MN, Eveleth-Virginia Muni, GPS RWY 27, Orig
Raton, NM, Raton Municipal/Crews Field, GPS RWY 25, Orig
Mandan, ND, Mandan Muni, VOR or GPS–A, Amdt 1
Mandan, ND, Mandan Muni, RADAR–1, Amdt 4
Wahpeton, ND, Harry Stern, GPS RWY 33, Orig
Allendale, SC, Allendale County, GPS RWY 35, Orig
Spearfish, SD, Black Hills-Clyde Ice Field, GPS RWY 12, Orig
Knoxville, TN, McGhee Tyson, VOR/DME RWY 5R, Amdt 4, Cancelled
Alpine, TX, Alpine-Casparis Municipal, NDB OR GPS RWY 19, Amdt 5
Brenham, TX, Brenham Muni, VOR/DME RWY 16, Amdt 1
Brenham, TX, Brenham Muni, NDB RWY 16, Amdt 5
Gainesville, TX, Gainesville Muni, NDB OR GPS RWY 17, Amdt 8
Houston, TX, Sugar Land Muni/Hull Field, VOR DME–A, Orig
Houston, TX, Sugar Land Muni/Hull Field, VOR/DME RNAV OR GPS RWY 17, Amdt 6, Cancelled
Houston, TX, William P. Hobby, VOR/DME OR GPS RWY 22, Amdt 24
Lyndonville, VT, Caledonia County, NDB RWY 2, Amdt 3

** * * Effective October 12, 1995*

Spokane, WA, Spokane Intl, ILS RWY 21, Amdt 19

** * * Effective Upon Publication*

Wadsworth, OH, Wadsworth Muni, VOR/DME–A, Amdt 1

Note: Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28, Amdt 10, published in TL95–19 dated August 25, 1995, missed approach instructions should read as follows: Climb to 2000 via BAL R–284 to JEANS INT/BAL 5.1 DME/RADAR and hold.

[FR Doc. 95–23104 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28327; Amdt. No. 1685]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on September 8, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
08/24/95	VT	Springfield	Springfield/Hartness State	FDC 5/4462	NDB OR GPS–A AMDT 5...
08/24/95	VT	Springfield	Springfield/Hartness State	FDC 5/4463	LOC–A AMDT 4...
08/29/95	TX	Dumas	Moore County	FDC 5/4779	VOR/DME OR GPS–A AMDT 5...
08/31/95	MI	Oscoda	Oscoda–Wurtsmith	FDC 5/4650	VOR OR GPS RWY 6 ORIG–A...
08/31/95	MI	Oscoda	Oscoda–Wurtsmith	FDC 5/4651	ILS/DME RWY 24 ORIG...
08/31/95	NV	Reno	Tahoe Intl	FDC 5/4647	ILS RWY 16R AMDT 9...
08/31/95	NV	Reno	Tahoe Intl	FDC 5/4648	LOC–S RWY 16R AMDT 5...

FDC date	State	City	Airport	FDC No.	SIAP
09/06/95	NC	Chapel Hill	Horace Williams	FDC 5/4822	VOR/DME OR GPS RWY 27, ORIG–A...
09/07/95	PA	Pittsburgh	Pittsburgh Intl	FDC 5/4837	ILS RWY 10R AMDT 6...
09/07/95	VA	Hot Springs	Ingalls Field	FDC 5/4835	ILS RWY 24 AMDT 1...

[FR Doc. 95–23103 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 24, 231, and 247

Guides for the Luggage and Related Products Industry, Guides for Shoe Content Labeling and Advertising, and Guides for the Ladies' Handbag Industry

AGENCY: Federal Trade Commission.

ACTION: Final Rule; Rescission of Guides.

SUMMARY: The Federal Trade Commission (the ''Commission''), as part of its periodic review of its rules and guides, announces that it has concluded a review of its Guides for the Luggage and Related Products Industry (''Luggage Guides''); Guides for Shoe Content Labeling and Advertising (''Shoe Content Guides''); and Guides for the Ladies' Handbag Industry (''Handbag Guides''). The Commission has decided to rescind these three Guides. In a document published elsewhere in this issue of the **Federal Register,** the Commission seeks public comment on proposed Guides for Select Leather and Imitation Leather Products. The Commission is taking this action to clarify and streamline the Guides.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Susan E. Arthur, Attorney, (214) 767–5503, Federal Trade Commission, Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION: In response to the Commission's request for public comment on the Luagge Guides, the Shoe Content Guides, and the Ladies' Handbag Guides, the Commission received 12 comments. The comments received are discussed in the Commission's request for public comment concerning its proposed Guides for Select Leather and Imitation Leather Products. That request is located elsewhere in this issue of the Federal Register.

A review of the comments and of the three Guides indicates that consolidation of their basic principles into one set of Guides is clearly warranted. Therefore, on the basis of the discussion in this rule—and the discussion in the Commission's request for public comment concerning its proposed Guides for Select Leather and Imitation Leather Products, which is located elsewhere in this issue of the **Federal Register**, and which is incorporated herein—16 CFR Parts 24, 231, and 247 are hereby rescinded.

List of Subjects

16 CFR Part 24

Advertising, Luggage industry, Trade practices.

16 CFR Part 231

Advertising, Footwear, Labeling, Trade practices.

16 CFR Part 247

Advertising, Handbag industry, Labeling, Trade practices.

PART 24—[REMOVED]

PART 231—[REMOVED]

PART 247—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of Title 16 of the Code of Federal Regulations by removing Parts 24, 231, and 247.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23038 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 95–76]

RIN 1515–AB81

Removal of Cambodia and Vietnam From List of ''Non-Entrant'' Countries

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On January 3, 1992, the United States lifted the trade embargo against Cambodia, normalizing economic relations between the United States and Cambodia. On February 3, 1994, President Clinton lifted the trade embargo against Vietnam. Effective April 27, 1995, the National Security Council amended its policy toward Cambodia and Vietnam by removing them from the ''non-entrant'' ''Category II'' status and placing them in the ''Category I'' status of vessels that may enter U. S. ports subject to certain limitations.

This document amends footnote 3a of section 4.20 of the Customs Regulations to remove Cambodia and Vietnam from the list of ''non-entrant'' countries so that foreign vessels entering the United States from these countries are now subject to a lesser special tonnage tax assessment.

DATES: This amendment is effective September 18, 1995. Reduced special tonnage tax assessments for foreign vessels entering the United States from Cambodia and Vietnam applied commencing on April 27, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara E. Whiting, Carrier Rulings Branch, (202) 482–6940.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to information provided by the Departments of State and Transportation, Customs has found that on January 3, 1992, the United States lifted the trade embargo against Cambodia, normalizing economic relations. On February 3, 1994, President Clinton lifted the trade embargo against Vietnam. Effective April 27, 1995, the National Security Council amended its policy toward Cambodia and Vietnam by removing them from the ''non-entrant'' ''Category II'' status and placing them in the ''Category I'' status of vessels that may enter U. S. ports subject to certain limitations.

Accordingly, Customs has determined that vessels which trade in or enter the United States from Democratic Kampuchea (Cambodia) and the Socialist Republic of Vietnam are no longer subject to the payment of special tonnage tax in the amount of $2.00 as provided in 46 U.S.C. App. 121 and 141 and section 4.20 of the Customs

Regulations (19 CFR 4.20), but they will be subject to the $0.50 special tonnage tax and $0.50 light money rates provided therein.

This document amends footnote 3a of section 4.20 of the Customs Regulations (19 CFR 4.20, footnote 3a) to remove Cambodia and Vietnam from the list of ''non-entrant'' countries, reflecting the lesser special tonnage tax assessments for foreign vessels entering the United States from these countries.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulation is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Inapplicability of Public Notice and Comment Requirements and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures, but merely announces a benefit for the public, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that the notice and public comment procedures thereon are unnecessary. For the same reasons, it has also been determined, pursuant to 5 U.S.C. 553(d)(1) and (3), that good cause exists for not requiring a delayed effective date.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements.

Amendment to the Regulations

For the reasons set forth in the preamble, part 4 of the Customs Regulations (19 CFR part 4) is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the specific authority for § 4.20 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511, 14512, 14513, 14701, 14702, 46 U.S.C. App. 121, 128;

* * * * *

§ 4.20 [Amended]

2. In § 4.20(c), footnote 3a to the table is amended by removing the words ''Democratic Kampuchea (Cambodia);'' and ''; and, the Socialist Republic of Vietnam''.

Approved: August 23, 1995.

William F. Riley,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–22977 Filed 9–15–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AH71

Board of Contract Appeals: Rules of the Board

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the rules of the VA Board of Contract Appeals concerning optional small claims (expedited) and accelerated procedures. The maximum jurisdictional amount of $10,000 is changed to $50,000 for cases in which an appellant may elect to have an appeal processed under the small claims (expedited) procedures. Also, the maximum jurisdictional amount of $50,000 is changed to $100,000 for cases in which an appellant may elect to have an appeal processed under the accelerated procedures. These amendments merely reflect statutory changes.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia J. Sheridan, Counsel to the Chairman, VA Board of Contract Appeals, Department of Veterans Affairs, 810 Vermont Ave., NW. Washington, DC 20420, (202) 273–6743.

SUPPLEMENTARY INFORMATION: This document amends Rule 12 of the rules of the VA Board of Contract Appeals (38 CFR 1.780 *et seq.*). Rule 12 includes a number of provisions relating to optional small claims (expedited) and accelerated procedures.

Previously, Rule 12 at 38 CFR 1.783(l)(1)(i) included the following provisions concerning optional small claims (expedited) procedures:

(i) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in paragraph (1)(2) of this section (rule 12). An appellant may elect the accelerated procedure set forth in paragraphs (1)(3) of this section (Rule 12) in any appeal eligible for small claims (expedited) procedure.

The $10,000 amount in this paragraph was mandated by statute. However, The Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355) changed the $10,000 amount to $50,000. Accordingly, in 38 CFR 1.783(l)(1)(i) the $10,000 amount is changed to $50,000 to reflect the statutory change.

Previously, Rule 12 at 38 CFR 1.783(l)(1)(ii) included the following provisions concerning accelerated procedures:

(ii) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in paragraph (1)(3) of this section (Rule 12).

The $50,000 amount in this paragraph also was mandated by statute. However, the FASA also changed the $50,000 amount to $100,000. Accordingly, in 38 CFR 1.783(l)(1)(ii) the $50,000 amount is changed to $100,000 to reflect the statutory change.

This final rule reflects statutory changes and, therefore, is not subject to the provisions of 5 U.S.C. 552 or 553, including the notice and comment provisions.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely reflects statutory amendments. Therefore, this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: September 7, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: Sections 1.955 to 1.970 issued under 38 U.S.C. 3720(a)(4) and 5302; 5 U.S.C. 5584.

§ 1.783 [Amended]

2. In § 1.783, paragraph (l)(1)(i) is amended by removing ''$10,000'' and adding in lieu thereof ''$50,000''; and paragraph (l)(1)(ii) is amended by removing ''$50,000'' and adding in lieu thereof ''$100,000''.

[FR Doc. 95–23036 Filed 9–15–95; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Parts 1 and 2

RIN 2900–AH69

Contract Appeals Board Regulations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document removes the Department of Veterans Affairs (VA) regulations concerning ''APPEALS FROM DECISIONS OF CONTRACTING OFFICERS.'' These regulations concerned appeals to the VA Contract Appeals Board (VACAB). Prior to 1978, contract disputes were resolved by the VACAB. However, the VACAB was ''superseded'' and ''subsumed'' by the VA Board of Contract Appeals (VABCA). The VACAB's functions were to be phased-out. The last VACAB appeal was docketed in 1986, and the phase-out has been completed. Hence, the VACAB regulations are no longer needed.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia J. Sheridan, Counsel to the Chairman, VA Board of Contract Appeals, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202)273–6743.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553 there is a basis for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date since this final rule concerns rules of agency organization, practice, or procedure. Additionally, under 5 U.S.C. there is good cause for dispensing with prior notice and comment and for dispensing with a 30-day delay of the effective date since the changes made by this document should not affect anyone and, consequently, prior procedures are impracticable, unnecessary, and contrary to the public interest.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule should not have an impact on any individual or entity. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of Information, Government contracts Government employees, Government property, Infants and children, Inventions and patents, Investigation, Parking, Penalties, Postal Service, Privacy Reporting and recordkeeping requirements, Seals and insignia Security measures, Wages

38 CFR Part 2

Authority delegations (Government agencies)

Approved: September 7, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 1 and 2 are amended as follows:

PART 1—GENERAL PROVISIONS

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

Authority: Sections 1.955 to 1.970 issued under 38 U.S.C. 3720(a)(4) and 5302; 5 U.S.C. 5584.

§§ 1.770–1.776 [Removed]

2. The heading ''APPEALS FROM DECISIONS OF CONTRACTING OFFICERS'' and §§ 1.770 through 1.776 are removed.

PART 2—DELEGATIONS OF AUTHORITY

3. The authority citation for part 2 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

§ 2.5 [Amended]

4. In § 2.5, paragraph (b) is amended by removing ''and Contracts Appeals Board''.

§§ 2.62–2.65a [Removed]

5. Sections 2.62 through 2.65a are removed.

[FR Doc. 95–23037 Filed 9–15–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5294–9]

Inspection/Maintenance Flexibility Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action revises the motor vehicle Inspection/Maintenance (I/M) Program Requirements. EPA announced its intent to amend the I/M Program Requirements in December 1994 and held stakeholders' meetings on January 24, 1995 and January 31, 1995. This action creates an additional, less stringent enhanced I/M performance standard which allows areas that can meet the 1990 Clean Air Act requirements for Reasonable Further Progress and attainment to implement an I/M program that falls below the originally promulgated enhanced I/M performance standard. Because the new low enhanced I/M performance standard eliminates the need for the special enhanced performance standard for El Paso, Texas, today's action repeals that special performance standard. This action also revises the high enhanced I/M performance standard to include a visual inspection of the positive crankcase ventilation (PCV) valve on all light-duty vehicles and light-duty trucks from model years 1968 to 1971, inclusive, and of the exhaust gas recirculation (EGR) valve on all light-duty vehicles and light-duty trucks from

model years 1972 through 1983, inclusive. The low enhanced performance standard contains similar testing requirements, which are necessary to ensure full compliance with the Clean Air Act's requirement that all federal performance standards for enhanced I/M programs be based upon a model program that includes, at a minimum, two inspections per subject vehicle: an emission inspection and a visual inspection. Today's action also changes the waiver cost requirements by extending the deadline for implementing the minimum expenditure to qualify for a waiver specified in the Clean Air Act; allowing the application of pre-inspection repairs toward meeting the waiver expenditure requirements under limited circumstances; allowing the cost of primary emission control components replaced by family or friends to apply toward the waiver cost requirement; and removing the bar against issuing hardship exemptions more than once per vehicle lifetime. EPA is also including revised regulatory language to change the population cutoff for basic I/M from 50,000 persons to 200,000 persons. Lastly, this rule makes clarifying amendments to the I/M requirements for areas undergoing redesignation. EPA will soon publish a separate Supplemental Notice of Proposed Rulemaking proposing an additional performance standard for attainment and moderate (with less than 200,000 population) ozone nonattainment areas not otherwise required to implement basic I/M programs in the Ozone Transport Region. That proposed standard is based on minimum statutory requirements for these particular areas and would afford them flexibility beyond that provided by this final action.

EFFECTIVE DATE: This rule will take effect on October 18, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket No. A–95–08. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8 a.m. to 4:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Eugene J. Tierney, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 668–4456.

SUPPLEMENTARY INFORMATION:

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A. Administrative Designation
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II. Summary of Rule

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992 (40 CFR part 51, subpart S) rules related to plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule, see 57 FR 52950). EPA published a notice of proposed rule making proposing changes to the I/M rule in the **Federal Register** on April 28, l995 (60 FR 20934). EPA today takes final action to revise the 1992 I/M rule to provide greater flexibility to states required to implement I/M programs.

Section 182 of the Act was prescriptive regarding the various elements that are required as part of an enhanced I/M performance standard. It also required that EPA provide states with flexibility in meeting the requirement for enhanced or basic I/M programs. States have requested additional flexibility in two areas: the timing of the Act's mandated minimum expenditure required to qualify for a waiver and a lower performance standard for areas that may not need an enhanced I/M program as effective as the one EPA adopted in 1992 to meet the Act's Reasonable Further Progress and attainment demonstration requirements. (These two standards are referred as the low enhanced and high enhanced performance standards, respectively.)

EPA is establishing an alternate, low enhanced I/M performance standard. This standard is designed for nonattainment areas that are required to implement enhanced I/M but which can obtain adequate emission reductions from other sources to meet emission reduction requirements, without the stringency of the high enhanced I/M performance standard. EPA will approve an enhanced I/M SIP meeting the low performance standard provided EPA has approved or is simultaneously approving the state's 1996 15% VOC reasonable further progress SIP and provided that the state's ozone or CO attainment SIP and its post-1996 VOC reasonable further progress SIPs have not been disapproved.

The low enhanced performance standard meets the Act's requirement that it be based on centralized, annual testing of light duty cars and trucks, and checks for tampering and exhaust emissions. Nevertheless, this standard can be met with a comprehensive decentralized, test-and-repair program.

EPA's opinion that states should have the flexibility to implement only the low enhanced I/M program if more is not needed to meet their air quality goals makes common sense for areas whose emissions affect only themselves. With respect to states in the Northeast Ozone Transport Region, however, there is the additional issue of the effect of one area's emissions on downwind areas' air quality, even if the first area's emissions result in achievement of all local goals for clean air. EPA believes that making the low enhanced performance standard available even within the OTR will result in needed reductions on both local and regional scales, while offering useful flexibility especially with respect to areas that themselves have no air quality problem. OTR states are required to submit attainment plans for their nonattainment areas, and these plans must address both local and transported emissions. In fact, EPA now believes that the low performance standard that EPA proposed and is finalizing today offers insufficient flexibility, in that it would require states to create all-new networks of emission testing stations in many cities currently without them, cities with no air quality problem of their own. EPA believes that the affected states will likely be able to find more cost-effective and publicly preferred ways to provide for region-wide attainment. However, EPA did not propose any more flexible policy for these areas, and cannot take final action at this time to provide more flexibility. Therefore, EPA will soon publish a Supplemental Notice of Proposed Rulemaking, which offers additional flexibility by proposing to establish a lower enhanced performance standard for qualified areas in the OTR. The Supplemental Notice will also explain the legal basis for this additional flexibility. The standard will allow attainment areas and marginal and moderate (with less than 200,000 population) ozone areas in the OTR, not otherwise required to implement basic I/M programs, to implement enhanced

programs which meet the requirements of the statute without establishing extensive emission test networks.

EPA published a Notice of Proposed Rulemaking (NPRM) on April 28, 1995 describing these and other proposed amendments to the I/M rule. Proposed changes in the waiver requirements, population cutoff for basic programs and requirements for basic areas which have been redesignated to attainment were designed to offer greater flexibility to the states in the implementation of their I/M programs. The NPRM also proposed the inclusion of visual checks as part of the test procedure for all vehicles subject to enhanced I/M. Readers should refer to the NPRM for a complete description of the background and rationale for the proposed amendments, which will not be restated here.

After receiving and considering public comment on the NPRM, EPA is today finalizing each of the proposed amendments as follows.

(1) EPA is establishing the alternative low enhanced performance standard.

(2) EPA is extending the deadline for the full implementation of the minimum expenditure required to be eligible for a waiver for both basic and enhanced I/M programs until January 1998. In the interim, a state can establish any minimum expenditure it chooses, as long as it accounts for the higher waiver rates that will occur between now and 1998 in its emission inventory forecasts in the Reasonable Further Progress plan.

(3) EPA is allowing states to include qualified repair cost expenditures that occur within 60 days of the initial test toward meeting the minimum waiver expenditure.

(4) Additionally, EPA is allowing the cost of specified emission control components replaced by persons other than recognized repair technicians to apply towards the waiver cost limit.

(5) EPA is deleting language from the November 5, 1992 I/M rule barring motorists from qualifying for more than one hardship exemption during the lifetime of a vehicle.

(6) EPA is adding a visual inspection of the positive crankcase ventilation (PCV) valve on all light-duty vehicles and light-duty trucks of model year 1968 through 1971, inclusive, and of the exhaust gas recirculation (EGR) valve on all light-duty vehicles and light-duty trucks of model year 1972 through 1983, inclusive to the high enhanced performance standard.

(7) In the proposed rule of April 28, 1995, EPA requested comment on whether or not it should change the minimum population cutoff for basic I/M programs. Based on the public comment received, EPA is revising the regulatory language in this rulemaking to increase the minimum threshold for basic I/M programs to 200,000 or more.

(8) Finally, EPA is clarifying the requirements for basic I/M areas that are eligible for redesignation to attainment. Consistent with EPA's original intent, EPA does not believe that a violation of the standard in an area that has been redesignated automatically requires the implementation or upgrade of an I/M program. EPA believes that, in the event of a violation, a state should have the flexibility to select whichever contingency measures are best suited to correcting the problem to bring the area to attainment as quickly as possible. The rule would continue to require, however, that such an upgraded basic I/M program be among the contingency measures from which the state will choose. Changes to remove extraneous language related to the requirements for an implementation schedule will also go into effect.

III. Authority

Authority for the action in this notice is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

IV. Public Participation

This section discusses the content of the most significant of the flexibility amendments, the submissions to the docket received during the comment period and EPA's response to those comments. Submissions were received from approximately 60 commenters including state governments and agencies, industry, environmental organizations and other organizations. Copies of the original comments can be obtained in their entirety for a reasonable copying fee from the docket for this rule. The docket also includes a complete Response to Comments document for this rule. Substantial comments were received on each of the amendments and were fully addressed in that document.

A. Low Enhanced Performance Standard

1. Summary of Proposal

EPA proposed to establish an alternate, less stringent I/M performance standard called the low enhanced performance standard. This low enhanced standard is designed for areas which are required to implement enhanced programs but which do not have a major mobile source component to the air quality problem, or which can obtain adequate reductions from other sources to meet the 15% VOC reduction requirement and demonstrate attainment.

The low enhanced standard differs from the original standard, now referred to as the high enhanced performance standard, in that it allows for idle testing. Although the standard is based on an annual, test-only network this can also be met with a biennial, test-and-repair network.

2. Summary of Comments

Commenters generally supported the notion of flexibility and the proposed low enhanced option, although most believe that it does not offer enough flexibility. The thrust of these comments was that the proposed flexibility will not be a viable option for most areas because credit discounts for test-and-repair networks and other mandated requirements preclude most states from implementing programs which they believe to be equivalent to required programs. One comment asked for clarification of an apparent inconsistency between the summary and the proposed rule: whether the low enhanced standard can be applied if attainment goals are met for either CO and/or ozone or both CO and ozone.

Several commenters strongly opposed the proposed low enhanced standard, claiming that it is inconsistent with Clean Air Act section 182(c)(3)(C)(vi), which mandates EPA to require centralized networks unless states can demonstrate equivalency of decentralized networks. They argue that these programs will be less effective and will result in failure to meet attainment goals. Comments were also made that EPA is mandated to establish ''a'' performance standard and that to establish more than one is contrary to law.

3. Response to Comments

EPA has designed this flexibility specifically for those areas which either do not have a major mobile source component to their air pollution problem or which do not require I/M programs which achieve substantial reductions in automotive emissions to achieve air quality goals. To lower the standard any further and make it available to more enhanced I/M areas by granting inappropriately large credits to test-and-repair programs would undermine the goals of I/M and the Clean Air Act. While the Act requires certain program parameters to ensure programs are both effective and enforceable, EPA is mandated to ensure that these programs meet their intended goals. EPA maintains that it offers the states flexibility to do so by making a case-by-case assessment of program

effectiveness and assigning credits accordingly. EPA is, in fact, in the process of doing this with two test-and-repair states. EPA believes that to allow more credit for test-and-repair networks than is scientifically justified by the available data or make vital requirements optional would lead to failed programs and attainment goals. EPA supports its credit assessment for test-and-repair networks later in this document.

EPA believes that the low enhanced performance standard is consistent with the Act's requirement that a program be based on a centralized network unless the state demonstrates that a decentralized program is equally effective. EPA believes that low enhanced programs that opt for the decentralized network can make such a demonstration with the MOBILE5a model and a comprehensive program which includes annual testing of heavy duty vehicles, pressure testing, and full anti-tampering programs. EPA also maintains that the Act in no way bars it from establishing multiple performance standards. This is not a new interpretation, but rather one which EPA took in the case of El Paso which was subject to an alternate standard under the original I/M rule.

To clarify the apparent inconsistency between the summary and the rule: low enhanced I/M may be implemented only in those states that can meet all of the 1990 Clean Air Act requirements for Reasonable Further Progress (RFP) for ozone and attainment for both ozone and carbon monoxide, if the area is required to implement enhanced I/M for both pollutants. If an area is required to implement enhanced I/M for only one pollutant (regardless of a requirement to implement basic I/M for the other pollutant), then low enhanced may be implemented if RFP and attainment requirements are met for that pollutant.

B. Extended Deadline for Implementing the $450 Waiver

1. Summary of Proposal

The original I/M rule requires that for enhanced programs, states must implement the $450 minimum expenditure to qualify for a waiver when the I/M program starts in 1995.

EPA proposed to postpone full implementation of the enhanced I/M waiver requirement until January 1, 1998, to allow states time to reach the long-term goals of the Clean Air Act. This action aims to provide the short term regulatory relief states have been requesting and would give states additional time to develop programs to assist low-income vehicle owners to repair their vehicles.

Some states are in the process of developing programs to mitigate the impact of I/M-related repair costs on low-income motorists. Such efforts have generally involved either granting low-income motorists time extensions of up to one full test cycle (per the November 5, 1992 rule), repair subsidy programs for individuals on some form of public assistance, or scrappage programs for low value, high emitting vehicles. Repair subsidy and scrappage based efforts tend to vary most in the area of funding mechanism. In some programs, mitigation efforts are funded by way of late fees collected from motorists who have missed their scheduled testing deadline; in others, revenue is generated by allowing new car buyers to pay a on-time ''mitigation fee'' which exempts them from the first scheduled inspection. EPA is willing to work with states that wish to develop other creative ways to deal with the issue of repair costs for low-income motorists.

2. Summary of Comments

Comments were divided on the issue of whether EPA should extend the deadline for implementing the $450 waiver. Most of the parties unsatisfied by EPA's proposal argued that a CPI (Consumer Price Index) adjustment of the $450 waiver expenditure would increase the repair cost minimum to between $600–650 when the full waiver requirement would be implemented in 1998, leading to public acceptance problems. With respect to this issue, two parties made the following recommendations: The EPA was urged to allow states to maintain their current minimum waiver amounts until 1998, at which time the phase-in would begin. Once $450 was applied as the limit during 1998, the minimum waiver amount would be adjusted annually based on the CPI with 1998 as the base year. Another commenter asked for revision of the rule language to clearly state that the often-referenced CPI-adjusted $450 amount would be likely to exceed $600 in 1998. One comment claimed that lost credit would occur from extending the waiver and this would have to be made up elsewhere. Another commenter queried why EPA was still interested in identifying high emitters through enhanced test programs when the amendment would mean that individuals would not be required to make all the necessary repairs.

The general thrust of comments supporting the rule focused on the additional flexibility this amendment would give states to phase in the $450 minimum expenditure waiver and implement hardship waiver programs. One comment suggested that the additional time would allow states to work on building public acceptance of the program and improve technician training. Another comment supported the extension of the deadline but suggested that CPI adjustments be applied only to the full minimum expenditure waiver amount no sooner than one full test cycle following final implementation.

3. Response to Comments

For emissions-related repairs not covered by warranty, the Clean Air Act very clearly requires a minimum expenditure of $450 for vehicles to qualify for a waiver. It is also very clear that the waiver limit is to be adjusted annually based on the Consumer Price Index, with a base year of 1989. As the preamble to the original I/M rule states, (page 52964, **Federal Register**), EPA will annually notify states of the adjusted amount.

It is not the EPA's intention that states begin the phase-in in 1998. EPA maintains that states have more than enough flexibility to begin the phase-in now to maintain a minimal increment by 1998. EPA believes that the enhanced I/M program should be fully implemented by 1998, including the CPI adjusted $450 waiver, to enable areas to achieve the reductions contemplated by the program prior to the attainment deadline for serious areas (i.e., 11/15/99). Should areas need reductions between now and 1998 to meet reasonable further progress requirements, they would have to achieve them from other programs should they choose to delay full implementation of the $450 waiver amount.

EPA believes that the extension of the waiver deadline will give states the opportunity to improve technician training so that by 1998 the majority of vehicles would be repaired for well below the CPI-adjusted $450 minimum waiver amount. The additional time will also give states ample opportunity to set up hardship programs for low-income vehicle owners and scrappage programs for vehicles that are not economical to repair.

To clarify the apparent misunderstanding regarding the proposed amendment's effect on repairs: I/M programs will continue as scheduled, motorists will still be required to repair their vehicles, and real emissions reductions will be achieved. However, the minimum waiver amount will depend on the cost limit prescribed by the state's phase-in

program and the levels of emissions reductions will depend upon what waiver rates result.

C. Population Requirements for Basic I/M

1. Summary of Proposal

EPA requested comment on whether it should change the minimum population cut-off for basic I/M programs. Currently, basic I/M programs are required in moderate ozone and carbon monoxide non-attainment areas with a 1990 Census-defined population of 50,000 or more. EPA considered raising this threshold to 200,000 or more.

2. Summary of Comments

The majority of responses to the proposed amendment were generally supportive. Some commenters indicated that the issue did not affect them since they were in the OTR (Ozone Transport Region) and therefore required enhanced testing regardless of whether or not the population cut-off was increased. Many of the commenters who supported the change did so with a proviso: that the rule be applied only to areas that were not currently included in I/M and that were in moderate attainment areas. Two parties indicated that the proposed amendment should only apply if an area can demonstrate that the absence of I/M would not impact downwind areas. A few supported the change because they viewed it as added flexibility for the states.

Commenters opposed to the amendment suggested that EPA had not offered a reasonable explanation for this change and that areas with less than 200,000 people deserved clean air protection. They argued that the amendment would only serve to encourage states to opt-out of OTR to avoid compliance.

3. Response to Comments

EPA proposed this amendment to grant states further flexibility in designing I/M programs to meet local needs. Areas under 200,000 population which are still in nonattainment are required to achieve whatever ozone reductions are needed to meet reasonable further progress or attainment requirements. While exempted from the mandatory basis I/M requirement under this amendment, such areas would have to achieve those reductions from other programs, or implement an I/M program, at the state's discretion.

EPA concludes that the 200,000 population cut-off for basic programs is authorized by the Act because sections 182(a)(2)(B)(i) and 182(b)(4) require implementation only of an I/M program no less stringent than that required under pre-1990 EPA I/M guidance. EPA's pre-1990 I/M guidance required implementation of basic I/M programs only in urbanized areas of 200,000 population. It is true that some moderate areas would not be required to implement I/M programs if their population were under 200,000, despite the fact that section 182(b)(4) requires a basic I/M program in all moderate areas. However, the basic program that is required is a program that applies only to areas of 200,000 or more population. The issue of whether Congress meant to expand the geographic scope of basic I/M programs by requiring them in all moderate areas was presented to the court in litigation on the 1992 I/M rules. The court ruled that the statutory language ''does not, in our view, compel the conclusion that Congress sought silently to alter any preexisting exclusions for basic I/M programs, particularly when Congress explicitly incorporated the preexisting guidance by reference.'' Further, the court concluded that ''the requirement that states submit implementation plans for those moderate areas not covered in the previous statute does not by its term affect the scope of I/M programs *within* those areas''. *Natural Resources Defense Council, Inc.* v. *EPA*, 22 F.3d 1125, 1141–2. Consequently, EPA believes that although basic I/M programs are required for all moderate areas, they need only be implemented in urbanized areas with populations of 200,000 or more within such moderate areas.

Basic I/M is prescribed to solve local problems. Questions arising from the transport of ozone and CO downwind across state boundaries may be answered by referring to section 184 of the Clean Air Act.

As to the effects on OTR areas, states will not be encouraged to opt out to avoid compliance. Rather, the SNPRM discussed previously outlines the OTR-low enhanced performance standard which gives states more flexibility and incentive to remain in the OTR.

D. Test-and-Repair Discount and Program Equivalency

1. Summary of the Issue

Although today's action does not address the credit allowances for test-and-repair networks and the question of equivalency with test-only networks, the issue has become a point of contention as some states seek more flexibility in program design. A notable quantity of the comments received on today's rulemaking dealt expressly with this issue.

2. Summary of Comments

Commenters in support of the default discount stressed that SIP credits must be based on real quantifiable emissions reductions and that they supported the default discount and would also support data that showed an even greater discount for a test-and-repair network. Another commenter strongly supported the default discount, adding that the undisputed performance disadvantage of ''test-and repair'' systems should persuade EPA to keep the current credit structure. Another group commented that their independent data analysis of two states, one with a test-only system and one with a test-and-repair system, showed conclusively that the test-and-repair system was achieving significantly less emission reductions than the test-only system and that the default discount used by the EPA accurately reflected the loss of emission reductions for the test-and-repair system.

Commenters opposed to the default discount claimed that test-only I/M does not work as well as EPA claims and that test-and-repair programs are unfairly discounted by their comparison to an inflated estimate of test-only effectiveness. Some commenters added that past performance has shown that test-and-repair could be as effective as test-only and should be credited accordingly. The California I/M Review Committee was frequently cited along with studies by Georgia Tech, and others as scientific evidence that the audit data upon which EPA studies were based was somehow flawed.

3. Response to Comments

It should first be noted that in the original I/M rule EPA had proposed granting ''provisional equivalency'' to test-and-repair programs for purposes of initial SIP submission and approval, requiring program evaluation to assure that programs meet the performance standard. Comments by state agencies and others at that time were compelling and strongly against provisional equivalency. They argued that because both state and EPA evidence showed that test-and-repair programs were inferior to test-only programs, in terms of emissions reductions, it would be inadequate and probably illegal for EPA to grant them full credit. They suggested that to grant provisional equivalency without proven success would be irresponsible and would allow ineffective and costly programs to continue while air quality improvement would suffer. EPA acknowledged these

comments and eliminated provisional equivalency from the final I/M rule. Nevertheless, EPA included provisions in the final rule allowing states to make demonstrations based on local data that test-and-repair was more effective than the national default credits.

EPA's default discount for test-and-repair services is based on the best data from a broad set of indicators and across many programs. Cited studies have not shown evidence that would cause EPA to revoke the default discount. The most comprehensive study of test-and-repair effectiveness was conducted by the California I/M Review Committee in the early 1990s and showed that despite aggressive enforcement, the use of advanced technology, and a huge outlay of government oversight, the program still did not achieve more than half of what a test-only program could achieve. While EPA continues to believe that the default discount is appropriate as a national estimate when there is no local data to prove another level, EPA is willing to consider local data to determine whether it supports a higher or lower credit. EPA believes the I/M rule allows it to give prospective credit based on a retrospective analysis of such local data. EPA is working with Utah and Virginia at this time to analyze local data in an attempt to establish program specific credits.

EPA received only minor comment on all other proposals in the NPRM for this rule. A summary of those comments and of EPA's response may be found in the Response to Comments document included in the docket for this rule.

Based upon the public comment received and a reasoned analysis, EPA is proceeding with the adoption of each of the proposed amendments with no substantive changes.

V. Administrative Requirements

A. Administrative Designation

It has been determined that these amendments to the I/M rule are a significant regulatory action under the terms of Executive Order 12866 and are therefore subject to OMB review.

However, it does not create an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or the environment. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing I/M requirements published in the **Federal Register** on November 5, 1992 (57 FR 52950). It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

B. Reporting and Recordkeeping Requirement

There are no information requirements in this final rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. A small government jurisdiction is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' This certification is based on the fact that the I/M areas impacted by the rulemaking do not meet the definition of a small government jurisdiction, that is, ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' Furthermore, the impact created by the action does not increase the pre-existing burden which this final rule seeks to amend.

D. Unfunded Mandates Act

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 where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective 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 impacted by the rule.

To the extent that the rules being promulgated by this action would impose any mandate as defined in Section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens from those resulting from the currently existing I/M rule.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Transportation.

Dated: September 6, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 51 of title 40 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 51.350 is amended by revising paragraphs (a)(4), (a)(6), (a)(7), (a)(8), (a)(9) and (b)(4) and by removing and reserving paragraph (a)(5) to read as follows:

§ 51.350 Applicability.

* * * * *

(a) * * *

(4) Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area with a population of 200,000 or more.

(5) [Reserved]

(6) If the boundaries of a moderate ozone nonattainment area are changed pursuant to section 107(d)(4)(A)(i)-(ii) of the Clean Air Act, such that the area includes additional urbanized areas with a population of 200,000 or more, then a basic I/M program shall be implemented in these additional urbanized areas.

(7) If the boundaries of a serious or worse ozone nonattainment area or of a moderate or serious CO nonattainment area with a design value greater than 12.7 ppm are changed any time after enactment pursuant to section 107(d)(4)(A) such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas, if the 1980 Census-defined urban area population is 200,000 or more.

(8) If a marginal ozone nonattainment area, not required to implement enhanced I/M under paragraph (a)(1) of this section, is reclassified to moderate, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) with a

population of 200,000 or more. If the area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more.

(9) If a moderate ozone or CO nonattainment area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined population is 200,000 or more.

(b) * * *

(4) In a multi-state urbanized area with a population of 200,000 or more that is required under paragraph (a) of this section to implement I/M, any state with a portion of the area having a 1990 Census-defined population of 50,000 or more shall implement an I/M program. The other coverage requirements in paragraph (b) of this section shall apply in multi-state areas as well.

* * * * *

3. Section 51.351 is amended by revising paragraphs (a) introductory text, and (b), by removing and reserving paragraph (e) and by adding paragraphs (f) and (g) to read as follows:

§ 51.351 Enhanced I/M performance standards.

(a) Enhanced I/M programs shall be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the program. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model or an alternative model approved by the Administrator, and shall meet the minimum performance standard both in operation and for SIP approval. Areas shall meet the performance standard for the pollutants which cause them to be subject to enhanced I/M requirements. In the case of ozone nonattainment areas subject to enhanced I/M and subject areas in the Ozone Transport Region, the performance standard must be met for both oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), except as provided in paragraph (d) of this section.

* * * * *

(b) *On-road testing.* The performance standard shall include on-road testing of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraphs (f) and (g) of this section. Specific requirements are listed in § 51.371 of this subpart.

(e) [Reserved].

* * * * *

(f) *High Enhanced Performance Standard.* Except as provided in paragraph (g) of this section, the model program elements for the enhanced I/M performance standard shall be as follows:

(1) *Network type.* Centralized testing.

(2) *Start date.* For areas with existing I/M programs, 1983. For areas newly subject, 1995.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and later vehicles.

(5) *Vehicle type coverage.* Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) *Exhaust emission test type.* Transient mass-emission testing on 1986 and later model year vehicles using the IM240 driving cycle, two-speed testing (as described in appendix B of this subpart S) of 1981–1985 vehicles, and idle testing (as described in appendix B of this subpart S) of pre-1981 vehicles is assumed.

(7) *Emission standards.* (i) Emission standards for 1986 through 1993 model year light duty vehicles, and 1994 and 1995 light-duty vehicles not meeting Tier 1 emission standards, of 0.80 gpm hydrocarbons (HC), 20 gpm CO, and 2.0 gpm NO_X;

(ii) Emission standards for 1986 through 1993 light duty trucks less than 6000 pounds gross vehicle weight rating (GVWR), and 1994 and 1995 trucks not meeting Tier 1 emission standards, of 1.2 gpm HC, 20 gpm CO, and 3.5 gpm NO_X;

(iii) Emission standards for 1986 through 1993 light duty trucks greater than 6000 pounds GVWR, and 1994 and 1995 trucks not meeting the Tier 1 emission standards, of 1.2 gpm HC, 20 gpm CO, and 3.5 gpm NO_X;

(iv) Emission standards for 1994 and later light duty vehicles meeting Tier 1 emission standards of 0.70 gpm HC, 15 gpm CO, and 1.4 gpm NO_X;

(v) Emission standards for 1994 and later light duty trucks under 6000 pounds GVWR and meeting Tier 1 emission standards of 0.70 gpm HC, 15 gpm CO, and 2.0 gpm NO_X;

(vi) Emission standards for 1994 and later light duty trucks greater than 6000 pounds GVWR and meeting Tier 1 emission standards of 0.80 gpm HC, 15 gpm CO and 2.5 gpm NO_X;

(vii) Emission standards for 1981–1985 model year vehicles of 1.2% CO, and 220 gpm HC for the idle, two-speed tests and loaded steady-state tests (as described in appendix B of this subpart S); and

(viii) Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO_2) on vehicles subject to a steady-state test (as described in appendix B of this subpart S); and

(viii) Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO_2) on vehicles subject to a steady-state test (as described in appendix B of this subpart S).

(8) *Emission control device inspections.* (i) Visual inspection of the catalyst and fuel inlet restrictor on all 1984 and later model year vehicles.

(ii) Visual inspection of the positive crankcase ventilation valve on 1968 through 1971 model years, inclusive, and of the exhaust gas recirculation valve on 1972 through 1983 model year vehicles, inclusive.

(9) *Evaporative system function checks.* Evaporative system integrity (pressure) test on 1983 and later model year vehicles and an evaporative system transient purge test on 1986 and later model year vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 3% waiver rate, as a percentage of failed vehicles.

(12) *Compliance rate.* A 96% compliance rate.

(13) *Evaluation date.* Enhanced I/M program areas shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_X shall be the same as for ozone.

(g) *Alternate Low Enhanced I/M Performance Standard.* An enhanced I/M area which is either not subject to or has an approved State Implementation Plan pursuant to the requirements of the Clean Air Act Amendments of 1990 for Reasonable Further Progress in 1996, and does not have a disapproved plan for Reasonable Further Progress for the period after 1996 or a disapproved plan for attainment of the air quality standards for ozone or CO, may select the alternate low enhanced I/M performance standard described below in lieu of the standard described in paragraph (f) of this section. The model program elements for this alternate low enhanced I/M performance standard are:

(1) *Network type.* Centralized testing.

(2) *Start date*. For areas with existing I/M programs, 1983. For areas newly subject, 1995.

(3) *Test frequency*. Annual testing.

(4) *Model year coverage*. Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage*. Light duty vehicles, and light duty trucks, rated up to 8,500 pounds GVWR.

(6) *Exhaust emission test type*. Idle testing of all covered vehicles (as described in Appendix B of Subpart S).

(7) *Emission standards*. Those specified in 40 CFR Part 85, Subpart W.

(8) *Emission control device inspections*. Visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 model year vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer model year vehicles.

(9) *Evaporative system function checks*. None.

(10) *Stringency*. A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate*. A 3% waiver rate, as a percentage of failed vehicles.

(12) Compliance rate. A 96% compliance rate.

(13) Evaluation date. Enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_x shall be the same as for ozone.

4. Section 51.360 is amended by revising the introductory text and paragraphs (a)(1), (a)(5), (a)(6), (a)(7) introductory text, (a)(9) and (b) to read as follows:

§ 51.360 Waivers and compliance via diagnostic inspection.

The program may allow the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards, as long as the prescribed criteria described below are met.

(a) * * *

(1) Waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed. Qualifying repairs include repairs of the emission control components, listed in paragraph (a)(5) of this section, performed within 60 days of the test date.

* * * * *

(5) General repairs shall be performed by a recognized repair technician (i.e., one professionally engaged in vehicle repair, employed by a going concern whose purpose is vehicle repair, or possessing nationally recognized certification for emission-related diagnosis and repair) in order to qualify for a waiver. I/M programs may allow the cost of parts (not labor) utilized by non-technicians (e.g., owners) to apply toward the waiver limit. The waiver would apply to the cost of parts for the repair or replacement of the following list of emission control components: oxygen sensor, catalytic converter, thermal reactor, EGR valve, fuel filler cap, evaporative canister, PCV valve, air pump, distributor, ignition wires, coil, and spark plugs. The cost of any hoses, gaskets, belts, clamps, brackets or other accessories directly associated with these components may also be applied to the waiver limit.

(6) In basic programs, a minimum of $75 for pre-81 vehicles and $200 for 1981 and newer vehicles shall be spent in order to qualify for a waiver. These model year cutoffs and the associated dollar limits shall be in full effect no later than January 1, 1998. Prior to January 1, 1998, states may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the basic I/M performance standard.

(7) Beginning on January 1, 1998, enhanced I/M programs shall require the motorist to make an expenditure of at least $450 in repairs to qualify for a waiver. The I/M program shall provide that the $450 minimum expenditure shall be adjusted in January of each year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index of 1989. Prior to January 1, 1998, states may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the relevant enhanced I/M performance standard.

* * * * *

(9) A time extension, not to exceed the period of the inspection frequency, may be granted to obtain needed repairs on a vehicle in the case of economic hardship when waiver requirements have not been met. After having received a time extension, a vehicle must fully pass the applicable test standards before becoming eligible for another time extension. The extension for a vehicle shall be tracked and reported by the program.

(b) *Compliance via diagnostic inspection*. Vehicles subject to a transient IM240 emission test at the cutpoints established in §§ 51.351 (f)(7) and (g)(7) of this subpart may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by the I/M agency or a contractor to the I/M agency show that no additional emission-related repairs are needed. Any such exemption policy and procedures shall be subject to approval by the Administrator.

* * * * *

5. Section 51.372 is amended by revising paragraphs (c) introductory text, (c)(3), (c)(4), and (e) to read as follows:

§ 51.372 State implementation plan submissions.

* * * * *

(c) *Redesignation requests*. Any nonattainment area that EPA determines would otherwise qualify for redesignation from nonattainment to attainment shall receive full approval of a State Implementation Plan (SIP) submittal under Sections 182(a)(2)(B) or 182(b)(4) if the submittal contains the following elements:

* * * * *

(3) A contingency measure consisting of a commitment by the Governor or the Governor's designee to adopt or consider adopting regulations to implement an I/M program to correct a violation of the ozone or CO standard or other air quality problem, in accordance with the provisions of the maintenance plan.

(4) A contingency commitment that includes an enforceable schedule for adoption and implementation of the I/M program, and appropriate milestones. The schedule shall include the date for submission of a SIP meeting all of the requirements of this subpart. Schedule milestones shall be listed in months from the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. Unless the state, in accordance with the provisions of the maintenance plan, chooses not to implement I/M, it must submit a SIP revision containing an I/M program no more than 18 months after notification by EPA.

* * * * *

(e) *SIP submittals to correct violations*. SIP submissions required pursuant to a violation of the ambient ozone or CO standard (as discussed in paragraph (c) of this section) shall address all of the requirements of this subpart. The SIP shall demonstrate that performance standards in either

§ 51.351 or § 51.352 shall be met using an evaluation date (rounded to the nearest January for carbon monoxide and July for hydrocarbons) seven years after the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. Emission standards for vehicles subject to an IM240 test may be phased in during the program but full standards must be in effect for at least one complete test cycle before the end of the 5-year period. All other requirements shall take effect within 24 months of the date EPA notifies the state that it is in violation of the ozone or CO standard or any earlier date specified in the state plan. The phase-in allowances of § 51.373(c) of this subpart shall not apply.

[FR Doc. 95–23106 Filed 9–15–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 69

[FRL–5296–9]

Special Exemptions From Requirements of the Clean Air Act for the Territory of Guam

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Direct final rulemaking.

SUMMARY: On July 14, 1995, the Governor of Guam filed a petition (''Petition'') with the Administrator seeking a waiver of certain Clean Air Act (''CAA'') requirements which apply to Guam Power Authority (''GPA''). The Petition was filed under Section 325(a) of the CAA. The waiver will help to ease a severe energy emergency on Guam. Based upon the information in the Petition and supplementary information from GPA and the Guam Environmental Protection Agency (''GEPA''), EPA is granting the waiver requested. EPA finds that there is good cause for a direct final rulemaking and that notice and public procedures are impracticable, unnecessary, and contrary to the public interest.

The waiver allows, with certain conditions, one baseload diesel electric generating facility to operate at the Cabras Power Plant prior to the receipt of a final Prevention of Significant Deterioration (''PSD'') permit by GPA. The waiver also allows the construction, but not operation, of a second baseload diesel unit at the Cabras Power Plant prior to GPA's receipt of a final PSD permit.

EFFECTIVE DATE: This direct final rule is effective September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Norman Lovelace, Chief, Office of Pacific Islands and Native American Programs (E–4), Office of External Affairs, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105. Telephone: (415) 744–1599.

SUPPLEMENTARY INFORMATION:

Background

The Petition was submitted by Governor Gutierrez of Guam to the Administrator of EPA in a letter dated July 14, 1995. It is accompanied by supporting documentation, including newspaper accounts describing traffic safety, water supply, and political problems caused by the significant electrical energy shortage on Guam. The Petition incorporates an air quality analysis, based upon computer modeling, which demonstrates the effects of the waiver upon air quality, particularly in the offshore direction, from the generating facilities involved.

The Petition seeks a waiver of certain CAA requirements for the operation and construction by GPA of two baseload diesel electric generators. Both units are part of the Cabras Power Plant. The first facility involved is designated as Cabras Unit No. 3. This forty megawatt diesel generator was constructed, pursuant to 40 CFR 69.11(a)(1), prior to GPA's receipt of a final PSD permit. (This unit is designated Cabras Diesel No. 1 in 40 CFR 69.11(a)(1). Its designation has been changed since the 1993 promulgation of that rule.) The Petition asks EPA to waive CAA requirements as necessary to allow operation of Cabras Unit No. 3, subject to conditions, prior to receipt of a final PSD permit by GPA.

The waiver describes two conditions accompanying the operation of Cabras Unit No. 3. First, during operations under the waiver a lower sulfur fuel oil will be fired in the Cabras Power Plant and in the adjacent Piti Power Plant during certain periods. These power plants operate under a fuel switching intermittent control strategy, and the sulfur-in-fuel reduction in the waiver application applies to operations under offshore wind conditions. Second, the waiver will last only until August 15, 1996, or until issuance of a final PSD permit to GPA for this unit, whichever occurs first.

The Petition also seeks a waiver of CAA requirements as necessary to allow GPA to construct a second forty megawatt baseload unit at the Cabras Power Plant. This facility is designated as Cabras Unit No. 4. The waiver application seeks to allow construction of Cabras Unit No. 4 prior to a receipt by GPA of a PSD permit. Cabras Unit No. 4 will not operate prior to receipt of final PSD permit.

Guam has experienced a longstanding shortage of electrical energy, repeatedly leading to rotating blackouts of areas of the island. The background to this energy shortage is described in the 1993 waiver proceeding before EPA. 50 FR 15579, 15580. The Petition describes how the 1993 energy shortage has continued despite a substantial capital development program by GPA, and in some respects has grown worse. The energy shortage was created originally because of very rapid growth in energy demand due to increased residential electrical consumption and a boom in tourism. The Petition describes how energy shortfalls are now exacerbated as a result of substantial facility outages caused by equipment failures.

As EPA noted in the 1993 waiver proceeding, Guam is an isolated island. 58 FR 13580. GPA generates almost all electric power used on the island (other than power generated by the United States Navy). Unlike power authorities on the mainland United States, GPA does not have the option of purchasing power from other sources. Guam is, and must remain, self sufficient with regard to energy generation.

The Petition states that Guam's energy shortfall has worsened in recent months because of facility outages caused by planned and unplanned maintenance requirements. The longstanding nature of the energy shortage has required GPA to use its existing facilities at peak capacity for several years. GPA has also deferred planned maintenance, when safety considerations have allowed, to permit units to remain in service. Because of the length of time which has elapsed since the beginning of the emergency, the result is now substantially reduced reliability of GPA's electric generating units. The Petition describes several significant and unplanned recent maintenance outages.

The construction and operation of additional, reliable baseload generating units will enable GPA to satisfy electrical demand with an appropriate margin of safety, while at the same time allowing for planned maintenance outages of generating units. Once sufficient baseload capacity exists and can be operated, routine, as well as unplanned blackouts on the island will be ended. Cabras Units Nos. 3 and 4 are such baseload units.

The Petition states that Cabras Unit No. 3 will be ready to begin operation and electrical generation on approximately August 15, 1995. The building which houses Cabras Unit No.

3 and will house Cabras Unit No. 4 has already been constructed under 40 CFR 69.11. The remaining construction of Cabras Unit No. 4 can be carried out immediately pursuant to this rulemaking.

The Petition describes a second potential difficulty with PSD permitting for the operation of Cabras Unit No. 3 and the construction of Cabras Unit No. 4. Absent changes in the current operations of the Cabras and Piti Power Plants, GPA's computer modeling suggests that the operation of the new units, combined with existing facilities, may cause exceedences of sulfur dioxide National Ambient Air Quality Standards (''NAAQS'') on Orote Point, a peninsula of elevated terrain located in the offshore direction from the power plants.

GPA is re-evaluating its computer modeling results using state of the art wind tunnel modeling. Preliminary results of wind tunnel modeling seem to confirm the possibility of the exceedences projected by computer models. If a final analysis upholds that result, significant changes to power plant operations likely will be necessary in order for PSD permits to be issued for Cabras Units Nos. 3 and 4.

Section 325(a) of the CAA allows a waiver of certain CAA requirements, based upon local factors, only if the waiver will not cause exceedences of the primary NAAQS or violations of the hazardous air pollutant provisions of the CAA. The hazardous air pollutant provisions of the CAA are not affected by the Petition. The Petition is accompanied by an air quality analysis, utilizing computer modeling, which demonstrates that all NAAQS will be protected if the requested waivers are granted and incorporate the operating conditions described below.

GPA operates the Cabras and Piti Power Plants under an intermittent control strategy which utilizes fuel switching. This intermittent control strategy is described in an EPA document entitled the ''Cabras Area ICS.'' This strategy has required the use of fuel oil with a maximum sulfur content of 1.19 percent when winds blow in an onshore direction, and the use of fuel oil with a maximum sulfur content of 2.84 percent when winds blow in an offshore direction.

As a condition of the waiver sought, GPA is to reduce the sulfur content in the fuel oil fired in the Cabras Power Plant and the Piti Power Plant when winds blow in an offshore direction. The sulfur content of the fuel used will be reduced to a maximum content of 2.00 percent. The Petition describes how GPA will obtain and assure the use of such fuel oil prior to beginning the operation of Cabras Unit No. 3.

EPA is granting the Petition, with the conditions contained therein, and is issuing the requested waiver. Cabras Unit No. 3 will be allowed to operate prior to receipt of a PSD permit. This operation is subject to the use of fuel oil with a maximum sulfur content of 2.00 percent at the Cabras and Piti Power Plants during offshore wind conditions. Moreover, this waiver for Cabras Unit No. 3 is granted only until August 15, 1996, or until a final PSD permit is secured by GPA, whichever event occurs sooner. Cabras Unit No. 4 may be constructed, but not operated, prior to receipt of a PSD permit. Finally, a report on the results of GPA's Orote Point evaluation shall be filed with EPA by October 15, 1995.

Cabras Unit No. 3 is subject to a conditional permit to construct, issued by GEPA on May 12, 1994. GPA has filed an application to GEPA for authority to operate this unit. During the period of this waiver, GPA must comply with the requirements of these GEPA permits.

This rule is promulgated on a direct final basis. EPA is convinced that the energy emergency on Guam creates significant adverse consequences which require immediate action. As documented in the Petition, continuing planned and unplanned power outages on Guam create substantial public health and safety concerns. EPA has been furnished with descriptions of traffic intersections at which traffic lights cannot operate. The water supplies to areas on Guam are serviced by electric pumps, and EPA has also been furnished with descriptions of interruptions of water supplies due to power outages. Finally, as would be expected, significant and sustained citizen displeasure has been voiced regarding this problem. These factors constitute good cause for EPA to waive notice requirements. In this instance, a delay in the effectiveness of this waiver granted would be impracticable and contrary to the public interest. In addition, based on the lack of negative comments in the 1993 waiver proceeding, EPA believes that this is a noncontroversial rulemaking action. Therefore, EPA finds that there is good cause for a direct final rulemaking, pursuant to 5 U.S.C. 553(d)(3), and that notice and public procedures are impracticable, unnecessary, and contrary to the public interest.

GEPA has received and reviewed a copy of the Petition. It supports the issuance of this waiver.

Regulatory Analysis

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.

This direct final rule applies only to large sources of air emissions used to generate electrical power on Guam. These sources of electrical power will be constructed, owned, and operated by GPA. This organization is not a small entity. Therefore, this rulemaking will not impact small entities.

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

List of Subjects in 40 CFR Part 69

Air pollution control.

Dated: September 11, 1995.

Carol Browner,

Administrator.

Part 69 of chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

Authority: Section 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

2. Section 69.11 is amended by adding paragraph (c) to read as follows:

§ 69.11 New exemptions.

* * * * *

(c) Pursuant to Section 325(a) of the CAA and a petition submitted by the Governor of Guam on July 14, 1995 (''1995 Petition''), the Administrator of EPA conditionally exempts Guam Power Authority (''GPA'') from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 1995 Petition as Cabras Unit No. 4, with the following conditions:

(i) Cabras Unit No. 4 shall not operate until a final PSD permit is received by GPA for this unit;

(ii) Cabras Unit No. 4 shall not operate until it complies with all requirements

of its PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Cabras Unit No. 4 operates either prior to the issuance of a final PSD permit or without BACT equipment, Cabras Unit No. 4 shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit.

(2) A waiver of the requirement to obtain a PSD permit prior to the operation of the unit identified in the 1995 Petition as Cabras Unit No. 3 is granted subject to the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be modified to require the use of fuel oil with a sulfur content of 2.00 percent or less during offshore wind conditions. This fuel shall be fired in Cabras Power Plant Units Nos. 1 through 3 and in Piti Power Plant Units Nos. 4 and 5.

(ii) Cabras Unit No. 3 shall operate in compliance with all applicable requirements in its permits to construct and to operate as issued by Guam Environmental Protection Agency.

(iii) The waiver provisions allowing Cabras Unit No. 3 to operate prior to issuance of a PSD permit shall expire on August 15, 1996, or upon the receipt by GPA of a PSD permit for Cabras Unit No. 3, whichever event occurs first.

(3) On or before October 15, 1995, GPA shall submit to EPA, Region IX, a report concerning the operation of Cabras Unit No. 3 and the construction of Cabras Unit No. 4. The report shall contain:

(i) A summary of GPA's conclusions from its wind tunnel study;

(ii) A description of the alternatives available to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4;

(iii) A description of the alternative GPA chooses to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4; and

(iv) A plan of implementation by GPA.

[FR Doc. 95–23107 Filed 9–15–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPD–766–F]

RIN 0938–AG21

Medicare Program; Standards for Quality of Water Used in Dialysis and Revised Guidelines on Reuse of Hemodialysis Filters for End-Stage Renal Disease (ESRD) Patients

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the Medicare conditions for coverage of suppliers of end-stage renal disease services. The revisions remove general language in the regulations regarding water quality; incorporate by reference standards for monitoring the quality of water used in dialysis as published by the Association for the Advancement of Medical Instrumentation (AAMI) in its document, ''Hemodialysis Systems'' (second edition); and update existing regulations to incorporate by reference the second edition of AAMI's voluntary guidelines on ''Reuse of Hemodialyzers.''

EFFECTIVE DATE: These regulations are effective on October 18, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 1995.

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan, (410) 966–4635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1881 of the Social Security Act (the Act) authorizes Medicare coverage and payment for the treatment of end-stage renal disease (ESRD) in approved facilities that provide dialysis to ESRD patients. The Health Care Financing Administration (HCFA) grants approval of ESRD facilities after they have been surveyed by a State agency. The State survey agency determines the facility's compliance with the conditions specified in regulations at 42 CFR part 405, subpart U. Medicare payment is limited to ESRD services furnished by facilities meeting these conditions.

A. Water Quality

The existing regulation governing the quality of water used in dialysis (§ 405.2140(a)(5)) requires that the water be analyzed periodically and treated as necessary to maintain a continuous supply that is biologically and chemically compatible with acceptable dialysis techniques. The lack of specificity of these requirements makes it difficult for State agency surveyors to measure facility compliance with the standard.

Realizing that water quality is one of the most important aspects of health and safety in dialysis led us to consult with the Public Health Service and various other professionals in the dialysis industry to redefine the standards used by State surveyors in determining compliance with the regulations. As a result of these consultations, we concluded that there was a need to establish specific measurable standards regarding the quality of water used in dialysis. According to the Public Health Service's Center for Disease Control and Prevention, the Association for the Advancement of Medical Instrumentation (AAMI) standard on water quality is the only standard available, is accepted by the medical community and is currently used by most facilities.

The 1992 AAMI standard, ''Hemodialysis Systems,'' reflects the collective expertise of a committee of health care professionals, in conjunction with device manufacturers and government representatives. This committee developed a standard of performance for manufacturers that will, at a minimum, promote the effective, safe performance of hemodialysis systems, devices, and related materials. The standard includes specific water quality requirements and has an appendix that provides a guideline for the device user with specific emphasis on water purity assurance and monitoring. This standard is outcome-oriented in that it stipulates only specific biological and chemical water purity levels and does not restrict the methods used by facilities to attain and maintain the acceptable levels.

Each AAMI standard or recommended practice is reviewed at least every 5 years because of constant changes in medical technology and to clarify or improve existing guidelines. The standard was originally published in 1982. In 1986, the AAMI Renal Disease and Detoxification Committee appointed task groups to carefully review specific areas of the standard. After review by the task groups and the full committee, a proposed revision was drafted. This document, ''Hemodialysis Systems'' (second edition), was voted on by the committee, reviewed by the public, and was approved on March 16, 1992.

B. Reuse of Hemodialyzers

Section 1881(f)(7) of the Act requires the Secretary to establish protocols for reuse of hemodialyzers for those facilities that voluntarily elect to reuse the filters. Reuse can be accomplished through a variety of techniques that involve the cleaning, disinfecting, and preparing of disposable hemodialysis devices for subsequent use by the same patient. Although the potential exists for adverse patient outcomes from reuse, reprocessing and reuse of dialyzers are safe when done properly.

Existing regulations at § 405.2150 require ESRD facilities reusing hemodialyzers to meet the voluntary guidelines and standards adopted by AAMI and issued in July 1986 as ''Reuse of Hemodialyzers.'' The AAMI guidelines on reuse of hemodialyzers are based on the national consensus of physicians, other health care professionals, government representatives, patients, and industry. These guidelines (directed to health professionals) describe the details of reprocessing dialyzers and address various areas such as personnel qualifications and training, patient considerations, equipment, reprocessing supplies, monitoring during dialysis, quality assurance and quality control.

After review by the AAMI Renal Disease and Detoxification Committee and the public, the second edition of the ''Reuse of Hemodialyzers'' was approved. The second edition is directed to the physician in charge of hemodialyzer reprocessing (using a manual or automated method) and describes the essential elements of good practices for reprocessing dialyzers to help assure safety and effectiveness.

II. Provisions of the Proposed Regulations

We published in the **Federal Register** (59 FR 6937) on February 14, 1994, a proposed rule to amend the Medicare regulations to incorporate by reference the AAMI standard for water quality and the AAMI guidelines for monitoring purity of water for hemodialysis found in the following sections of ''Hemodialysis Systems'' (second edition):

- 3.2.1—Water Bacteriology
- 3.2.2— Maximum Level of Chemical Contaminants
- Appendix B, section B1 through B5— Guidelines for Monitoring Purity of Water Used for Hemodialysis.

We proposed that this incorporation by reference would replace the existing general language in § 405.2140(a)(5) which requires that water used for dialysis must be analyzed periodically and treated as necessary to maintain a continuous supply that is biologically and chemically compatible with acceptable dialysis techniques.

The February 14, 1994, proposed rule also specified the proposed incorporation by reference of the 1993 (second) edition of the AAMI guidelines on ''Reuse of Hemodialyzers'' to replace the previously incorporated 1986 edition. In addition, we proposed to amend § 405.2150 to remove paragraph (a)(2) concerning staff exposure to chemical germicides, paragraph (a)(3)(iii) concerning reporting adverse patient reactions to the manufacturer, and paragraph (b) concerning the standard for dialyzer caps. These topics (included in the three paragraphs previously mentioned) are covered in the following sections of the revised 1993 AAMI guidelines that are now being incorporated by reference:

- Section 8—Physical plant and environmental safety considerations
- Section 11—Reprocessing
- Section 13—Monitoring
- Annex A—Section A11.4—Germicide.

The proposed rule specified that copies of both AAMI publications may be purchased from AAMI and are available for inspection at the HCFA Information Resource Center or the Office of the Federal Register.

III. Analysis of and Responses to Public Comments

We received five timely public comments on the February 1994 proposed rule. All commenters were generally supportive of the proposed revisions. Their comments and our responses are discussed below.

A. General

Comment: One commenter noted that the Government's regulatory process is slower than the private sector's in making changes. They recommended that we develop a mechanism to automatically incorporate the most recent revision of AAMI guidelines into the regulation rather than revise the regulations each time the AAMI guideline is updated.

Response: We acknowledge that the process of issuing a revision to the regulations each time the AAMI guidelines are updated results in delay in giving the updated guidelines the force of law. It certainly would be simpler for us to merely adopt the most recent version of the AAMI guidelines automatically upon update as the commenter suggested. However, we have some concerns that such a system may not be consistent with our obligation to the ESRD facilities that would be affected.

Under the current system, we carefully review and consider the changes made in the AAMI updates and make a determination as to whether it is appropriate and necessary to incorporate the AAMI provisions in our regulations. Then we offer the public an opportunity to participate in the regulation process through a comment period.

If we were to adopt the commenter's suggestion, the industry would be required to comply with the AAMI guidelines regardless of whether changes are beneficial to Medicare beneficiaries or unduly burdensome to facilities.

In this regard, we note that we received a comment, which is discussed later in this document, expressing concern with the level of influence afforded to the reuse manufacturers under the process of adopting the AAMI guidelines.

We are in the process of preparing a proposed rule that would totally revise the conditions of coverage for ESRD facilities. We will solicit comment from the public on the merits of this proposal at that time. Until we have had an opportunity to hear form the facilities that would be impacted by this suggestion, we believe it is most appropriate to continue to pursue the rulemaking under the Administrative Procedure Act and provide an opportunity for participation by the affected entities.

B. Water Quality

Comment: Two commenters recommended that we also incorporate the AAMI provisions relating to sampling and testing methodologies contained in sections 4.2.1 and 4.2.2 of ''Hemodialysis Systems.'' They noted that the sampling and testing protocols are essential to obtaining results that are meaningful and lead to the desired outcome of good patient health and safety. They presented examples of factors that can erroneously influence test results, such as leaving samples at room temperature, sampling only at one site, and shortened incubation periods.

Response: We note the commenters' concern and fully endorse the provisions contained in sections 4.2.1 and 4.2.2. of the AAMI ''Hemodialysis Systems'' document. However, we note that the subject provisions are exceedingly detailed and include not only point of water collection within the dialysis system, but also time of assay, storage temperatures, filter technique, and culture media. While we encourage facilities to utilize these guidelines, we

believe that they are overly prescriptive. Moreover, the subject provisions are procedure-oriented as opposed to outcome-oriented and not necessary for ensuring Medicare beneficiary health and safety. We believe that we can meet the statutory mandate for beneficiary health and safety while permitting facilities some flexibility in sampling and testing procedures.

In addition, the adopted provisions of AAMI water quality standard address specific bacteriological and chemical purity levels. We also adopted the AAMI Appendix guidelines with regard to monitoring frequency. The guidelines address monitoring practices similar to sections 4.2.1 and 4.2.2 but in a more general, less prescriptive nature. We feel confident that these provisions provide enough detail to permit surveyors to adequately determine appropriate water quality. Moreover, these new standards represent a significant improvement over the assurances contained in the existing regulation. We believe that it would be unnecessarily burdensome and prescriptive to specify minute details as to the sampling techniques. Further, such specificity would be inconsistent with the Administration's commitment to reduce Federal regulatory burden. Consequently, we are not adopting the commenters' suggestion at this time.

We are, however, currently developing a complete revision of the ESRD conditions of coverage. One of the principal goals of this project is to make the conditions patient-centered and outcome-oriented. Ultimately, we may choose an outcome-oriented set of conditions regulating sampling methodology more explicitly. We will consider these comments as we develop the new conditions.

Comment: One commenter recommended that we apply the water quality standards to water used for reprocessing as well as for dialysate, noting that contaminated water can adversely affect reprocessing through the water rinse phases.

Response: The AAMI water standards that we have adopted were prepared, in collaboration with the industry, exclusively for water used during hemodialysis. The guidelines were not intended for adoption to the reuse process. We have incorporated water standards specifically for the reuse process from the AAMI reuse standards. The reuse standards contain water requirements in sections 7.1.2. and 11.4.1. We believe these standards are adequate to meet our need to ensure beneficiary health and safety.

C. Hemodialyzer Reuse

Comment: One commenter took issue with the statement in the preamble of the proposed rule stating that, ''Although the potential exists for adverse patient outcomes from reuse, reprocessing and reuse of dialyzers are safe when done properly.'' This commenter referenced the recent research indicating an association between increased mortality and reuse with certain germicides. The commenter concluded that it may be premature to state unequivocally that reprocessing and reuse of dialyzers are safe.

Response: We note that the sentence addressed by the commenter clearly includes the caveat that reprocessing is safe when done ''properly''. We do not believe the statement is misleading or erroneous in light of research findings.

Although the referenced research finds an association between increased mortality and reuse of certain germicides, it does not conclude that reuse is not safe. In addition, the Food and Drug Administration (FDA) has approved the product and its labelling, reviewed manufacturers' studies, and followed routine procedures that include product testing. Thus, we can conclude that the germicides currently marketed for reprocessing dialyzers do, in fact, work effectively to destroy bacteria.

HCFA and the FDA believe the research in question supports a conclusion that proper technique is essential for effective use of the germicides. Consequently, the FDA has been working with one manufacturer to strengthen product user education. In this regard, the manufacturer in question has taken several voluntary actions to promote proper use of the product, including issuing revised detailed instructions. In addition, the manufacturer has held numerous training sessions all over the nation to educate its customers regarding proper use of the product. Further, the manufacturer in question requires its customers to sign commitments to verify that they understand and will comply with product user instructions before further merchandise will be distributed.

Comment: Two commenters requested clarification of the requirement in § 405.2150(a)(2) that states that facilities may use only one germicide in reprocessing. Specifically, the commenters were concerned about the use of bleach and another germicide during reprocessing. One commenter specifically asked if it was necessary to discard all dialyzers currently being reused if the facility changes germicides.

Response: For purposes of reuse, bleach is considered a cleansing agent, not a germicide. Thus, many facilities use bleach as part of the reuse process to flush and clean blood deposits before the actual germicide soaking process is initiated. We do not intend to imply that this bleach cleansing process adversely affects the reprocessing. Since we do not consider bleach to be a germicide, the requirement to discard dialyzers treated with a different germicide does not apply to bleaching.

We do intend that a facility that changes germicides discard all those dialyzers reprocessed with the old germicide. We are concerned that exposing dialyzers to different germicides may cause membrane leaks. While we recognize that it may be expensive and considered wasteful by some facilities to discard dialyzers with test values that indicate they are still effective, we believe that this precaution is a necessary safety measure. Facilities should take this added expense into consideration when analyzing their alternatives and making a determination regarding the changing of germicides.

Comment: One commenter indicated that the prohibition against reuse of dialyzers for hepatitis B-positive patients that is contained in the AAMI guidelines is unjustified and costly to dialysis facilities. The commenter cited a report from the Centers for Disease Control that concluded that reuse of dialyzers was not associated with increased transmission of hepatitis B. Commenters supported measures other than a total ban against reuse for hepatitis B-positive patients, such as holding dedicated equipment in isolation areas, to eliminate the risk of cross-contamination of dialyzers.

Response: Hepatitis B is a highly contagious disease that has the potential to be extremely damaging to an ESRD patient. Given the highly contagious nature of the disease, the CDC has for many years strongly recommended extreme precaution and isolation of those patients who are hepatitis B-positive. Many physicians, nurses, and other professionals involved in the ESRD field have similarly supported the position of extreme caution in treating the hepatitis B-positive patient.

We want to point out that the AAMI provision related to banning reuse for hepatitis B-positive patients was developed in a public forum and reflects the views of many noted professionals. These guidelines were developed by a committee of national experts in a variety of ESRD-related fields. The committee's recommendations were then distributed to the AAMI membership at large for comment. Thus,

the prohibition against reuse of dialyzers for hepatitis B positive patients was developed by the medical community and reflects the general concern of most professionals that extreme caution is necessary in treating patients with the disease.

While there may be no appreciable evidence to demonstrate that reuse would increase the spread of hepatitis B, there is no conclusive evidence that reuse in this population is safe. Given that hepatitis B is very contagious and that the industry generally supports the prohibition, we believe that permitting reuse for hepatitis B-positive patients would be an inappropriate risk to the health and safety of ESRD patients.

Comment: One commenter expressed concern that the AAMI reuse guidelines provide too much latitude to device manufacturers in establishing operating parameters for their equipment. The commenter was concerned that ESRD facilities are a captive audience to manufacturers, who could design expensive equipment or procedures. Under the reuse regulations, which require compliance with the manufacturer's guidelines, facilities may be forced to bear financial burdens with little recourse. The commenter suggested that HCFA develop a process to allow ESRD facilities to appeal the application of excessively restrictive guidelines for equipment.

Response: We do not support the commenter's recommendation for HCFA to develop an appeal process for application of equipment guidelines. It is not within the purview of the HCFA to become involved in manufacturers' guidelines. The FDA, not HCFA, is responsible for approval of devices, equipment, and labelling, including manufacturers' instructions.

Manufacturers' product guidelines are very technical and are developed only after considerable research and deliberation with respect to complex technical and scientific matters. HCFA does not have the appropriate staffing or expertise to adjudicate facilities' appeals of these scientific matters. However, the FDA does offer recourse to facilities through its Office of Compliance. Facilities may contact the FDA by writing to: Food and Drug Administration, Office of Compliance, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20850.

In addition, we note that the manufacture of reprocessing devices, germicides, and equipment takes place in the competitive market arena. ESRD facilities are free to choose among a number of alternative strategies for reprocessing dialyzers, or they may choose not to reuse at all. Thus, we do not believe that the facilities are a captive audience to the manufacturers given that there are a variety of dialyzer processing methods and reprocessing product manufacturers.

D. Impact on the Hemodialysis Community

We specifically solicited input from the commenters on our assumption that the adoption of the AAMI water and reuse standards would not represent a burden on the provider community as most are voluntarily complying with the AAMI guidelines.

Comment: Several commenters agreed with our conclusion that there would be little impact on facilities because most facilities already voluntarily comply with AAMI guidelines. Nonetheless, they voiced support for making the guidelines mandatory to force those few non-compliant facilities into appropriate practices.

Response: We appreciate the support for our proposal and are proceeding to publish the final regulations.

Comment: One commenter challenged our statement that the AAMI water standards are supported by scientific literature. The commenter also disagreed with the statement that the standards are based on industry consensus, since Government representatives participated in the AAMI guideline development.

Response: As noted earlier, the AAMI guidelines were developed by a committee of noted experts in hemodialysis. Once the committee formulated a draft document, it was circulated to AAMI membership for comment. The AAMI membership includes representatives of manufacturers, physicians, patients, technicians, and other fields. The committee seriously considered the comments and made appropriate revisions in the guidelines. Decisions reflected the majority of the committee members; no single member had authority to direct the decision or overrule the majority. While it is true that Government employees participated in the development of the guidelines, we do not believe that the fact that a Government representative participated in the process is an indication that the resulting guidelines are not representative of the industry consensus.

The AAMI committee utilized empirical data regarding microbial limits and epidemiological findings (among other things) in developing the guidelines. We acknowledge that by using the term ''scientific literature'' we may have inadvertently implied that the AAMI had performed clinical trials and controlled experimentation. The intent of the statement was to indicate that the water quality limits established in the guidelines reflected reasonable assumptions and available empirical data.

IV. Provisions of the Final Regulations

We are adopting the provisions of the February 14, 1994, proposed regulations as final regulations without change.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Regulatory Impact Statement

A. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all ESRD facilities are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

B. Water Quality Standards

This final rule incorporates industry standards on the quality of water used in dialysis into existing regulations thereby, enabling surveyors to accurately assess a facility's compliance with the standards on water quality. The AAMI standards are the results of a collaborative effort by health professionals and industry representatives to respond to clinical needs and to help ensure patient health and safety. The AAMI's recommended maximum levels for water contaminants have been clearly defined, reflect reasonable assumptions and available empirical data, and were developed through industry consensus. Under the AAMI water standard, the supplier/manufacturer of dialysis water treatment

equipment is responsible for ensuring that the water produced by the system routinely does not exceed the maximum allowable chemical contaminant levels. Because AAMI's acceptable contamination levels have been in effect since 1982 and are recognized as medically acceptable standards, we believe that manufacturers have been producing and facilities have been purchasing equipment capable of meeting these requirements. We understand that technology is in place for all facilities to meet the AAMI water standard. The public comments that we received on the proposed rule support this conclusion. Changes in water quality will be handled through consultation with State and local water authorities. Safe purity levels will be ensured through continued monitoring by the physician in charge of dialysis. Although contaminants in water used in dialysate may cause adverse patient reactions, actual documented adverse incidents are rare when the water is monitored properly. Because the AAMI water quality standard represents long-standing acceptable medical practice, we believe the vast majority of facilities already comply with this standard. Incorporation of the AAMI standard into the regulations will help ensure patient health and safety by providing surveyors with a measurable standard with which they may assess facility compliance, especially in the few facilities that do not voluntarily conform to the water quality guidelines adopted by the industry.

C. Reuse of Hemodialyzers

The AAMI ''Reuse of Hemodialyzers'' does not promote either single use or reuse of dialyzers. The guidelines were developed to acknowledge the widespread practice of reprocessing and provide recommendations for optimal hemodialyzer reprocessing. In January 1993, HCFA's Health Standards and Quality Bureau canvassed the 2,345 Medicare-certified ESRD facilities to determine if they practiced reuse, and, if so, the disinfecting protocols used. Sixty-five percent (1,532) of the facilities reported practicing reuse. Of these facilities, approximately 51 percent use renalin as the germicide; two-thirds of these facilities use an automated disinfecting system. Approximately 40 percent of the facilities reported using formalin/formaldehyde as the germicide, with manual and automated systems receiving equal use. Approximately 9 percent of the facilities practicing reuse reported using glutaraldehyde as the germicide, with the majority of these facilities using an automated disinfecting system. Less than 1 percent of the facilities use other disinfecting methods.

Because the 1993 AAMI guidelines do not differ significantly from the 1986 guidelines (which all Medicare participating facilities practicing reuse already must meet) we believe that the great majority of the facilities practicing reuse will be in compliance with the new standards in this final regulation. The 1993 AAMI standards were developed through a public forum and their adoption was well publicized. They reflect the most up-to-date reuse procedures already practiced by many of the facilities. Moreover, we do not believe that incorporating the 1993 guidelines into our regulations, in and of itself, will prompt any facility to begin or discontinue reuse.

We expect that each facility will respond to these new standards based on the relationship of these standards to its current reuse practices and to factors such as whether or not the facility can buy new filters in quantity less expensively than it can upgrade its reuse practices. As we indicated earlier, 65 percent of the facilities are already reusing dialyzers. The major effect of this final rule will be to ensure that Medicare standards for reuse reflect safe and effective practices.

D. Conclusion

Because we are unable to predict the decisions facilities will make in response to this regulation, we are unable to quantify the potential effect it will have. All five public responses to the February 1994 proposed rule were favorable.

Beneficiaries may be reassured that HCFA has adopted specific water quality standards and updated its standards for reuse of hemodialyzers to ensure their health and safety. However, we expect that there will be a negligible effect on most beneficiaries and facilities since we believe these revisions will make no major changes in current facility operation or patient experience. This final rule is not expected to result directly in any increases or reductions in Medicare program expenditures.

For these reasons, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this final rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Incorporation by reference, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV, Part 405, Subpart U is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

A. The authority citation for part 405, Subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a), unless otherwise noted.

B. In § 405.2140, the heading of paragraph (a) is republished, and paragraph (a)(5) is revised to read as follows:

§ 405.2140 Condition: Physical environment.

* * * * *

(a) *Standard: building and equipment.** * *

(5)(i) The ESRD facility must employ the water quality requirements listed in paragraph (a)(5)(ii) of this section developed by the Association for the Advancement of Medical Instrumentation (AAMI) and published in ''Hemodialysis Systems,'' second edition, which is incorporated by reference.

(ii) Required water quality requirements are those listed in sections 3.2.1, Water Bacteriology; 3.2.2, Maximum Level of Chemical Contaminants; and in Appendix B: Guideline for Monitoring Purity of Water Used for Hemodialysis as B1 through B5.

(iii) Incorporation by reference of the AAMI's ''Hemodialysis Systems,'' second edition, 1992, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.[1] If any changes in

[1] The publication entitled ''Hemodialysis Systems,'' second edition, 1992, is available for inspection at the HCFA Information Resource Center, 7500 Security Boulevard, Baltimore, MD

Continued

''Hemodialysis Systems,'' second edition, are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

* * * * *

C. In § 405.2150, the undesignated introductory text and paragraph (a) are revised, paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, and redesignated paragraph (c)(1) is revised to read as follows:

§ 405.2150 Condition: Reuse of hemodialyzers and other dialysis supplies.

An ESRD facility that reuses hemodialyzers and other dialysis supplies meets the requirements of this section. Failure to meet any of paragraphs (a) through (c) of this section constitutes grounds for denial of payment for the dialysis treatment affected and termination from participation in the Medicare program.

(a) *Standard: Hemodialyzers.* If the ESRD facility reuses hemodialyzers, it conforms to the following:

(1) *Reuse guidelines.* Voluntary guidelines adopted by the AAMI (''Reuse of Hemodialyzers,'' second edition). Incorporation by reference of the AAMI's ''Reuse of Hemodialyzers,'' second edition, 1993, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.[2] If any changes in ''Reuse of Hemodialyzers,'' second edition, are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

(2) *Procedure for chemical germicides.* To prevent any risk of dialyzer membrane leaks due to the combined action of different chemical germicides, dialyzers are exposed to only one chemical germicide during the reprocessing procedure. If a dialyzer is exposed to a second germicide, the dialyzer must be discarded.

(3) *Surveillance of patient reactions.* In order to detect bacteremia and to maintain patient safety when unexplained events occur, the facility—

(i) Takes appropriate blood cultures at the time of a febrile response in a patient; and

(ii) If pyrogenic reactions, bacteremia, or unexplained reactions associated with ineffective reprocessing are identified, terminates reuse of hemodialyzers in that setting and does not continue reuse until the entire reprocessing system has been evaluated.

(b) * * *

(c) * * *

(1) Limit the reuse of bloodlines to the same patient;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–22859 Filed 9–15–95; 8:45 am]

BILLING CODE 4120–01–P

21244–1850 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Association for the Advancement of Medical Instrumentation, 3300 Washington Boulevard, Suite 400, Arlington, VA 22201–4598.

[2] The publication entitled ''Reuse of Hemodialyzers,'' second edition, 1993, is available for inspection at the HCFA Information Resources Center, 7500 Security Boulevard, Baltimore, MD 21244–1850 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Association for the Advancement of Medical Instrumentation, 3300 Washington Boulevard, Suite 400, Arlington, VA 22201–4598.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 28, 30, 31, 35, 37, 40, 50, 54, 55, 56, 57, 61, 67, 70, 71, 72, 76, 78, 79, 90, 91, 95, 97, 99, 106, 150, 154, 171, 174, 188, and 189

[CGD 95–012]

RIN 2115–AF03

Inspected and Uninspected Commercial Vessels; Removal of Obsolete and Unnecessary Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying its regulations for both inspected and uninspected commercial vessels by removing and revising obsolete and unnecessary provisions. The Coast Guard expects that this final rule will reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 46, Code of Federal Regulations.

DATES: This rule is effective on October 18, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR R. K. Butturini, Design and Engineering Standards Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this final rule are LCDR R. K. Butturini, Project Manager, Ms. Shereen Bell, Project Assistant and LT Rachel Goldberg, Project Counsel, Office of Chief Counsel.

Regulatory History

On May 9, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Removal of Obsolete and Unnecessary Regulations'' (60 FR 24748). The Coast Guard received one letter commenting on the NPRM. No public meeting was requested, and none was held specifically for this project. A public meeting was held on April 20, 1995 (60 FR 16423) to discuss the Coast Guard's regulatory process and regulatory reform. Relevant comments made at that meeting have been considered in this final rule.

Background and Purpose

On March 4, 1995, the President issued a memorandum calling on executive agencies to review regulations with the goals of—

(1) Cutting obsolete regulations;

(2) Focusing on results instead of process and punishment;

(3) Convening meetings with the regulated community; and,

(4) Expanding efforts to promote consensual rulemaking.

At an April 20, 1995 public meeting announced in the March 30, 1995 **Federal Register** (60 FR 16423) and in another notice published in the May 31, 1995 **Federal Register** (60 FR 28376), the Coast Guard declared its commitment to eliminating Coast Guard induced differences between the requirements that apply to U.S. vessels in international trade and those requirements that apply to similar vessels in international trade that fly the flag of responsible foreign nations. The purpose of this final rule is to begin the process of achieving this goal by removing or revising regulations that the Coast Guard has found to be obsolete and unnecessary.

In compiling the list of CFR sections included in this final rule, the Coast

Guard did not consider parts of 46 CFR that are under review as part of other, ongoing regulatory projects. Additional rulemaking projects are expected to adopt accepted industry standards, remove other obsolete or unnecessary Coast Guard regulations and solicit public comment on additional provisions which should be modified or eliminated. Sections were identified for revision or removal by this rule for the following reasons:

(a) A regulation includes citation to a long-passed compliance date;

(b) Vessels or equipment covered under certain regulations have become impractical due to social or economic changes;

(c) Equipment mandated by regulation is no longer manufactured or used;

(d) Requirements imposed by regulations are repeated in another section;

(e) The law cited as authority has been repealed or revoked; or,

(f) The text of the regulation merely repeats statutory language.

Discussion of Comments and Changes

In response to the notice of proposed rulemaking one comment letter was received. The letter was supportive of the overall efforts by the Coast Guard to remove and revise obsolete and unnecessary provisions.

The following discussion summarizes the changes being made by this final rule to Title 46 of the CFR.

1. Passed Compliance Dates

The following regulations are being removed or revised because they include a reference to a compliance date which has passed. For example, 46 CFR 25.40–1(c) states that modifications for the purposes of complying with ventilation requirements must be completed by June 1, 1966. These types of references are no longer needed in the regulations and are being removed.

Cite (46 CFR)	Change made	Subject addressed by regulation
§ 25.40–1(c)	Removed	Motorboat ventilation.
§ 28.110(a)	Date removed	Life preservers
§ 28.115(a)	Date removed	Ring life buoys.
§ 28.135(a)	Date removed	Lifesaving equipment markings.
§ 28.145	Date removed	Distress signals.
§ 28.210 (c), (d) and (e)	Dates removed	First aid equipment and training.
§ 28.240(a)	Date removed	General alarm systems.
§ 28.270(c)	Date removed	Instructions, drills, and safety orientation.

2. Impractical Vessels, Equipment, or Arrangements

Some sections are being removed or revised because they apply to vessels or equipment that have become impractical due to changes in the world economy or social values. For example, most of the following listed regulations concern nuclear-powered vessels, vessels intended to incinerate waste at sea, and facilities and ships intended for energy production from differences in seawater temperature. However, no vessel or facility designed for any of these purposes is currently operating, and construction of any of these types of vessels or facilities is not likely in the foreseeable future. Therefore, these regulations are no longer necessary.

The Coast Guard's regulations concerning ocean thermal energy conversion vessels were issued as a result of a Congressional mandate stated in the Ocean Thermal Conversion Act of 1980 (The Act), codified at 42 U.S.C. 9101 *et seq.* The Act required the Coast Guard, in conjunction with the Department of Energy and the National Oceanic and Atmospheric Administration (NOAA), to promulgate regulations concerning ocean thermal energy conversion (OTEC) facilities and plantships. In the fifteen years since Congress passed the Act, there have been no OTEC facilities or plantships constructed, nor has there been any indication of any future activity in this area. Therefore, as part of its effort to cut obsolete and unnecessary regulations, the Coast Guard after consultation with both the Department of Energy and NOAA, has decided to remove all of its regulations concerning OTEC facilities and plantships.

During internal staff review, additional regulations concerning nuclear vessels and OTEC facilities and plantships were found which had not been identified for removal in the NPRM. These additional regulations are also being removed by this rule since they are no longer necessary. These additional sections being removed from Title 46 CFR are: 31.05–10, 31.40–1, 50.01–10, 50.05–15, 50.20–5, 50.30–10, 54.01–10, 56.01–2, 56.04–1, 56.07–10, 56.20–9, 56.50–25, 56.50–85, 56.60–2, 56.70–15, 57.02–2, 57.06–1, 57.06–4, 57.06–5, 58.03–1, 67.3, 71.01–10, 71.20–15, 71.25–10, 71.75–10, 71.75–20, 91.01–10, 91.20–15, 91.25–10, 91.60–1, 91.60–40, 171.001, 174.005, 189.01–10, 189.20–15, 189.25–10, 189.60–1, 189.60–40.

Another regulation falling into this category concerns steerage passengers. The Steerage Passenger Act of 1882 (ch. 374, 22 Stat. 186 (1882))(The Steerage Act) established accommodation requirements for steerage passengers. Steerage passengers historically were passengers paying the lowest fares for the poorest accommodations and the Steerage Act was written primarily for the safety of immigrants travelling by sea to the United States. The Steerage Act was repealed by Congress in 1983 when Subtitle II of 46 U.S.C. (Pub. L. 98–89, 97 Stat. 500) was revised and consolidated. As a result, regulations addressing carriage of steerage passengers are no longer necessary.

Cite (46 CFR)	Change made	Subject addressed by regulation
§ 30.01–25	Removed	Nuclear vessel inspection.
§ 30.10–44	Removed	Nuclear vessel inspection.
§ 31.01–5(b)	Removed	Nuclear vessel inspection.
§ 31.05–10	Revised	Nuclear vessels.
§ 31.10–15(c)	Removed	Nuclear vessel inspection.
§ 31.40–1(b)	Removed	Nuclear vessels.
§ 31.40–30	Removed	Nuclear vessel inspection.
§ 31.40–40(e)	Revised	Nuclear vessel inspection.
Part 37	Removed	Nuclear vessel inspection.

Cite (46 CFR)	Change made	Subject addressed by regulation
§ 50.01–10	Revised	Nuclear pressure vessels.
§ 50.05–15	Revised	Nuclear vessels; Ocean thermal energy conversion facilities and plantships.
§ 50.20–5(c)	Removed	Nuclear pressure vessels.
§ 50.30–10	Revised	Nuclear pressure vessels.
§ 54.01–10	Revised	Nuclear pressure vessels.
§ 54.15–5(i) note	Removed	Nuclear power plants.
Part 55	Removed	Nuclear power plant components.
§ 56.01–2	Revised	Nuclear power plant components.
§ 56.01–10	Revised	Nuclear power plant piping.
§ 56.04–1	Revised	Nuclear power plant piping.
§ 56.07–10	Revised	Nuclear power plant piping.
§ 56.20–9	Revised	Nuclear power plant valves.
§ 56.30–5(b)(4)	Revised	Nuclear power plant piping.
§ 56.50–25	Revised	Nuclear power plant safety valves.
§ 56.50–85	Revised	Nuclear power plant tank venting.
§ 56.60–2	Revised	Nuclear power plant materials.
§ 56.70–15	Revised	Nuclear power plant piping.
§ 57.02–2	Revised	Nuclear power plant welding.
§ 57.06–1	Revised	Nuclear power plant welding.
§ 57.06–4	Revised	Nuclear power plant welding.
§ 56.06–5	Revised	Nuclear power plant welding.
§ 58.03–1	Revised	Nuclear power plant components.
§ 61.01–1(a)	Revised	Nuclear pressure vessels.
§ 61.10–1(b)	Removed	Nuclear power plant components.
§ 61.15–1(b)	Removed	Hydrostatic test of nuclear plant piping.
Subpart 61.25	Removed	Tests and inspections of nuclear reactor power plants.
§ 67.3	Revised	Ocean thermal energy conversion facilities and plantships.
§ 70.05–12	Removed	Nuclear vessel inspection.
§ 70.10–30	Removed	Nuclear vessel inspection.
§ 71.01–10	Revised	Nuclear vessels.
§ 71.20–15(b)	Removed	Nuclear vessels.
§ 71.25–10	Removed	Nuclear vessel inspection.
§ 71.75–5	Revised	Nuclear vessel inspection.
§ 71.75–10(c)	Removed	Nuclear vessels.
§ 71.75–20(c)	Revised	Nuclear vessels.
§ 72.25–5	Removed	Steerage passengers.
Part 79	Removed	Requirements for nuclear vessels.
§ 90.05–40	Removed	Nuclear vessel inspection.
§ 90.10–24	Removed	Nuclear vessel inspection.
§ 91.01–10	Revised	Nuclear vessels.
§ 91.20–15(c)	Removed	Nuclear vessel inspection.
§ 91.25–10(b)	Removed	Nuclear vessel inspection.
§ 91.60–1(b)	Removed	Nuclear vessels.
§ 91.60–30	Removed	Nuclear vessel inspection.
§ 91.60–40(e)	Removed	Nuclear vessels.
Part 99	Removed	Requirements for nuclear vessels.
Part 106	Removed	Requirements for ocean thermal energy conversion facilities and plantships.
Part 150, Subpart B	Removed	Incinerator vessels.
§ 171.001	Revised	Stability.
§ 174.005(c)	Removed	Nuclear vessels; Ocean thermal energy conversion facilities and plantships.
Part 174, Subpart D	Removed	Requirements for nuclear vessels.
Part 174, Subpart F	Removed	Requirements for ocean thermal energy conversion facilities and plantships.
§ 188.05–15	Removed	Nuclear vessels.
§ 188.10–47	Removed	Nuclear vessel inspection.
§ 189.01–10	Revised	Nuclear vessel inspection.
§ 189.20–15(c)	Removed	Nuclear vessels.
§ 189.25–10(b)	Removed	Nuclear vessel inspection.
§ 189.60–1	Revised	Nuclear vessels.
§ 189.60–30	Removed	Nuclear vessel inspection.
§ 189.60–40(e)	Removed	Nuclear vessels.

3. Equipment No Longer Manufactured or Used

Section 35.30–5(c), which pertains to maintaining galley fires, is being removed because it addresses equipment that is no longer manufactured or used.

4. Repeated Provisions

The following regulations are being removed because the requirements they impose are repeated in other, more logical locations in Title 46 of the CFR. For example, requirements for carriage of vinyl chloride monomer are contained in 46 CFR part 40, Special Construction, Arrangement, and Other

Provisions for Carrying Certain Flammable or Combustible Dangerous Cargoes in Bulk. More up-to-date requirements are also located in 46 CFR 151.50–34 in subchapter O, Certain Bulk Dangerous Cargoes. Also, 46 CFR 56.50–101 and 56.50–102 contain unnecessary references to refrigeration and liquefied petroleum gas piping systems, topics discussed in detail in 46 CFR part 58, Main and Auxiliary Machinery and Related Systems.

In the following list, the citation to the regulations where the repeated requirements are being retained in Title 46 CFR is indicated in square brackets below the section being removed.

Cite (46 CFR)	Change made	Subject addressed by regulation
Part 40 (§ 151.50–34)	Removed	Requirements for vinyl chloride monomer.
§ 56.50–101 (Subpart 58.20)	Removed	Refrigeration systems.
§ 56.50–102 (Subpart 58.16)	Removed	Liquefied petroleum gas for domestic service.
§ 76.10–10(l)(2) (§ 76.10–10(l)(3))	Removed	Lined fire hose in the engine room.
§ 95.10–10(l)(2) (§ 95.10–10(l)(4))	Removed	Lined fire hose in the engine room.
§ 154.1745 (§ 151.50–34)	Revised	Requirements for vinyl chloride.

5. Outdated Authority Citations

The authority citations for parts 25, 30, 31, 35, 50, 54, 56, 71, 72, 78, 91, 97, 171, 174, 188 and 189 are being updated because they either cite statutory provisions which have been repealed or an executive order which has been revoked. Specifically, the majority of these provisions delete references to 46 U.S.C. 4104 and 5115 which were repealed on November 16, 1990 (Pub. L. 101–595, 104 Stat. 2993), E.O. 11735 which was revoked by E.O. 12777 (56 FR 54757, 3 CFR, 1991 Comp., p. 351) and 49 U.S.C. 1804 which was repealed on July 5, 1994 (Pub. L. 103–272, 108 Stat. 1379).

6. Statutory Language Repeated

The regulatory text of the following provisions repeats exactly the statutory language without any further requirements. Regulations which do not add to self-executing statutes are not useful. Therefore, these regulations which only repeat statutory language are being removed.

Cite (46 CFR)	Change made	Subject addressed by regulation
§ 35.01–30	Removed	Reckless or negligent operation.
§ 78.30–30	Removed	Reckless or negligent operation.
§ 97.27–10	Removed	Reckless or negligent operation.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Assessment is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include—(1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and, (2) governmental jurisdictions with populations of less than 50,000.

This final rule will have no economic impact on small entities because it amends portions of regulations that—(1) are purely administrative; (2) do not reflect common marine industry practice; (3) apply to vessels that no longer exist; or, (4) are repeated in other sections. Therefore, the Coast Guard finds that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule imposes on the public no new or added requirements for collecting information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2.c of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 37

Cargo vessels, Marine safety, Nuclear vessels, Radiation protection.

46 CFR Part 40

Cargo vessels, Hazardous materials transportation, Marine safety, Occupational safety and health, Seamen, Vinyl chloride.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 55

Nuclear vessels, Reporting and recordkeeping requirements.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 57

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 67

Vessels.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 72

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 79

Marine safety, Nuclear vessels, Passenger vessels, Radiation protection, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 99

Cargo vessels, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements.

46 CFR Part 106

Energy, Environmental protection, Hazardous substances, Intergovernmental relations, Marine resources, Marine safety, Vessels.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 171

Marine safety, Passenger vessels.

46 CFR Part 174

Marine safety, Vessels.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 25, 28, 30, 31, 35, 37, 40, 50, 54, 55, 56, 57, 61, 67, 70, 71, 72, 76, 78, 79, 90, 91, 95, 97, 99, 106, 150, 154, 171, 174, 188 and 189 as follows:

PART 25—REQUIREMENTS

1. The authority citation for Part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

§ 25.40–1 [Amended]

2. Section 25.40–1 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

3. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4506, 6104, 10603; 49 U.S.C. 5103, 5106; 49 CFR 1.46.

§ 28.110 [Amended]

4. In § 28.110, paragraph (a) is amended by removing the words ''after November 15, 1991,''.

§ 28.115 [Amended]

5. In § 28.115, paragraph (a) is amended by removing the words ''after November 15, 1991,''.

§ 28.135 [Amended]

6. In § 28.135, paragraph (a) is amended by removing the words ''after September 1, 1992,''.

§ 28.145 [Amended]

7. Section 28.145 is amended by removing the words ''after November 15, 1991,''.

8. In § 28.210, paragraphs (c), (d), and (e) are revised to read as follows:

§ 28.210 First aid equipment and training.

* * * * *

(c) Each vessel that operates with more than 2 individuals on board must have at least 1 individual certified in first aid and at least 1 individual certified in CPR. An individual certified in both first aid and CPR will satisfy both of these requirements.

(d) Each vessel that operates with more than 16 individuals on board must have at least 2 individuals certified in first aid and at least 2 individuals certified in CPR. An individual certified in both first aid and CPR may be counted for both requirements.

(e) Each vessel that operates with more than 49 individuals on board must have at least 4 individuals certified in first aid and at least 4 individuals certified in CPR. An individual certified in both first aid and CPR may be counted for both requirements.

§ 28.240 [Amended]

9. In § 28.240, paragraph (a) is amended by removing the words ''after September 1, 1992,''.

10. In § 28.270, paragraph (c) is revised to read as follows:

§ 28.270 Instructions, drills, and safety orientation.

* * * * *

(c) *Training.* No individual may conduct the drills or provide the instructions required by this section unless that individual has been trained

in the proper procedures for conducting the activity. An individual licensed for operation of inspected vessels of 100 gross tons or more need not have additional training to comply with this requirement.

* * * * *

PART 30—GENERAL PROVISIONS

11. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.01–25 [Removed]

12. Section 30.01–25 is removed.

§ 30.10–44 [Removed]

13. Section 30.10–44 is removed.

PART 31—INSPECTION AND CERTIFICATION

14. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.01–5 [Amended]

15. Section 31.01–5 is amended by removing the designation ''(a)'' from paragraph (a) and removing paragraph (b).

16. In § 31.05–10, paragraph (b) is amended by removing the words ''For nuclear vessels see part 37 of this subchapter.'', and paragraph (a) is revised to read as follows:

§ 31.05–10 Period of validity of certificate of inspection —TB/ALL

(a) Certificates of inspection will be issued for periods of either 1 or 2 years.

* * * * *

§ 31.10–15 [Amended]

17. Section 31.10–15 is amended by removing paragraph (c).

18. Section 31.40–1 is revised to read as follows:

§ 31.40–1 Application—T/ALL

The provisions of this subpart shall apply to all tankships on an international voyage.

§ 31.40–30 [Removed]

19. Section 31.40–30 is removed.

§ 31.40–40 [Amended]

20. Section 31.40–40 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 35—OPERATIONS

21. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 35.01–30 [Removed]

22. Section 35.01–30 is removed.

§ 35.30–5 [Amended]

23. Section 35.30–5 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

PART 37—[REMOVED]

24. Part 37 is removed.

PART 40—[REMOVED]

25. Part 40 is removed.

PART 50—[AMENDED]

26. The authority citation for part 50 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

§ 50.01–10 [Amended]

27. In § 50.01–10, paragraph (b) is amended by removing the words ''nuclear pressure vessels,''.

§ 50.05–15 [Amended]

28. In § 50.05–15, the introductory text in paragraph (a) is amended by removing the words ''nuclear vessels,'' and paragraph (c) is removed.

29. In § 50.20–5, paragraph (c) is removed, paragraph (d) is redesignated as paragraph (c) and paragraph (b) is revised to read as follows:

§ 50.20–5 Procedures for submittal of plans.

* * * * *

(b) The plans may be submitted in duplicate to the Officer in Charge, Marine Inspection, at or nearest the place where the vessel is to be built. Alternatively, the plans may be submitted in triplicate to the Marine Safety Center.

* * * * *

30. Section 50.30–10 is revised to read as follows:

§ 50.30–10 Class I, I–L and II–L pressure vessels.

(a) Classes I, I–L and II–L pressure vessels shall be subject to shop inspection at the plant where they are being fabricated, or when determined necessary by the Officer in Charge, Marine Inspection.

(b) The manufacturer shall submit Class I, I–L and II–L pressure vessels, as defined in Parts 54 and 56 of this subchapter for shop inspection at such stages of fabrication as may be requested by the Officer in Charge, Marine Inspection.

PART 54—PRESSURE VESSELS

31. The authority citation for Part 54 is revised to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–10 [Amended]

32. In § 54.01–10, paragraph (a) is amended by removing the words '', such as steam generators in the secondary system of a nuclear plant,''.

§ 54.15–5 [Amended]

33. In § 54.15–5, the colon at the end of paragraph (i) is removed and replaced with a period and the note following paragraph (i) is removed.

PART 55—[REMOVED]

34. Part 55 is removed.

PART 56—PIPING SYSTEMS AND APPURTENANCES

35. The authority citation for part 56 is revised to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 56.01–2 [Amended]

36. In § 56.01–2, paragraph (b) is amended by removing the entry for American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code: Section III, Rules for the Construction of Nuclear Power Plants, 1986 with addenda.

§ 56.01–10 [Amended]

37. Section 56.01–10 is amended by removing paragraph (c)(2)(ii) and redesignating paragraphs (c)(2)(iii) and (c)(2)(iv) as paragraphs (c)(2)(ii) and (c)(2)(iii), respectively.

§ 56.04–1 [Amended]

38. In § 56.04–1, Table 56.04–1—Piping Classifications is amended by removing the entry ''Nuclear'' in the Service column and the corresponding entry ''See part 55 of this subchapter.'' in the Class column.

§ 56.07–10 [Amended]

39. In § 56.07–10, paragraph (e) is amended by removing the words ''and nuclear''.

§ 56.20–9 [Amended]

40. In § 56.20–9, paragraph (b) is amended by removing the words ''nuclear and''.

§ 56.30–5 [Amended]

41. In § 56.30–5, paragraph (b)(4) is amended by removing the words ''and nuclear.''

§ 56.50–25 [Amended]

42. In § 56.50–25, paragraph (a) is amended by removing the words ''Other arrangements may be permitted for nuclear systems when specifically authorized by the Commandant.''.

§ 56.50–85 [Amended]

43. In § 56.50–85, paragraph (a)(1) is amended by removing the words ''Tanks in nuclear systems shall be provided with means for preventing uncontrolled release of hazardous amounts of radioactive materials.''.

§ 56.50–101 [Removed]

44. Section 56.50–101 is removed.

§ 56.50–102 [Removed]

45. Section 56.50–102 is removed.

§ 56.60–2 [Amended]

46. Section 56.60–2 is amended by removing the note at the end of the section.

47. In § 56.70–15, paragraph (a)(3) is revised to read as follows:

§ 56.70–15 Procedure.

(a) * * *

(1) * * *

(3) Sections of pipe shall be welded insofar as possible in the fabricating shop. Prior to welding Class I piping or low temperature piping, the fabricator shall request a marine inspector to visit his plant to examine his fabricating equipment and to witness the qualification tests required by part 57 of this subchapter. One test specimen shall be prepared for each process and welding position to be employed in the fabrication.

* * * * *

PART 57—WELDING AND BRAZING

48. The authority citation for part 57 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 57.02–2 [Amended]

49. In § 57.02–2, paragraph (a)(1) is amended by removing the words ''nuclear vessels,''.

50. In § 57.06–1, paragraphs (b) and (c) are revised to read as follows:

§ 57.06–1 Production test plate requirements.

* * * * *

(b) Main power boilers shall meet the test plate requirements for Class I pressure vessels.

(c) Test plates are not required for heating boilers or Class III pressure vessels. Test plates are not required for main power boilers or pressure vessels constructed of P–1 material as listed in QW 422 of the ASME Code whose welded joints are fully radiographed as required by Part 52 or 54 of this subchapter as applicable except when toughness tests are required in accordance with § 57.06–5. When toughness tests are required all prescribed production tests shall be performed.

§ 57.06–4 [Amended]

51. In § 57.06–4, paragraph (a) is amended by removing the words ''and Classes A and B nuclear vessels''.

52. In § 57.06–5, paragraph (a) is revised to read as follows:

§ 57.06–5 Production toughness testing.

(a) In addition to the test specimens required by § 57.06–4(a), production toughness test plates shall be prepared for Classes I–L and II–L pressure vessels in accordance with subpart 54.05 of this subchapter.

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

53. The authority citation for part 58 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 58.03–1 [Amended]

54. In § 58.03–1, paragraph (b) is amended by removing the entry for American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section III, Division 1, Rules for Construction of Nuclear Power Plant Components, July 1989 with 1989 addenda.

PART 61—PERIODIC TESTS AND INSPECTIONS

55. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 61.01–1 [Amended]

56. In § 61.01–1, paragraph (a) is amended by removing the words ''nuclear pressure vessels,''.

§ 61.10–1 [Amended]

57. Section 61.10–1 is amended by removing the designation ''(a)'' from paragraph (a) and removing paragraph (b).

§ 61.15–1 [Amended]

58. Section § 61.15–1 is amended by removing the designation ''(a)'' from paragraph (a) and removing paragraph (b).

Subpart 61.25—[Removed]

59. Subpart 61.25 is removed.

PART 67—DOCUMENTATION OF VESSELS

60. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

61. Section 67.3 is amended by removing the definitions for *Ocean thermal energy conversion facility* and *Ocean thermal energy conversion plantship* and by revising the definition for *Vessel* to read as follows:

§ 67.3 Definitions.

* * * * *

Vessel includes every description of watercraft or other contrivance capable of being used as a means of transportation on water, but does not include aircraft.

* * * * *

PART 70—GENERAL PROVISIONS

62. The authority citation for part 70 is amended to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

§ 70.05–12 [Removed]

63. Section 70.05–12 is removed.

§ 70.10–30 [Removed]

64. Section 70.10–30 is removed.

PART 71—INSPECTION AND CERTIFICATION

65. The authority citation for part 71 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 71.01–10 [Amended]

66. In § 71.01–10, paragraph (a) is amended by removing the words ''For nuclear vessels see also § 79.10–1 of this subchapter.''.

§ 71.20–15 [Amended]

67. Section 71.20–15 is amended by removing the paragraph designation ''(a)'' from paragraph (a) and removing paragraph (b).

§ 71.25–10 [Amended]

68. Section 71.25–10 is amended by removing the paragraph designation ''(a)'' from paragraph (a) and removing paragraph (b).

69. In § 71.75–5, the section heading and paragraph (a) are amended to read as follows:

§ 71.75–5 Passenger Ship Safety Certificate.

(a) All vessels on an international voyage are required to have a ''Passenger Ship Safety Certificate.''

* * * * *

§ 71.75–10 [Amended]

70. Section 71.75–10 is amended by removing paragraph (c).

§ 71.75–20 [Amended]

71. In § 71.75–20, paragraph (c) is amended by removing the words ''or the Nuclear Passenger Ship Safety Certificate''.

PART 72—CONSTRUCTION AND ARRANGEMENT

72. The authority citation for part 72 is revised to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 72.25–5 [Removed]

73. Section 72.25–5 is removed.

PART 76—FIRE PROTECTION EQUIPMENT

74. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 76.10–10 [Amended]

75. Section 76.10–10 is amended by removing paragraph (l)(2) and redesignating paragraph (l)(3) as paragraph (l)(2).

PART 78—OPERATIONS

76. The authority citation for part 78 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 78.30–30 [Removed]

77. Section 78.30–30 is removed.

PART 79—[REMOVED]

78. Part 79 is removed.

PART 90—GENERAL PROVISIONS

79. The authority citation for part 90 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 90.05–40 [Removed]

80. Section 90.05–40 is removed.

§ 90.10–24 [Removed]

81. Section 90.10–24 is removed.

PART 91—INSPECTION AND CERTIFICATION

82. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

83. In § 91.01–10, paragraph (a) is revised to read as follows:

§ 91.01–10 Period of validity.

(a) Certificates of inspection will be issued for periods of either 1 or 2 years. Application may be made by the master, owner, or agent for inspection and issuance of a new certificate of inspection at any time during the period of validity of the current certificate.

* * * * *

§ 91.20–15 [Amended]

84. Section 91.20–15 is amended by removing paragraph (c).

§ 91.25–10 [Amended]

85. Section 91.25–10 is amended by removing the paragraph designation ''(a)'' from paragraph (a) and removing paragraph (b).

86. Section 91.60–1 is revised to read as follows:

§ 91.60–1 Application.

The provisions of this subpart shall apply to all cargo vessels on an international voyage.

§ 91.60–30 [Removed]

87. Section 91.60–30 is removed.

§ 91.60–40 [Amended]

88. Section 91.60–40 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 95—FIRE PROTECTION EQUIPMENT

89. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 95.10–10 [Amended]

90. Section 95.10–10 is amended by removing paragraph (l)(2) and redesignating paragraphs (l)(3) and (l)(4) as paragraphs (l)(2) and (l)(3), respectively.

PART 97—OPERATIONS

91. The authority citation for Part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 97.27–10 [Removed]

92. Section 97.27–10 is removed.

PART 99—[REMOVED]

93. Part 99 is removed.

PART 106—[REMOVED]

94. Part 106 is removed.

PART 150—COMPATIBILITY OF CARGOES

95. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Subpart A—[Amended]

96. The designation ''Subpart A—Compatibility of Cargoes'' for § 150.105 through § 150.170 is removed.

Subpart B—[Removed]

97. Subpart B of Part 150 is removed.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

98. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

99. Section 154.1745 is revised to read as follows:

§ 154.1745 Vinyl chloride: Transferring operations.

A vessel carrying vinyl chloride must meet the requirements of § 151.50–34(g) through (k) of this chapter.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

100. The authority citation for part 171 is revised to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46.

101. In § 171.001, paragraph (b) is revised to read as follows:

§ 171.001 Applicability.

* * * * *

(b) Specific sections of this part also apply to nautical school ships, sailing school vessels and oceanographic vessels. The applicable sections are listed in subparts C and D of part 173 of this chapter.

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

102. The authority citation for part 174 is revised to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

103. Section 174.005 is revised to read as follows:

§ 174.005 Applicability.

Each of the following vessels must comply with the applicable provisions of this part:

(a) Deck Cargo Barge.

(b) Mobile offshore drilling unit (MODU) inspected under Subchapter IA of this chapter.

(c) Tugboat and towboat inspected under Subchapter I of this chapter.

(d) Self-propelled hopper dredge having an assigned working freeboard.

(e) Oceangoing ships of 500 gross tons or over, as calculated by the International Convention on Tonnage Measurement of Ships, 1969, designed primarily for the carriage of dry cargoes, including roll-on/roll-off ships.

Subpart D—[Removed and Reserved]

104. Subpart D of part 174 is removed and reserved.

Subpart F—[Removed and Reserved]

105. Subpart F of part 174 is removed and reserved.

PART 188—GENERAL PROVISIONS

106. The authority citation for part 188 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 188.05–15 [Removed]

107. Section 188.05–15 is removed.

§ 188.10–47 [Removed]

108. Section 188.10–47 is removed.

PART 189—INSPECTION AND CERTIFICATION

109. The authority citation for part 189 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1890 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

110. In § 189.01–10, paragraph (a) is revised to read as follows:

§ 189.01–10 Period of validity.

(a) Certificates of Inspection will be issued for periods of either 1 or 2 years. Application may be made by the master, owner, or agent for inspection and issuance of a new certificate of inspection at any time during the period of validity of the current certificate.

* * * * *

§ 189.20–15 [Amended]

111. Section 189.20–15 is amended by removing paragraph (c).

§ 189.25–10 [Amended]

112. Section 189.25–10 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

113. Section 189.60–1 is revised to read as follows:

§ 189.60–1 Application.

The provisions of this subpart shall apply to all oceanographic research vessels on an international voyage. (See § 188.05–10 of this subchapter.)

§ 189.60–30 [Removed]

114. Section 189.60–30 is removed.

§ 189.60–40 [Amended]

115. Section 189.60–40 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

Dated: September 5, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–22981 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 091295D]

Atlantic Tuna Fisheries; Bluefin Tuna Closure and Quota Reallocation

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

ACTION: Closure and reallocation.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) General category quota and Angling category quota for 1995 have been reached. Therefore, the General category fishery will be closed effective at 11:59 p.m. on September 12, 1995, and the Angling category fishery will be closed effective at 11:59 p.m. on September 17, 1995. This action is being taken to prevent further overharvest of these categories. NMFS also announces a transfer of 15 mt of ABT from the longline-south Incidental subcategory to the longline-north Incidental subcategory. NMFS has determined that the fisheries landing ABT under the longline-south Incidental subcategory will not achieve the full 1995 allocation. NMFS also transfers from the Reserve category to account for overharvest in the General, Harpoon, and Angling categories. These actions are being taken to extend the season for the longline-north Incidental subcategory, ensure additional collection of biological assessment and monitoring data, and prevent waste of bluefin tuna that might otherwise be discarded dead.

EFFECTIVE DATE: The General category closure is effective 11:59 p.m. local time on September 12, 1995, through December 31, 1995. The Angling category closure is effective 11:59 p.m. local time on September 17, 1995, through December 31, 1995. The longline and reserve inseason transfers are effective September 12, 1995.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Kevin B. Foster, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the

Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

Closure

Implementing regulations for the Atlantic tuna fisheries at 50 CFR 285.22 provide for a total annual quota of 438 mt of large medium and giant Atlantic bluefin tuna to be harvested from the regulatory area by vessels permitted in the General category. To date, over 527 mt have been harvested. Regulations also provide for an annual quota of 324 mt for the Angling category. Best available estimates indicate that the Angling category quota has been harvested for 1995.

NMFS is required, under 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota applicable to any period and publish a **Federal Register** announcement stating that fishing for, retaining, possessing or landing ABT must cease on a date and at a specified hour, and not recommence until the opening of the subsequent quota period.

Fishing for, retention, possessing, or landing large medium or giant ABT by vessels in the General category must cease at 11:59 p.m. local time September 12, 1995. Fishing for, retention, possessing, or landing schools, large schools, small medium, large medium, or giant ABT by vessels in the Angling category must cease at 11:59 p.m. local time September 17, 1995. The intent of this action is to prevent further overharvest of the quota established for these categories.

The Harpoon category was previously closed on August 11, 1995 (60 FR 42469, August 16, 1995). The Incidental and Purse Seine categories will remain open until quotas for these categories are reached.

Inseason Transfers

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during a single year quota period or the second year of a biannual quota period as defined by ICCAT, the AA determines, based on landing statistics, present year catch rates, effort, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock; (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

The bluefin have migrated to their summer feeding grounds in New England waters and incidental catch by longline vessels operating south of 34° N. lat. is no longer expected to occur. A total of 60 mt currently remain of the amount allocated to this southern subcategory. The Incidental category longline-north has exceeded its allocation of 23 mt for vessels fishing north of 34° N. lat. Once the quota is reached for this northern subcategory, any bluefin tuna incidentally taken by longline vessels must be discarded at sea. In order to prevent waste of bluefin tuna that might otherwise be discarded dead, it is reasonable to transfer quota from the southern to the northern subcategory.

Reallocating 15 mt from the Incidental longline-south category responds to the criteria listed above as follows: Incidental category landings are a major contributor to the collection of biological data on this fishery; incidental catches by longline vessels in 1995 have been high, and it would be necessary to close this subcategory of the fishery unless additional quota allocation were made.

NMFS also transfers from the Reserve to the General, Harpoon, and Angling categories. The purpose of these transfers is to cover overharvest in these categories.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 12, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–23028 Filed 9–12–95; 4:59 pm]

BILLING CODE 3510–22–P

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 090895A]

Groundfish of the Gulf of Alaska; Prohibit Retention of Sablefish in the West Yakutat District

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the West Yakutat district of the Gulf of Alaska (GOA). NMFS is requiring that catches of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to trawl gear in the West Yakutat district of the GOA has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), October 1, 1995, until 12 midnight, A.l.t., December 31, 1995.

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 the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.24(c)(2), the share of the sablefish TAC assigned to trawl gear in the West Yakutat district of the GOA was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995), as 205 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.24(c)(3)(ii), that the share of the sablefish TAC assigned to trawl gear in the West Yakutat district of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the West Yakutat district of the GOA be treated as prohibited species in accordance with § 672.20(e).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: September 11, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23009 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 675

RIN 0648–AH69

[Docket No. 950414105–5227–03;I.D. 082495D]

Groundfish of the Bering Sea and Aleutian Islands; Observer Requirements

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a technical amendment to the final rule implementing Amendment 35 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP). This action clarifies observer coverage requirements established for shoreside processing facilities and mothership processor vessels during the second pollock season.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: The final rule implementing Amendment 35 to the FMP was published in the **Federal Register** on July 5, 1995 (60 FR 34904). The preamble to that rule explains that regulatory amendments were implemented that ''would increase 1995 observer coverage for mothership processor vessels and for some shoreside processors receiving pollock harvested in the catcher vessel operational area (CVOA)* * *.'' This technical amendment clarifies the regulatory language of that final rule to more accurately reflect the original purpose and intent of that rule.

The final rule requires a second NMFS-certified observer for mothership processor vessels and certain shoreside processing facilities during the second pollock season, which begins August 15. The intent of the rule is to ensure that processors receiving pollock harvested from the CVOA have adequate observer coverage in order to count accurately the number of nonchinook salmon taken as bycatch in the pollock fishery. Amendment 35 established a bycatch limit of 42,000 nonchinook salmon for the second pollock season.

The preamble to the final rule explains that shoreside processing plants that ''receive pollock harvested from the CVOA during the 1995 nonroe season and that offload fish at two locations on the same dock and have distinct and separate equipment to process those fish will also be required to have an extra observer'' (60 FR 34905). A second observer is necessary because of the large volume of pollock that could be offloaded at these facilities and the additional time required by observers to count salmon bycatch. While the regulation uses the term ''fish,'' the intent was to require an additional observer only for those shoreside processors that offload and process pollock at more than one location.

NMFS is clarifying the regulation at § 675.25(b)(2) by changing the word ''fish'' in § 675.25(b)(2) to ''pollock.'' Thus, it will now be clear that two observers are required only at facilities that meet all three of the following criteria: (1) Receive pollock harvested by catcher vessels in the CVOA during the second pollock season, (2) offload pollock at more than one location on the same dock of that facility, and (3) have distinct and separate equipment at each location to process those pollock. Regulations at § 675.25(b)(1) also require an additional observer on mothership processor vessels that receive pollock from catcher vessels harvesting in the CVOA during the second pollock season. The second observer at shoreside processor facilities and on mothership processor vessels is required until the chum salmon savings area (CSSA) is closed due to attainment of the 42,000 nonchinook bycatch limit. The intent of the regulation is to have the additional observer present at the processor to count the salmon to be counted toward the salmon bycatch limit.

Under the final rule, salmon bycatch during the second pollock season is counted through October 14 or until the bycatch limit is reached, whichever occurs first. The additional observer is not necessary once the bycatch limit is reached or after October 14. NMFS is clarifying the intent of the regulations to require the additional observer to be present until either the CSSA is closed (i.e., the bycatch limit has been reached) or October 15, whichever occurs first.

Classification

This technical amendment clarifies the regulations requiring observer coverage in shoreside processing facilities and on mothership processor vessels and relieves a regulatory restriction. The requirement for additional observers to monitor the offloading or processing of fish other than pollock during the second pollock season does not provide accurate salmon bycatch data for the pollock fishery and does not provide any other significant benefits. Similarly, additional observers are not needed once the nonchinook bycatch limit has been reached. These requirements impose a burden that is unnecessary and additional delay in removing that requirement would result in additional observer expense without providing any significant public benefit. Consequently, the Assistant Administrator for Fisheries, NOAA, finds that there is good cause to waive prior notice and opportunity to comment on this action. Because this action relieves a restriction, under U.S.C. 533(d)(1), a delay in the effective date is not necessary.

This rule is exempt from procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment. No analysis has been prepared.

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

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 11, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble 50 CFR part 675 is amended to read as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

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

2. In § 675.25, paragraph (b) is revised to read as follows:

§ 675.25 Observer requirements.

* * * * *

(b) Additional observer coverage requirements applicable through December 31. 1995. (1) Each mothership processor vessel that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15 under § 675.23(e), is required to have a second NMFS-certified observer aboard, in addition to the observer required under § 677.10(a)(1)(i) of this chapter, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) or October 15, whichever occurs first.

(2) Each shoreside processor that offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15, under § 675.23(e), is required to have a NMFS-certified observer, in addition to the observer required under § 677.10(a)(1)(i) of this chapter, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2) of this chapter, or until October 15, whichever occurs first.

[FR Doc. 95–23033 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 353 and 354

[Docket No. 90–117–2]

Export Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule that would revise completely the ''Phytosanitary Export Certification'' regulations, which concern inspection and phytosanitary certification of plants and plant products offered for export.

DATES: Consideration will be given only to written comments on Docket No. 90–117–1 that are received on or before October 16, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 90–117–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 90–117–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard M. Crawford, Senior Operations Officer, Plant Protection and Quarantine, Port Operations, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 139, Riverdale, MD 20737–1228; (301) 734–8537.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1995, we published in the **Federal Register** (60 FR 42472–42479, Docket No. 90–117–1) a proposal to revise completely the ''Phytosanitary Export Certification'' regulations in 7 CFR 353, which concern inspection and phytosanitary certification of plants and plant products offered for export.

Comments on the proposed rule were required to be received on or before September 15, 1995. We are extending the comment period on Docket No. 90–117–1 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 147a; 21 U.S.C. 136 and 136a; 44 U.S.C. 35; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 11th day of September 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–23031 Filed 9–15–95; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL TRADE COMMISSION

16 CFR Part 24

Guides for Select Leather and Imitation Leather Products

AGENCY: Federal Trade Commission.

ACTION: Request for public comment on proposed Guides for Select Leather and Imitation Leather Products.

SUMMARY: The Federal Trade Commission (the ''Commission''), as part of its periodic review of its rules and guides, announces that it has concluded a review of its Guides for the Luggage and Related Products Industry (''Luggage Guides''); Guides for Shoe Content Labeling and Advertising (''Shoe Content Guides''); and Guides for the Ladies' Handbag Industry (''Handbag Guides''). The Commission rescinds these three Guides in a document published elsewhere in this issue of the **Federal Register**. The Commission now seeks public comment on proposed Guides for Select Leather and Imitation Leather Products. The proposed Guides combine relevant portions of the three Guides, update certain language used in the Guides, and make other modifications to clarify and streamline the provisions of the Guides. The Commission has included within the coverage of the proposed combined Guides the provisions of the Commission's Trade Regulation Rule Concerning Misbranding and Deception as to Leather Content of Waist Belts (''Waist Belt Rule'').

DATES: Written comments on the proposed Guides for Select Leather and Imitation Leather Products must be submitted by October 18, 1995.

ADDRESSES: Written comments should be submitted to the Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone number (202) 326–2506. Comments should be identified as ''16 CFR Part 24—Comment—Proposed Guides for Select Leather and Imitation Leather Products''.

FOR FURTHER INFORMATION CONTACT: Susan E. Arthur, Attorney, (214) 767–5503, Federal Trade Commission, Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION:

I. Background

The Luggage Guides, promulgated on February 27, 1979, address potential deception in the sale, offering for sale, and distribution of luggage and related products. Specific industry guidance is provided by the Guides in connection with the following:

—disclosures to be made for products made of split leather, imitation leather or processed leather, or products which contain backing material;
—representations that products are made from the skin of a fictitious animal;
—the use of words, terms, depictions or devices that may indicate that a product is made of any material when it is not;
—representations that a product is wholly of a particular composition;
—representations that a product is leather when it contains ground, pulverized or shredded leather;
—representations that a product is colored, finished or dyed with aniline dye or otherwise dyed, embossed, grained, processed, finished or stitched in a certain manner;

—representations about the hardware, box or frame of products; and
—use of the terms ''waterproof,'' ''dustproof,'' ''warpproof,'' ''scuffproof,'' and ''scratchproof.''

The Shoe Content Guides were adopted by the Commission on October 2, 1962. They contain industry guidance for the labeling and advertising of shoe content with respect to the following:

—use of the term ''leather'' on labels and in advertisements;
—disclosures on labels concerning simulated or imitation leather, concealed innersoles, split leather, embossed or processed leather, and ground or shredded leather;
—disclosures in advertisements that depict non-leather parts of shoes or slippers which appear to be made of leather;
—disclosures to be used with terms that are suggestive of leather (*e.g.*, ''Duraleather''); and
—use of words or terms which would convey the impression that shoes or slippers are made of a certain material when they are not.

The Handbag Guides were promulgated on June 27, 1969, and address potential misrepresentations regarding ladies' handbags and similar articles. These Guides specifically address misrepresentations as to the composition and other characteristics of such products and provide specific industry guidance regarding the following:

—disclosures to be made with respect to a product's composition;
—representations that a product is colored, finished or dyed with aniline dye or otherwise dyed, embossed, grained, processed, finished or stitched in a certain manner;
—use of the terms ''scuffproof,'' ''scratchproof,'' ''scuff resistant,'' and ''scratch resistant;'' and
—deceptive pricing of products.

In addition, the Handbag Guides address price discrimination, advertising and promotional allowances, and the providing of promotional services and facilities. The Guides also discuss inducing or receiving a discrimination in price, advertising allowance or promotional service or facility.

The Waist Belt Rule, promulgated on June 27, 1964, regulates representations made in the sale, offering for sale, and distribution of men's and boy's belts, and women's and children's belts when not offered for sale as part of a garment. The Rule states that it is an unfair method of competition and an unfair or deceptive act or practice to:

—represent that a belt not made from the hide of an animal is leather;
—represent that a belt is ''leather'' when it contains ground, pulverized, or shredded leather;
—represent that a product is ''leather'' when it contains split leather;
—represent that a belt is made from a specified animal hide when it is not
—represent that a product is wholly of a particular composition when it is not;
—sell or distribute belts which have the appearance of leather, but which are made of split leather or ground, pulverized or shredded leather or of non-leather material, unless proper disclosure is made;
—sell or distribute belts which have been processed so as to have the appearance of a different type of leather, unless proper disclosure is made; and
—sell or distribute belts having an outer surface of leather or other material, which are backed with a different kind of leather or non-leather material having the appearance of leather, unless proper disclosure is made.

In response to a request for public comment on the Luggage Guides, the Shoe Content Guides and the Ladies' Handbag Guides, the Commission received 12 comments. The Commission received 10 comments regarding the Waist Belt Rule. Only three of the Waist Belt Rule comments were not also submitted in response to the request for comments on the three Guides.[1]

The **Federal Register** notice requesting comments on the three sets of Guides contained a list of questions designed to assist the Commission in determining whether the Guides should be maintained, amended or rescinded.

Ten of the comments supported retaining the Guides in some form,[2] one expressed no opinion on the issue,[3] and one comment merely asked a question.[4] Six of the comments were from consumers,[5] one was from a leather tanning company,[6] one was from a manufacturer of wallets,[7] and four were from trade associations.[8] The following discussion regarding the comments received is grouped according to the questions posed in the notice. A number of the comments dealt with issues common to all of the Guides and the Rule. The comments for all four are addressed together.

(1) Is there a continuing need for the Guides? Ten of the comments indicated that there is a continuing need for the Guides.[9]

(a) What benefits have the Guides provided to purchasers of the products or services affected by the Guides?

The comments received indicate that the Guides provide a number of benefits to consumers. Two comments suggested that consumers benefit from the Guides because the Guides require identification of imitation leather content, which, when used in shoes, may cause feet to sweat excessively.[10] Another comment stated that the disclosure requirements in the Guides benefit consumers because leather has special properties of durability, breathability, and flexibility.[11] One comment indicated that animal lovers, vegetarians and others who do not wish to wear leather need to know what they are buying.[12] Four comments indicated that the requirements of the Guides otherwise assist consumers in making purchasing decisions.[13]

(b) Have the Guides imposed costs on purchasers? The comments indicated that costs to purchasers are minimal.[14]

(2) What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

A number of the comments suggested that certain changes be made to the Guides. Generally, these suggestions fall

[1] Comments Concerning the Three Guides:
1. Rose E. Kettering (''REK'') Same comment sent regarding Waist Belt Rule
2. Matt Anderson (''MA'') Same comment sent regarding Waist Belt Rule
3. Marilyn Raeth (''MR'') Same comment sent regarding Waist Belt Rule
4. James A. McGarry (''JAM'') Same comment sent regarding Waist Belt Rule
5. Lenna Mae Gara (''LMG'') Same comment sent regarding Waist Belt Rule
6. Linda D. Lipinski (''LDL'')
7. Footwear Industries of America (''FIA'')
8. Leather Industries of America, Inc. (''LIA'') Same comment sent regarding Waist Belt Rule
9. Luggage and Leather Goods Manufacturers of America, Inc.(''LLGMA'')
10. Cromwell Leather Company, Inc. (''CL'') Same comment sent regarding Waist Belt Rule
11. Enger Kress (''EK'')
12. Footwear Distributors and Retailers of America (''FDRA'')
Comments Concerning the Waist Belt Rule:
13. Stephen Toso (''ST'')
14. Humphreys, Inc. (''HI'')
15. Enger Kress (''EK2'')

[2] REK, #1; MA, #2 at 1; MR, #3; JAM, #4; LMG, #5; FIA, #7 at 1; LIA, #8 at 1; LLGMA, #9 at 2; CL, #10 at 1; EK, #11.
[3] FDRA, #12.
[4] LDL, #6.
[5] REK, #1; MA, #2; MR, #3; JAM, #4; LMG, #5; LDL, #6.
[6] CL, #10.
[7] EK, #11.
[8] FIA, #7; LIA, #8; LLGMA, #9; FDRA, 12.
[9] REK, #1; MA, #2 at 1; MR, #3; JAM, #4; LMG, #5; FIA, #7 at 1; LIA, #8 at 1; LLGMA, #9 at 1; CL, #10 at 1; EK, #11 at 1.
[10] REK, #1; MA, #2 at 2.
[11] FIA, #7 at 1.
[12] LMG, #5.
[13] MR, #3; JAM, #4; EK, #11 at 1; CL, #10 at 2.
[14] EK, #11 at 1; FIA, #7 at 2.

into the following categories: Definitions and use of the term ''Leather,'' Disclosure Requirements, Scope of the Guides, and Use of the term ''Bonded Leather.''

—Definitions and Use of the Term ''Leather''

One comment suggested that the Guides incorporate definitions of the terms ''Leather,'' ''Bonded Leather,'' and ''Manmade.''[15] Another comment suggested that a section should be added stating what materials are covered and giving a definition of each.[16] These additional definitions are not necessary because the Guides clearly cover all types of leather and all materials with the appearance of leather.

Three comments suggested that ''man-made'' should be used to describe certain non-leather products rather than ''simulated leather'' and similar terms using the word ''leather.''[17] One comment suggested that ''man-made'' be added to the list of examples of non-leather products and that ''urethane'' be recognized as a material which is often used in industry products.[18] The terms listed in the Guides as examples of appropriate disclosures for non-leather materials are adequate and would clearly indicate to consumers that a particular material is not leather. Because these terms are merely examples, it is not necessary to make additions to the list.

Two comments urged that the Guides be amended to allow split leather to be called ''leather'' because the European Union countries allow that term to be used without qualification to describe split leather.[19] However, insufficient support was presented to justify modification of this aspect of the Guides. In support of preservation of the Guides' distinction between top grain and split leather, one comment stated that split grain is less expensive, less attractive, and less durable than top grain leather, and that split leather is subject to ''crocking.''[20] Another comment stated that the Guides should continue to permit only top grain leather to be called ''leather'' or ''genuine leather'' and that other forms of leather should include qualifying words.[21] The apparent differences between the performance and appearance of top grain leather and that of split leather, as well as possible consumer expectations with regard to these materials, indicate that the Guides should continue to state that only top grain leather products should be called ''leather'' without qualification.

—Disclosure Requirements

The Guides contain a section specifically setting forth a method of making disclosures. Regarding the form of disclosures, one comment suggested that the Luggage Guides should be amended to state that the type of outer material used in the product must be permanently stamped on the product or on a label sewn into the product and that composition information regarding any other part of the product may be stamped either on the product, or on a tag, label, or card attached thereto.[22] There is insufficient justification for this amendment because consumers are adequately protected by the current provision which provides that disclosures should be stamped either on the product or on a tag, label, or card attached to the product until the consumer receives the item. A comment regarding the Waist Belt Rule suggested that using abbreviations in disclosures may be deceptive.[23] Some abbreviations that might be used may not be readily understood by consumers; however, the current disclosure provisions in the Guides already discourage deceptive abbreviations.

A suggestion was made in one comment to adopt the ''present industry practice'' of identifying embossed products by the name of the animal skin and by the name of the animal which is imitated in the appearance of the material, for example, ''pigskin grain cowhide.''[24] This method may be deceptive because it may be unclear which term describes the composition and which term describes the imitated grain. The Guides are not changed with regard to this type of disclosure.

One comment urged the Commission to delete the disclosure provision relating to composition of backing material because it was alleged that the provision was confusing and did not reflect current industry practice. It was further alleged that disclosures were unnecessary because backing material is not visible and is only used as support for the outer covering.[25] Because no substantiation was provided for these allegations, this change has not been made.

A suggestion was made that, due to a change in consumer preferences, the Commission should delete the provision regarding affirmative disclosure of manmade materials.[26] This comment stated that great strides have been made in the manufacture of synthetic materials and that such materials are often preferred. However, as discussed above, it appears that consumers believe that the Guides' suggested disclosures relating to manmade materials provide important information. Therefore, the Commission is not making the recommended change. The same comment stated that the Guides should be ''clarified'' with regard to multi-material uppers, and that a disclosure such as ''leather upper with manmade materials'' should be allowed. The Guides currently indicate that disclosure as to individual components should be made; therefore, a broad, non-specific disclosure would not be in accordance with the Guides. The recommended change has not been made.

An additional comment argued that the Guides should require country of origin disclosures.[27] Country of origin labeling for imported products is addressed by statute and U.S. Customs Service regulations.[28] The FTC Guides address the nature of the product, not its source. Therefore, incorporation of such a requirement in these Guides would be inappropriate. Another comment stated that efforts to acquaint foreign manufacturers with the Guides should be made.[29] While this suggestion has merit, it is not appropriate to address it in the Guides.

—Scope of the Guides

Several of the comments argued that the scope of the Guides should be modified. One comment concerning the Luggage Guides suggested that Parts 24.3 (deceptive practices as to aniline finish, graining, embossing and processing), 24.4 (deception as to hardware, frame or box) and 24.5 (misuse of the terms ''waterproof,'' ''dustproof,'' ''warpproof,'' ''scuffproof,'' and ''scratchproof'') should be deleted because they deal with specific deceptive claims that are covered by the general deception paragraph, 24.1.[30] Part 24.4 is deleted because it does not deal with the nature of leather and

[15] LIA, #8 at 4–5.

[16] LLGMA, #9 at 2–3.

[17] FIA, #7 at 2; LIA, #8 at 4–5; LLGMA, #9 at 2–3.

[18] EK, #11 at 2.

[19] LIA, #8 at 4; FDRA, #12 at 3.

[20] FIA, #7 at 2. Crocking is the transfer of color from the surface of a colored material to an adjacent area of the same material or to another surface, principally by rubbing.

[21] CL, #10 at 1.

[22] LLGMA, #9 at 4.

[23] ST, #13.

[24] LLGMA, #9 at 3.

[25] LLGMA, #9 at 3.

[26] FDRA, #12 at 3.

[27] EK, #11 at 1–2.

[28] 19 U.S.C. 1304; 19 CFR Part 134.

[29] LIA, #8 at 2.

[30] EK, #11 at 2.

imitation-leather materials and is appropriately handled in the general deception paragraph. However, the other two sections, which deal primarily with the processing and manufacturing of materials used in leather and imitation-leather products, provide useful guidance for industry members and are retained.

A suggestion was made that the Shoe Content Guides should apply only to shoe uppers and outersoles because those are the parts of a shoe upon which consumers base decisions, and there is limited space on a shoe for markings.[31] Another comment urged that the Guides should not apply to concealed innersoles because consumers expect that the concealed portions of footwear bottoms, particularly innersoles, are made of synthetic material.[32] However, no supporting evidence of consumer beliefs was supplied for either of these comments. Since it appears that useful information regarding other components of industry products is provided pursuant to the Guides, the Guides will remain as they are with respect to this issue.

—Use of the Term ''Bonded Leather''

Several of the comments received dealt with the issue of ''bonded leather,'' which generally refers to material made of leather fibers held together with a bonding agent. Several comments suggested permitting use of the term ''bonded leather'' for materials containing at least 75% leather fiber.[33] This, it was argued, would allow limited addition of non-leather fibers to improve strength, humidity expansion and heat resistance.[34] One comment stated that this 75% figure reflects a ''widespread consensus'' in the leather tanning and manufacturing industries.[35] Another called 75% an ''industry practice.''[36] However, insufficient evidence was submitted to establish that the 75% figure is an industry standard.

Even if the 75% figure were an industry practice or standard, it would not prevent deception. In a comment regarding the Waist Belt Rule, consumer survey evidence was provided in support of use of the term ''bonded leather.''[37] However, this survey indicated that 23.2% of the people surveyed believe the term means genuine cowhide leather. 57.2% believe the term means reprocessed leather scrap.[38] Although the submitters of the survey asserted that ''reprocessed leather scrap'' was the correct response, if other fibers have been added to leather fibers, it would be deceptive to refer to the entire mixture of materials as leather scrap. Use of the term ''bonded leather'' standing alone violates the Guides as they existed prior to this time. Without further qualification, the term would not appear to inform consumers that non-leather fibers are contained in the material. Further, some consumers may interpret the term ''bonded'' to mean material of a greater quality than leather,[39] or strengthened or reinforced leather.

A final comment suggested adding the term ''bonded leather'' to that section of the Guides which addresses use of the terms ''ground, pulverized or shredded leather.''[40] This suggestion has merit. Currently, two of the Guides and the Rule would allow use of terms such as ''pulverized leather'' to describe the content of materials. However, the Luggage Guides appear to suggest that disclosure be made of all materials contained in ground, pulverized or shredded leather. Such disclosures are useful, but may be lengthy. The proposed Guides now state that manufacturers should only use terms such as ''ground leather,'' ''pulverized leather,'' ''shredded leather'' or ''bonded leather'' to identify the products made of such materials if there is a disclosure of the amount of leather fibers and of the amount of non-leather substances contained in the material.

One comment specifically opposed use of the term ''bonded leather,'' and suggested that ground, pulverized or shredded leather should continue to be identified as non-leather material, with disclosures such as ''simulated leather containing leather fibers.''[41] Another comment stated that calling a product leather if it contains little leather is deceptive.[42] The Commission believes that the term ''bonded leather'' could be confusing to consumers who do not know that ''bonded leather'' may include substances other than leather. This is equally true with respect to ground, pulverized or shredded leather. However, a disclosure of the amount of leather fiber and of the amount of non-leather materials in a product is an effective way of preventing this deception. Further, providing a means by which a product which contains substantial amounts of leather can be distinguished in some way from totally simulated leather would be in the best interest of consumers. Thus, the proposed Guides state that if the terms ''ground leather,'' ''pulverized leather,'' ''shredded leather'' or ''bonded leather'' are used to describe materials, then a disclosure of the percentage of leather fiber and of the percentage of other substances contained should be made.

(a) How would these changes affect the costs the Guides impose on firms subject to their requirements?

The comment suggesting country of origin labeling stated that such a requirement would impose no additional cost on firms.[43] One of the comments urging that the definition of leather include split leather stated that costs would be reduced by permitting a single standard for labeling in this country and in the European Union. No other comments addressed this question.

(b) Would it be useful to the affected industries if the Luggage Guides, the Shoe Content Guides, and the Handbag Guides were combined into one set of industry guides that address all of these products or leather products in general?

One comment recommended that all Guides concerning leather be consolidated.[44] Another said that one set of guides should be made to cover all leather-using industries.[45] One comment stated that the Guides could be generalized to many if not all industries.[46] One comment urged the Commission to maintain separate Guides because the manufacturing processes are separate and distinct.[47] The Luggage and Leather Goods Manufacturers of America stated that it did not endorse combining the Guides.[48] A final comment suggested that a set of leather definitions be developed to apply to all finished goods.[49]

The Commission believes that the three Guides should be combined because of the similarity of the composition issues addressed by each of the Guides. Further, the Commission believes it is appropriate to include in the combined Guides the provisions of the Waist Belt Rule. However, the Commission seeks further comments on the issue of whether the Guides should be expanded to cover other products containing leather and imitation leather. These products would include, for

[31] FIA, #7 at 3.
[32] FDRA, #12 at 4.
[33] FIA, #7 at 3; LIA, #8 at 5; LLGMA, #9 at 3–4; CL, #10 at 3.
[34] CL, #10 at 3.
[35] CL, #10 at 3.
[36] LLGMA, #9 at 4.
[37] HI, #14, part 6.
[38] HI, #14, part 6.
[39] EK, #11 at 3.
[40] FIA, #7 at 3.
[41] EK, #11 at 3.
[42] CL, #10 at 3.
[43] EK, #11 at 2.
[44] LIA, #8 at 2.
[45] CL, #10 at 1.
[46] EK, #11 at 2.
[47] FIA, #7 at 4.
[48] LLGMA, #9 at 2.
[49] LIA, #8 at 4–5.

example, clothing, furniture,[50] watchbands, and equestrian items such as saddles. In particular, the Commission seeks comment as to whether there are special considerations for these different products which are not addressed by the proposed Guides.

(3) What significant burdens or costs, including costs of adherence, have the Guides imposed on firms subject to their requirements?

The comments indicated that the costs are minimal.[51]

(a) Have the Guides provided benefits to such firms?

One comment said that the Guides give industry members some assurance that all companies are labeling their products consistently and that valid comparisons can be made by consumers.[52]

(4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms subject to their requirements?

One comment indicated that if the Guides cannot realistically be enforced, then eliminating the regulation would reduce costs.[53] The same comment supported simple, less complex regulation.[54] One of the comments stated that costs would be reduced by permitting a single standard for labeling in this country and in the European Union. Another comment stated that no changes to the Guides need be made specifically to reduce costs of compliance.[55]

(a) How would these changes affect the benefits provided by the Guides?

No comments were received regarding this question.

(5) Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

One comment indicated that there is no overlap with other laws or regulations.[56] Another comment suggested that the Commission examine the labeling practices in the European Union and review the North American Free Trade Agreement and the Caribbean Basin Initiative.[57] A review of information provided by one commenter regarding the European Union Directive on Footwear Labeling revealed little similarity between it and the Guides. The calculation of shoe material area used in the directive (if two materials are present, they must be listed in descending order of area or volume) and the differences in terminology may serve to make the Guides more, rather than less, complex. Further, unlike the Guides, the directive allows use of symbols to indicate type of material. While symbols might be an effective, simpler way of providing information to consumers, symbols have not been used before in this country in this context. An extensive consumer education program would be required to implement the use of such symbols. Further, the Guides currently provide consumers with more information than does the use of the symbols adopted by the European Union. A review of NAFTA and CBI revealed no conflicts with the Guides.

(6) Since the Guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on the Guides?

Two comments suggested that today's ecological concerns dictate that leather scraps be used in ''bonded leather'' rather than disposed of as waste.[58] While not designed to address ecological concerns, the Guides may encourage the use of leather scraps because they provide that, if the term ''bonded leather'' is used, a disclosure regarding the percentage of leather fibers in the material should be made.

As discussed above, two comments urged that the Guides be amended to allow split leather to be called ''leather.'' One of the reasons given for suggesting this change is that technological advances have resulted in a split leather which is superior to that produced years ago.[59] However, another comment encouraged retaining the distinction because split leather is less expensive, less attractive, and less durable than top grain leather, and split leather is subject to ''crocking.''[60] Insufficient support was presented to justify modification of this aspect of the Guides.

As discussed above, one comment urged the Commission to delete the requirement that the presence of manmade materials be affirmatively disclosed.[61] The comment stated that great strides have been made in the manufacture of synthetic materials and that such materials are often preferred. This recommended change has not been made because it appears that consumers obtain important information from this disclosure and may use this information to select the material of their choice.

(7) Do members of the ladies' handbag industry require these industry-specific Guides for information about the standards applicable to price discrimination and discriminatory promotional allowances, or could equally helpful guidance be obtained from more general sources such as the Fred Meyer Guides?

No comments were received regarding this question. These interpretive statements are duplicative of Sections (a) and (f) of the Robinson-Patman Act with respect to price discrimination, and duplicative of the Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR Part 240 (commonly known as the ''Fred Meyer Guides''), which interpret Sections (d) and (e) of the Robinson-Patman Act, and Section 5 of the Federal Trade Commission Act with respect to discriminatory promotional allowances and services. A general statement of policy, such as that contained in the Fred Meyer Guides, is preferable to industry-specific Guides. Therefore, these sections of the Ladies' Handbag Guides have not been incorporated into the proposed Guides.

II. Conclusion

A review of the comments and of the three Guides indicates that retention and consolidation of their basic principles into one set of Guides is clearly warranted. Furthermore, the provisions of the Waist Belt Rule should be incorporated into the consolidated Guides. The Guides and the Waist Belt Rule deal with very similar issues. The nature of the covered products and the related concerns regarding composition are such that combining their provisions would be an efficient and effective way to prevent deception in this area. The Commission also believes that the Guides probably should cover other products made of leather or imitation leather. However, it is seeking additional comment before deciding whether to include such products within the scope of the Guides.

The proposed Guides consolidate 16 CFR Parts 24, 231, and 247. The language of the proposed Guides has been simplified and clarified, as well as updated to reflect current Commission legal standards.

In addition, the proposed Guides incorporate the following modifications:

—The Guides now include all products formerly covered by the three Guides and the Rule; boots were added as well.

—The scope of the Guides has been broadened to include deception in the

[50] Representations concerning leather and imitation-leather furniture currently are covered by the Commission's Guides for the Household Furniture Industry, 16 CFR 250.4.

[51] FIA, #7 at 2; LIA, #8 at 2; EK, #11 at 1.

[52] EK, #11 at 2.

[53] LIA, #8 at 2.

[54] LIA, #8 at 3.

[55] EK, #11 at 2.

[56] EK, #11 at 2.

[57] LIA, #8 at 2.

[58] LIA, #8 at 4; CL, #10 at 2.

[59] LIA, #8 at 4; FDRA, #12 at 3.

[60] FIA, #7 at 2.

[61] FDRA, #12 at 3.

marketing and advertising of industry products.

—A sentence setting forth the circumstances under which the unqualified term ''leather'' may be used is included for clarity. A similar provision was contained in the Shoe Guides.

—With regard to ground, pulverized, shredded, or bonded leather, the proposed Guides state that manufacturers of such materials may choose to identify the material as non-leather, or as ground, pulverized, shredded, or bonded leather. The Guides state that if the terms ''ground leather,'' ''pulverized leather,'' ''shredded leather,'' or ''bonded leather'' are used, a disclosure of the percentages of leather fibers and non-leather substances in the material should be made. The section regarding visible backing material has been clarified with regard to the use of the terms ''ground leather,'' ''pulverized leather,'' ''shredded leather,'' or ''bonded leather'' to describe backing materials.

—Provisions relating to the terms ''scuffproof'' and ''scratchproof'' have been amended to include other terms indicating that the product is resistant to wear. Use of terms such as ''scuff resistant'' and ''scratch resistant'' are addressed in an added section. This provision was taken from the Ladies' Handbag Guides.

—The section specifically dealing with deception as to the hardware, frame, or box of luggage has been deleted as unnecessary. This is covered by the general deception section.

—The Shoe Guides have a specific section relating to concealed innersoles. To avoid being too industry-specific, concealed innersoles are addressed in the proposed Guides in a footnote in the section concerning misrepresentations that a product is wholly of a particular composition.

—The Ladies' Handbag Guides included a section regarding deceptive pricing. Deceptive pricing is specifically covered by the general deception section; a separate section is not necessary and is therefore not included in the proposed Guides.[62]

—Finally, for the reasons discussed above, the price discrimination and related areas are not addressed in the proposed Guides.

III. Questions for Comment

The Commission seeks public comment on the following questions:

1. Should the proposed Guides for Select Leather and Imitation Leather Products be expanded in scope to include other products made of leather or imitation leather? Such products might include, but are not limited to, clothing, furniture, watchbands, and equestrian items.

2. Are there special considerations for these or other leather or imitation-leather goods which are not addressed by the proposed Guides? How could any such special considerations be addressed by the Guides?

List of Subjects in 16 CFR Part 24

Advertising, Distribution, Imitation-leather products, Labeling, Ladies' handbags, Leather and leather products industry, Luggage and related products, Shoes, Trade practices, Waist belts.

The Commission proposes to amend Title 16 of the Code of Federal Regulations by adding a new Part 24 to read as follows:

PART 24—GUIDES FOR SELECT LEATHER AND IMITATION LEATHER PRODUCTS

Sec.
24.0 Scope of Guides.
24.1 Deception (general).
24.2 Deception as to composition.
24.3 Deceptive practices as to aniline finish, graining, embossing and processing.
24.4 Misuse of the terms ''waterproof,'' ''dustproof,'' ''warpproof,'' ''scuffproof,'' ''scratchproof,'' ''scuff resistant,'' or ''scratch resistant.''

Authority: 15 U.S.C. 45, 46.

§ 24.0 Scope of Guides.

These Guides apply to the manufacture, sale, distribution, marketing, or advertising of all kinds or types of leather or simulated-leather trunks, suitcases, traveling bags, sample cases, instrument cases, brief cases, ring binders, billfolds, wallets, key cases, coin purses, card cases, french purses, dressing cases, stud boxes, tie cases, jewel boxes, travel kits, gadget bags, camera bags, ladies' handbags, shoulder bags, purses, pocketbooks, shoes, boots, slippers, belts (when not sold as part of a garment) and similar articles (hereinafter, ''industry product'').

§ 24.1 Deception (general).

It is unfair or deceptive to misrepresent, directly or by implication, the kind, grade, quality, quantity, material content, thickness, finish, serviceability, durability, price, origin, size, weight, ease of cleaning, construction, manufacture, processing, distribution, or any other material aspect of an industry product.

§ 24.2 Deception as to composition.

It is unfair or deceptive to misrepresent, directly or by implication, the composition of any industry product or part thereof. It is unfair or deceptive to use the unqualified term ''leather'' or other unqualified terms suggestive of leather unless the industry product so described is composed in all substantial parts of top grain leather.[1] This section includes, but is not limited to, the following:

(a) *Split leather.* If all or part of an industry product is made of split leather and the split leather is visible or if any representation is made as to the product's composition, then the presence of the split leather should be disclosed. For example:

Split Cowhide.

Note: For purposes of these Guides, leather from portions of hides or skins that have been split into two or more thicknesses, other than the grain or hair side, shall be considered split leather.

(b) *Imitation or simulated leather.* If all or part of an industry product is made of non-leather material that appears to be leather, the fact that the material is not leather, or the general nature of the material as something other than leather, should be disclosed. For example:

Not leather;
Imitation leather;
Simulated leather;
Vinyl;
Vinyl coated fabric; or
Plastic.

(c) *Embossed or processed leather.* The kind and type of leather from which an industry product is made should be disclosed when all or part of the product has been embossed, dyed, or otherwise processed so as to simulate the appearance of a different kind or type of leather. For example:

(1) An industry product made wholly of top grain cowhide that has been processed so as to imitate pigskin may be represented as being made of Top Grain Cowhide.

(2) Any additional representation concerning the simulated appearance of an industry product composed of leather should be immediately accompanied by a disclosure of the kind and type of leather in the product. For example:

Top Grain Cowhide With Simulated Pigskin Grain.

(d) *Backing material.* (1) The backing of any material in an industry product

[62] Additional guidance regarding this issue is provided by the Commission's Guides Against Deceptive Pricing, 16 CFR Part 233.

[1] The composition of heels, stiffenings, and ornamentation are not considered when making the determination of whether a shoe, boot, or slipper may be called ''leather''.

with another kind of material should be disclosed when the backing is not apparent upon casual inspection of the product, or when a representation is made which, absent such disclosure, would be misleading as to the product's composition. For example:

Top Grain Cowhide Backed With Split Cowhide; or
Split Cowhide Backed With Simulated Leather.

(2) The composition of the different backing material should be disclosed if it is visible and consists of split leather, non-leather material with the appearance of leather, or leather processed so as to simulate a different kind of leather.

(e) *Fictitious animal designations.* A representation should not be made, directly or by implication, that an industry product is made in whole or in part from the skin or hide of an animal that does not exist.

(f) *Misuse of trade names, etc.* A trade name, coined name, trademark, or other word or term, or any depiction or device should not be used if it misrepresents, directly or by implication, that an industry product is made in whole or in part from animal skin or hide, or that material in an industry product is leather, top grain leather, split leather, or other material. This includes, among other practices, the use of a stamp, tag, label, card, or other device in the shape of a tanned hide or skin or in the shape of a silhouette of an animal, in connection with any industry product that has the appearance of leather but that is not made wholly or in substantial part from animal skin or hide.

(g) *Misrepresentation that product is wholly of a particular composition.* A misrepresentation should not be made, directly or by implication, that an industry product is made wholly of a particular composition. A representation as to the composition of a particular part of a product should clearly indicate the part to which the representation applies.

(1) Where a product is made principally of top grain leather or of split leather but has certain non-leather parts that appear to be leather, the product may be described as made of top grain leather or split leather so long as accompanied by clear disclosure of the non-leather parts.[2] For example:

(i) An industry product made of top grain cowhide except for frame covering, gussets, and partitions that are made of plastic but have the appearance of leather may be described as:

Top Grain Cowhide With Plastic Frame Covering, Gussets and Partitions; or Top Grain Cowhide With Gussets, Frame Covering and Partitions Made of Non-Leather Material.

(ii) An industry product made throughout, except for hardware, of vinyl backed with split cowhide may be described as:

Vinyl Backed With Split Cowhide (See also disclosure provision concerning use of backing material in paragraph (d) of this section).

(iii) An industry product made of top grain cowhide except for partitions and stay, which are made of plastic-coated fabric but have the appearance of leather, may be described as:

Top Grain Cowhide With Partitions and Stay Made of Non-leather Material; or
Top Grain Cowhide With Partitions and Stay Made of Plastic-Coated Fabric.

(2) Where a product is made principally of top grain leather and its only other parts that appear to be leather are made of split leather, the product may be described as made of top grain leather so long as accompanied by adequate disclosure of the split leather parts. For example: An industry product made of top grain cowhide except for frame covering, gussets, and partitions made of split cowhide may be described as:

Top Grain Cowhide With Split Cowhide Frame Covering, Gussets, and Partitions.

(h) *Ground, pulverized, shredded, or bonded leather.* A material in an industry product that contains ground, pulverized, shredded, or bonded leather and thus is not wholly the hide of an animal should not be represented, directly or by implication, as being leather. This provision does not preclude an accurate representation as to the ground, pulverized, shredded, or bonded leather content of the material. However, if the material appears to be leather, it should be accompanied by either:

(1) An adequate disclosure as described by paragraph (b) of this section; or

(2) If the terms ''ground leather,'' ''pulverized leather,'' ''shredded leather,'' or ''bonded leather'' are used, a disclosure of the percentage of leather fibers and the percentage of non-leather substances contained in the material. For example: An industry product made of a composition material consisting of 60% shredded leather fibers may be described as:

Bonded Leather Containing 60% Leather Fibers and 40% Non-leather Substances.

(i) *Form of disclosures under this section.* All disclosures described in this section should appear in the form of a stamping on the product, or on a tag, label, or card attached to the product, and should be affixed so as to remain on or attached to the product until received by the consumer purchaser. All such disclosures should also appear in all advertising of such products irrespective of the media used whenever statements, representations, or depictions appear in such advertising which, absent such disclosures, serve to create a false impression that the products, or parts thereof, are of a certain kind of composition. The disclosures affixed to products and made in advertising should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually inspecting the products or casually reading, or listening to, such advertising. A disclosure necessitated by a particular representation should be in close conjunction with the representation.

§ 24.3 Deceptive practices as to aniline finish, graining, embossing and processing.

It is unfair or deceptive to misrepresent, directly or by implication:

(a) That any industry product is colored, finished, or dyed with aniline dye; or

(b) That all or part of any product is dyed, embossed, grained, processed, finished or stitched in a certain manner.

§ 24.4. Misuse of the terms ''waterproof,'' ''dustproof,'' ''warpproof,'' ''scuffproof,'' ''scratchproof,'' ''scuff resistant,'' and ''scratch resistant.''

It is unfair or deceptive to:

(a) Use the term ''Waterproof'' to describe all or part of an industry product unless the designated product or material is impermeable to water and moisture.

(b) Use the term ''Dustproof'' to describe an industry product unless the product is so constructed that when it is closed dust cannot enter it.

(c) Use the term ''Warpproof'' to describe all or part of an industry product unless the designated product or part is such that it cannot warp.

(d) Use the term ''Scuffproof,'' ''Scratchproof,'' or other terms indicating that the product is not subject to wear in any other respect, to describe an industry product unless the outside surface of the product is immune to scratches or scuff marks, or is not subject to wear as represented.

(e) Use the term ''Scuff Resistant,'' ''Scratch Resistant,'' or other terms

[2] In the case of shoes, boots, slippers, and related industry products that have visible parts with the appearance of leather, the composition of concealed innersoles should be disclosed unless the term ''leather'' can be used to describe the innersole material under these Guides.

indicating that the product is resistant to wear in any other respect, unless there is a basis for the representation and the outside surface of the product is meaningfully and significantly resistant to scuffing, scratches, or to wear as represented.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23039 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–P

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16 CFR Part 400

Rule Concerning Advertising and Labeling of Sleeping Bags

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: the Federal Trade Commission (''Commission'') announces the commencement of a rulemaking proceeding for the trade regulation rule concerning Advertising and Labeling of Sleeping Bags (''Sleeping Bag Rule'' or ''Rule''), 16 CFR Part 400. The proceeding will address whether or not the Sleeping Bag Rule should be repealed. The Commission invites interested parties to submit written data, views, and arguments on how the rule has affected consumers, businesses and others, and on whether there currently is a need for the rule. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2506. Comments and requests to testify should be identified as ''16 CFR Part 400—Comment—Sleeping Bag Rule'' and ''16 CFR Part 400—Request to Testify—Sleeping Bag Rule,'' respectively. If possible, submit comments both in writing and on a personal computer diskette in Work Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Attorney, Bureau of Consumer Protection, Division of Service Industry Practices, Room H–200, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–3280.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') seeking comment on the proposed repeal of the Sleeping Bag Rule, 60 FR 27240. In accordance with mandates of section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANPR comment period closed on June 22, 1995. The Commission received no public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking (''NPR'') the Commission initiates a proceeding to consider whether the Sleeping Bag Rule should be repealed or remain in effect, and solicits public comments.[1] The Commission is also interested in comments on whether the Rule should be streamlined or otherwise amended. If the Commission determines, based on the data, views and arguments submitted, that the Commission should consider additional alternatives, it will publish a supplemental notice of proposed rulemaking and will request public comments on those alternatives.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Sleeping Bag Rule regulates the advertising, labeling and marking of the dimensions of sleeping bags. The Commission had found that the practice of labeling sleeping bags by the dimensions of the unfinished material used in their construction (cut size) was misleading consumers about the actual size of the sleeping bag. To correct this misconception, the Commission in 1963 promulgated the Sleeping Bag Rule which provides that it is an unfair method of competition and an unfair or deceptive act or practice to use the ''cut size'' of the materials from which a sleeping bag is made to describe the size of a sleeping bag in advertising, labeling or marking unless:

(1) ''The dimensions of the cut size are accurate measurements of the yard goods used in construction of the sleeping bags''; and

(2) ''Such 'cut size' dimensions are accompanied by the words 'cut size' ''; and

(3) The reference to ''cut size'' is ''accompanied by a clear and conspicuous disclosure of the length and width of the finished products and by an explanation that such dimension constitute the finished size''.[2]

The Commission, as part of its oversight responsibilities, reviews rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly, on April 19, 1993, the Commission published in the Federal register a request for public comments on its Trade Regulation Rule on Advertising and Labeling as to Size as

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[1] In accordance with mandates of section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives 30 days prior to publication of the NPR.

[2] The rule then gives an example of proper size marking: ''Finished size 33″ × 68″' cut size 36″ × 72″.''

to Size of Sleeping Bags, 16 CFR 400 (''Rule'').

In its Request for Comment, the Commission asked commenters to address the costs and benefits of the rule, whether there was a continuing need for this regulation, the burdens placed on businesses subject to this regulation, whether changes should be made, any conflicts with other laws, and whether changes in technology affected the rule.

Only one specific comment relating to the Sleeping Bag Rule was received, which generally supported a continuation of this regulation.

In addition to this specific comment, one general comment, applicable to several rules being reviewed was received from an advertising agency association. The organization recommended rescission of the Sleeping Bag Rule, because the general prohibitions of the FTC Act covering false and deceptive advertising apply to the sleeping bag industry and the Rule creates unnecessary administrative costs for the government, industry members and consumers.

Commission staff also conducted an informal inquiry and inspected sleeping bags at several national chain stores. This inquiry found no violations of the Rule on either the sleeping bag packaging materials or the labels affixed to the product itself. In fact, it appeared from that limited inquiry that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaints regarding non-compliance with the rule, or of initiating any law enforcement actions alleging violation of the rule's requirements, 60 FR 2724–41. Finally, the Uniform Packaging and Labeling Regulation, which has been adopted by 47 states, regulates the labeling of sleeping bags, and appears to provide that these items must be labeled with their finished size, 60 FR 27241.

On May 23, 1995, the Commission issued an Advance notice of proposed rulemaking (ANPR) based on a review of the submissions received in response to the aforementioned request for comments. The Commission determined that there may no longer be a need to continue the Rule in light of the apparent changes in industry practices and the existence of laws in nearly all of the states that appear to mandate point-of-sale disclosures similar to those required by the Rule. No comments were received in response to this request.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experience are relevant to the extent they typify industry experience in general or the experience of similar-size firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2222.

Questions

(1) Do manufacturers and sellers of sleeping bags currently use ''cut size'' as a means of marking the size of their products for sale at retail to customers?

(2) Does the fact that nearly all of the states have adopted the Uniform Packaging and Labeling Regulation, which governs the labeling of sleeping bags, eliminate or greatly lessen the need for the Sleeping Bag Rule?

(3) Are there other federal or state laws or regulations, or private industry standards that eliminate a need for the Rule?

(4) What are the benefits and costs of the Rule to consumers?

(5) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(6) Does this Rule overlap or conflict with other federal, state, or local government laws or regulations?

(7) Is there a continuing need for the Rule or should the Rule be repealed?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[3] The analysis must contain,

[3] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform ''regulatory impact analyses'' of a proposed rule, but only if the rule will have certain ''significant'' economic or regulatory effects. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because

as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Sleeping Bag Rule does not impose ''information collection requirements'' under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* The Rule, however, does contain disclosure requirements, which specify that certain additional information must be given whenever the words ''cut-size'' are used to describe the dimensions of a sleeping bag.[4] Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

the Commission has no reason to believe that repealing the Rule will have a ''significant'' economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

[4] Under amendments to the P.R.A. in the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, to be codified at 44 U.S.C. 3501–20), which will become effective on October 1, 1995, these third-party disclosures may constitute a ''collection of information'' for which OMB clearance must be sought.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 400

Advertising, Trade practices, Sleeping bags.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23041 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 402

Rule Concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'') announces the commencement of a rulemaking proceeding for the trade regulation rule concerning deception as to non-prismatic and partially prismatic instruments being prismatic binoculars (''Binocular Rule''), 16 CFR Part 402. The proceeding will address whether or not the Binocular Rule should be repealed. The Commission invites interested parties to submit written data, views, and arguments on how the Rule has affected consumers, businesses and others, and on whether there currently is a need for the Rule. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue NW., Washington, DC 20580, telephone number (202) 326–2506. Comments and requests to testify should be identified as ''16 CFR Part 402—Comment—Binocular Rule'' and ''16 CFR Part 402—Request to Testify—Binocular Rule,'' respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Phillip Priesman, Attorney, Bureau of Consumer Protection, Division of Advertising Practices, Sixth Street and Pennsylvania Avenue NW., Washington,

DC 20580, telephone number (202) 326–2484.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') seeking comment on the proposed repeal of the Binocular Rule, 60 FR 27240. In accordance with mandates of section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of representatives. The ANPR comment period closed on June 22, 1995. The Commission received one public comment.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking (''NPR'') the Commission initiates a proceeding to consider whether the Binocular Rule should be repealed or remain in effect, and solicits public comments.[1] The Commission is also interested in comments on whether the Rule should be streamlined or otherwise amended. If the Commission determines, based on the data, views and arguments submitted, that the Commission should consider additional alternatives, it will publish a supplemental notice of proposed rulemaking and will request public comments on those alternatives.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Binocular Rule was published in final form in the **Federal Register** on June 5, 1964, and became effective on December 2, 1964. The Rule requires a clear and conspicuous disclosure on any advertising or packaging for non-prismatic or partially prismatic binoculars that the instruments are not fully prismatic. Fully prismatic binoculars rely on a prism within the instrument to reverse the visual image entering the lens so that it appears right-side up to the user. Other binoculars rely partially or entirely on mirrors to reverse the visual image. When the rule was promulgated, the Commission was concerned that consumers could be misled into believing that non-prismatic binoculars were in fact prismatic, absent such a disclosure.

To prevent consumer deception, the rule proscribed the use of the term ''binocular'' to describe anything other than a fully prismatic instrument, unless the term was modified to indicate the true nature of the item. Under the Rule, non-prismatic instruments could be identified as binoculars only if they incorporated a descriptive term such as ''binocular-nonprismatic,'' ''binocular-mirror prismatic,'' or ''binocular-nonprismatic mirror.''

Following publication of the ANPR, the Commission received one public comment regarding the Binocular Rule. The comment, from an importer and manufacturing company, suggested that there may be a continuing need for the Rule because field glasses and opera glasses, both of which are non-prismatic, are still advertised and sold today. The comment acknowledged, however, that present-day binoculars are fully prismatic, while the non-prismatic instruments are identified as either field glasses or opera glasses rather than binoculars. Thus, since it appears that all instruments sold as binoculars are prismatic, the Commission believes that the Binocular Rule may no longer be needed. Repeal of the Rule will also further the objectives of reducing obsolete government regulation.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation To Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2222.

[1] In accordance with mandates of section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to publication of the NPR.

Questions

(1) Is any manufacturer currently manufacturing non-prismatic or partially-prismatic binoculars?

(2) Is any individual or business entity currently marketing non-prismatic or partially-prismatic binoculars?

(3) Do any retail stores or suppliers still maintain stocks of non-prismatic or partially-prismatic binoculars?

(4) Is any manufacturer or marketer identifying non-prismatic field glasses or opera glasses as binoculars?

(5) Has technology changed so that the Rule is no longer needed?

(6) Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(7) What are the benefits and costs of the rule to consumers?

(8) What are the benefits and costs of the Rule to firms subject to the Rule's requirements?

(9) Should the Rule be kept in effect or should it be repealed?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** section of this notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act (''FRA'') 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small business.[2] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action, any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Binocular Rule does not impose ''information collection requirements'' under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* The Rule, however, does contain a disclosure requirement, which calls for a clear and conspicuous disclosure on any advertising or packaging for non-prismatic or partially prismatic binoculars that the instruments are not fully prismatic.[3] Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by those disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 402

Binoculars, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23046 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 404

Rule Concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'') announces the commencement of a rulemaking proceeding for the trade regulation rule concerning Deceptive Advertising and Labeling as to Size of Tablecloths and Related Products (''Tablecloth Rule'' or ''Rule''), 16 CFR Part 404. The proceeding will address whether or not the Tablecloth Rule should be repealed. The Commission invites interested parties to submit written data, views, and arguments on how the Rule has affected consumers, businesses and others, and on whether there currently is a need for the Rule. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires

[2] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform ''regulatory impact analyses'' of a proposed rule, but only if the rule will have certain ''significant'' economic or regulatory effects. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a ''significant' economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

[3] Under amendments to the PRA in the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, to be codified at 44 U.S.C. 3501–20), which will become effective on October 1, 1995, these third-party disclosures may constitute a ''collection of information'' for which OMB Clearance must be sought.

comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number 202–326–2506. Comments and requests to testify should be identified as ''16 CFR Part 404—Comment—Tablecloth Rule'' and ''16 CFR Part 404—Request to Testify—Tablecloth Rule,'' respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Attorney, Bureau of Consumer Protection, Division of Service Industry Practices, Room H–200, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, telephone number 202–326–3280.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') seeking comment on the proposed repeal of the Tablecloth Rule, 60 FR 27242. In accordance with mandates of section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 47a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANPR comment period closed on June 22, 1995. The Commission received no public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking (''NPR'') the Commission initiates a proceeding to consider whether the Tablecloth Rule should be repealed or remain in effect, and solicits public comments.[1] The Commission is also interested in comments on whether the Rule should be streamlined or otherwise amended. If the Commission determines, based on the data,views and arguments submitted, that the Commission should consider additional alternatives, it will publish a supplemental notice of proposed rulemaking and will request public comments on those alternatives.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Tablecloth Rule regulates the advertising, labeling and marking of the dimensions of tablecloths and related products. The Commission had found that the practice of labeling tablecloths and related products by the dimensions of the unfinished material used in their construction (cut size) was misleading consumers about the actual size of tablecloths and related products. To correct this misconception, the Commission in 1964 promulgated the Tablecloth Rule which provides that it is an unfair method of competition and an unfair and deceptive act or practice to use the ''cut size'' of the materials from which a tablecloth or related product is made to describe the size of a tablecloth or related product unless:

(a) ''Such 'cut size' dimensions are accompanied by the words 'cut size' ''; and

(b) ''The 'cut size' is accompanied by a clear and conspicuous disclosure of the dimensions of the finished products and by an explanation that such dimensions constitute the finished size''.[2]

The Commission, as part of its oversight responsibilities, reviews rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Trade Regulation Rule on Deceptive Advertising and labeling as to Size of Tablecloths and Related Products, 16 CFR 404 (''Rule'').

In its Request for Comment, the Commission asked commenters to address the costs and benefits of the rule, whether there was a continuing need for this regulation, the burdens placed on businesses subject to this regulation, whether changes should be made, any conflicts with other laws and whether changes in technology affected the rule.

Only one specific comment relating to the Tablecloth Rule was received, which generally supported a continuation of this regulation.

In addition to this specific comment, one general comment, applicable to several rules being reviewed was received from an advertising agency association. This organization recommended rescission of the Tablecloth Rule, because the general prohibitions of the FTC Act covering false and deceptive advertising apply to the tablecloth and related products industry and the Rule creates unnecessary administrative costs for the government, industry members and consumers.

Commission staff also engaged in an informal review of industry practices by examining the marking of dimensions on tablecloths and other items subject to the rule available for retail sale at several national chain stores. This informal review revealed no instances of rule violations. In fact, it appeared from that limited review that industry products were marked with only the finished size. Additionally, the Commission has no record of receiving any complaint regarding non-compliance with the rule or of initiating any law enforcement actions alleging violations of the rule's requirements, 60

[1] In accordance with mandates of section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives 30 days prior to publication of the NPR.

[2] The rule then gives an example of proper size marking: ''Finished size 50″ x 68″; Cut size 52″ x 70″.''

FR 27242. Finally, the Uniform Packaging and Labeling Regulation, which has been adopted by 47 states, regulates the labeling of tablecloths and related products, and appears to provide that these items must be labeled with their finished size, 60 FR 27242.

On May 23, 1995, the Commission issued an Advance Notice of Proposed Rulemaking (ANPR) based on a review of the submissions received in response to the aforementioned request for comments. The Commission determined that there may no longer be a need to continue the Rule in light of the apparent changes in industry practices and the existence of laws in nearly all of the states that appear to mandate point-of-sale disclosures similar to those required by the Rule. No comments were received in response to this request.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2222.

Questions

(1) Do manufacturers and sellers of tablecloths currently use ''cut size'' as a means of marking the size of their products for sale at retail to customers?

(2) Does the fact that nearly all of the states have adopted the Uniform Packaging and Labeling Regulation, which governs the labeling of tablecloths, eliminate or greatly lessen the need for the Tablecloth Rule?

(3) Are there other federal or state laws or regulations, or private industry standards that eliminate a need for the Rule?

(4) What are the benefits and the costs of the Rule to consumers?

(5) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(6) Does this Rule overlap or conflict with other federal, state, or local government laws or regulations?

(7) Is there a continuing need for the Rule or should the Rule be repealed?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[3] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Tablecloth Rule does not impose ''information collection requirements'' under the Paperwork Reduction Act

[3] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform ''regulatory impact analyses'' of a proposed rule, but only if the rule will have certain ''significant'' economic or regulatory effects. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a ''significant'' economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

(''PRA''), 44 U.S.C. 3501 *et seq.* The Rule, however, does contain disclosure requirements, which specify that certain additional information must be given whenever the words ''cut size'' are used to describe the dimensions of a tablecloth or other product.[4] Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 404

Advertising, Trade practices, Tablecloths and related products.

Authority: 15 U.S.C. 41–58.

[4] Under amendments to the P.R.A. in the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, to be codified at 44 U.S.C. 3501–20), which will become effective on October 1, 1995, these third-party disclosures may constitute a ''collection of information'' for which OMB clearance must be sought.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23042 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 405

Trade Regulation Rule on Misbranding and Deception as to Leather Content of Waist Belts

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the ''Commission'') proposes to commence a rulemaking proceeding to repeal its Trade Regulation Rule on Misbranding and Deception as to Leather Content of Waist Belts (''the Leather Belt Rule'' or ''the Rule''). The proceeding will address whether the Leather Belt Rule should be repealed or remain in effect. The Commission is soliciting written comment, data, and arguments concerning this proposal.

DATES: Written comments must be submitted on or before October 18, 1995.

ADDRESSES: Written comments should be identified as ''16 CFR Part 405'' and sent to Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Ave., N.W., Washington DC 20580.

FOR FURTHER INFORMATION CONTACT: Lemuel Dowdy or Edwin Rodriguez, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 601 Pennsylvania, Ave., NW., S–4302, Washington, DC 20580, (202) 326–2981 or (202) 326–3147.

SUPPLEMENTARY INFORMATION:

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission (''FTC'') Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et eq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5 (a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Leather Belt Rule was promulgated on June 27, 1964, to remedy deceptive practices involving misrepresentations about the leather content of waist belts that are not offered for sale as part of a garment. The Rule prohibits representations that belts not made from the hide or skin of an animal are made of leather or that belts are made of a specified animal hide or skin when such is not the case. In addition, it requires that belts made of split leather, and ground, pulverized or shredded leather bear a label or tag disclosing the kind of leather of which the belt is composed. The Rule also requires that non-leather belts having the appearance of leather bear a tag or label disclosing their composition or disclosing that they are not leather.

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice on March 27, 1995, asking questions about the benefits and burdens of the Rule to consumers and industry.[1] The request for comments elicited ten comments. Six comments were submitted by consumers and four by leather or leather goods manufacturers. Three comments recommend that the Commission amend the Rule to allow the use of the term ''bonded leather'' when a leather good is made of ground, pulverized, or shredded leather that is bonded with an adhesive. Seven comments support the continuation of the Leather Belt Rule as it currently exists. Two comments, from industry members, support guidelines for leather goods as a whole, as opposed to piecemeal regulation of individual leather products.

The consumer comment express continuing support for the Rule, contending that its disclosure requirements help consumers make informed purchasing decisions. One industry comment supports the Rule for the same reason. These commenters state that the rule helps consumers identify belts made of different types of cowhide leather, such as top grain leather, and split leather. In addition, they believe that the disclosures required by the Rule allow consumers to identify belts made of vinyl, plastic, polyurethane, paper and other synthetic materials that can be made to look like leather. Without these disclosures, the consumer commenters believe, consumers cannot be certain of the quality of the leather used in belts, or that belts are made of leather at all. Two

[1] 60 FR 15725. On the same date, the Commission published a **Federal Register** notice soliciting comments on its Industry Guides for luggage, shoes, and ladies' handbags. 60 FR 15724. *See* Guides for the Luggage and Related Products Industry, 16 CFR Part 24; Guides for Shoe Content Labeling and Advertising, 16 CFR Part 231; and Guides for the Ladies' Handbag Industry, 16 CFR Part 247.

of the comments express support for consolidating the Rule and the Guides into one set of guidelines for leather goods, which would set out definitions for leather that apply to all finished leather goods.

In two separate documents published elsewhere in this issue of the **Federal Register,** the Commission has announced that, to eliminate unnecessary duplication, it has rescinded the three separate guides for various leather products and seeks public comment on one set of proposed, consolidated guidelines: the Guides for Select Leather and Imitation Leather Products.[2] Accordingly, the Commission has tentatively determined that a separate Leather belt Rule is no longer necessary, and seek comments on he proposed repeal of the Rule.

Part B—Objectives

Based on this review, the Commission has tentatively determined that the Leather Belt Rule may not be necessary and in the public interest. The Commission believe that a single set of industry guides for leather products serves the public interest better than a Rule for leather belts and miscellaneous guides for other leather products. The objective of this notice is to solicit comment on whether the Commission should initiate a rulemaking proceeding to repeal the Leather Belt Rule.

Part C—Alternative Actions

The Commission is not considering any alternative other than the possibility of repealing the Leather Belt Rule.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Leather Belt Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies the issues on which it solicits public comments. The identification of issues is designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

(1) Is the misrepresentation of the leather contents of belts by manufacturers and distributors of belts still a significant problem in the marketplace?

(2) What benefits do consumers derive from the Rule?

(3) Should the Rule be kept in effect or should it be repealed?

(4) How would repealing the Rule affect the benefits experienced by consumers?

(5) How would repealing the Rule affect the benefits and burdens experienced by firms subject to the Rule's requirements?

(6) Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(7) Are the proposed Guides for Select Leather and Imitation Leather Products likely to provide all or most of the benefits now provided by the Rule?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 405

Advertising, Clothing, Labeling, Leather and leather products industry, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23040 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

[2] Repealing the rule would eliminate the Commission's ability to obtain civil penalties for any future misrepresentations of the leather content of belts. However, the Commission has tentatively determined that repealing the rule would not seriously jeopardize the Commission's ability to act effectively. Any significant problems that might arise could be addressed on a case-by-case basis, administratively under Section 5 of the FTC Act, 15 U.S.C. 45, or through Section 13(b) actions, 15 U.S.C. 53(b), filed in federal district court. Prosecuting serious misrepresentations in district court allows the Commission to obtain injunctive relief as well as equitable remedies, such as redress or disgorgement.

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16 CFR Part 413

Rule Concerning Failure to Disclose That Skin Irritation May Result From Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'') announces the commencement of a rulemaking proceeding for the trade regulation rule concerning the ''Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies and Glass Fiber Curtain and Drapery Fabrics'' (''Fiberglass Curtain Rule'' or ''Rule''), 16 CFR Part 413. The proceeding will address whether or not the Fiberglass Curtain Rule should be repealed. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2506. Comments and requests to testify should be identified as ''16 CFR Part 413—Comment—Fiberglass Curtain Rule'' and ''16 CFR Part 413—Request to Testify—Fiberglass Curtain Rule,'' respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez or Janice Podoll Frankle, Attorneys, Bureau of Consumer Protection, Division of Enforcement, 601 Pennsylvania, NW., Washington, DC 20004, (202) 326–3147 or (202) 326–3022.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') seeking comment on the proposed repeal of the Fiberglass Curtain Rule (60 FR 27243). In accordance with section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman

of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANPR comment period closed on June 22, 1995. The Commission did not receive any public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking (''NPR'') the Commission initiates a proceeding to consider whether the Fiberglass Curtain rule should be repealed or remain in effect.[1] The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Fiberglass Curtain Rule requires marketers of fiberglass curtains or draperies and fiberglass curtain or drapery cloth to disclose that skin irritation may result from handling fiberglass curtains or curtain cloth and from contact with clothing or other articles which have been washed (1) with such glass fiber products, or (2) in a container previously used for washing such glass fiber products unless the glass particles have been removed from such container by cleaning.

The Rule was promulgated on July 28, 1967 (32 FR 11023). The Statement of Basis and Purpose for the Rule stated that members of the consuming public had made statements that they had experienced skin irritation after washing or handling glass fiber curtains and draperies and glass fiber curtain and drapery fabrics. Consequently, the Commission concluded that it was in the public interest to caution consumers that skin irritation could result from the direct handling of fiberglass curtains, drapes, and yard goods, and from body contact with clothing or other articles that had been contaminated with fiberglass particles when they were washed with fiberglass products when the container had not been cleaned of all glass particles.

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission recently obtained information bearing on the need for this Rule. Based on this review, the Commission has determined that fiberglass curtains and drapes and fiberglass curtain or drape fabric no longer present a substantial threat of skin irritation to the consumer. Fiberglass was used in curtains primarily because of its fire retardant characteristics. Technological developments in fire retardant fabrics have caused fiberglass fabric to be displaced by polyester and modacrylics in the curtain and drapery industry.[2] Fiberglass fabrics are now used almost exclusively for very specialized industrial uses.[3]

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2222.

Questions

(1) Is any manufacturer currently manufacturing glass fiber curtains or draperies or glass fiber curtain or drapery fabric?

(2) Is any individual or business entity currently marketing glass fiber curtains or draperies or glass fiber curtain or drapery fabric?

(3) Do any retail stores or suppliers still maintain stocks of glass fiber curtains or draperies or glass fiber curtain or drapery fabric for resale?

(4) What are the benefits and the costs of the Rule to consumers?

(5) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(6) Has technology changed so that the Rule is no longer needed?

(7) Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(8) Should the Rule be kept in effect or should it be repealed?

[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives 30 days prior to its publication in the **Federal Register**.

[2] *See* Rulemaking Record, Category B, Staff Submissions.

[3] *Id.*

V. Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act (''RFA'', 5 U.S.C. 601–11) requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[4] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. Further, the Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

For all these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule, that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

[4] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to issue a preliminary regulatory analysis relating to proposed rules when the Commission publishes a notice of proposed rulemaking. The Commission has determined that a preliminary regulatory analysis is not required by section 22 and this proceeding because the Commission has no reason to believe that repeal of the Rule: (1) Will have an annual effect on the national economy of $100,000,000 or more; (2) will cause a substantial change in the cost or price of goods or services that are used exclusively by particular industries, that are supplied extensively in particular geographical industries, or that are acquired in significant quantities by the Federal Government; or (3) otherwise will have a significant impact upon persons subject to regulation under the Rule or upon consumers.

VII. Paperwork Reduction Act

The Fiberglass Curtain Rule does not impose ''information collection requirements'' under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* Although the Rule contains disclosure requirements, these disclosures are not covered by the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 413

Fiberglass curtains and curtain fabric, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

FR Doc. 95–23045 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 417

Trade Regulation; Rule Concerning the Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'') announces the commencement of a rulemaking proceeding for the trade regulation rule concerning the ''Failure to Disclose the Lethal Effects of Inhaling Quick-Freeze Aerosol Spray Products Used for Frosting Cocktail Glasses'' (''Quick-Freeze Spray Rule'' or ''Rule''), 16 CFR Part 417. The proceeding will address whether or not the Quick-Freeze Spray Rule should be repealed. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice of the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2506. Comments and requests to testify should be identified as ''16 CFR Part 417—Comment—Quick

Freeze Spray Rule'' and ''16 CFR Part 417—Request to Testify—Quick Freeze Spray Rule,'' respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Lemuel W. Dowdy or George Brent Mickum IV, Attorneys, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 601 Pennsylvania Ave., NW., Washington, DC 20004, (202) 326–2981 or (202) 326–3132.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking (''ANR'') seeking comment on the proposed repeal of the Quick-Freeze Spray Rule (60 FR 27244). In accordance with section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Subcommittee of Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANR comment period closed on June 22, 1995. The Commission received no public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking (''NPR'') the Commission initiates a proceeding to consider whether the Quick-Freeze Spray Rule should be repealed or remain in effect.[1] The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Quick-Freeze Spray Rule requires a clear and conspicuous warning on aerosol spray products used for frosting beverage glasses. The warning states that the contents should not be inhaled in concentrated form and that doing so may cause injury or death. Glass frosting products contain a compound known as Fluorocarbon 12 (dichlorodifluoromethane).

The Rule was promulgated on February 20, 1969 (34 FR 2417). The Statement of Basis and Purpose for the Rule stated that, although the product is not harmful when used as directed, there has been several instances where the intentional misuse of this product by inhaling its vapors resulted in death. Consequently, the Commission concluded that it was in the public interest to caution purchasers who may not otherwise be aware of the lethal effects of inhaling the product.

On October 25, 1989, the Commission published a notice in the **Federal Register** soliciting public comments on the Rule's impact on small entities (54 FR 43435). No comments were received in response to the notice. The Commission determined, however, that a small amount of quick-freeze aerosol products are still available for sale. Therefore, the Commission determined that because the Rule's safety warnings, if followed, could prevent physical harm and loss of life, the Rule should be retained.

Earlier in 1995, the Commission conducted an investigation to determine if there was a continuing need for the Rule. Based on this investigation, which was conducted prior to the issuance of the ANPR, the Commission determined that glass frosting products are no longer produced, can no longer be found in the marketplace, and are precluded by the Clean Air Act from being reintroduced into the market place.[2]

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Question for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposed repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Pubic Reference Room, Room H–130, Federal Trade

[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to its publication.

[2] 42 U.S.C.A. 7401, 7671i (West Supp. 1995). Regulations promulgated by the Environmental Protection Agency implementing the Clean Air Act ban chlorofluorocarbons in aerosols and foams for non-essential uses. 40 CFR 82.64 (1994). The ban, which includes fluorocarbon 12, became effective on January 17, 1994. *See also* Rulemaking Record, Category B, Staff Submissions.

Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number (202) 326–2222.

Questions

(1) Is any manufacturer currently manufacturing quick-freeze spray products?

(2) Is any individual or business entity currently marketing quick-freeze spray products?

(3) Do any retail stores or suppliers still maintain stocks of quick-freeze spray products for resale?

(4) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(5) What are the benefits and the costs of the Rule to consumers?

(6) Has technology changed so that the Rule is no longer needed?

(7) Does regulation of this product by the Environmental Protection Agency render the Rule unnecessary?

(8)Are there any other federal or state laws or regulations, or private industry standards, that eliminate the need for the Rule?

(9) Should the Rule be kept in effect or should it be repealed?

V. Request for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[3] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

For all these reasons the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that, if the Commission determines to repeal the Rule, that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Quick-Freeze Spray Rule does not impose ''information collection requirements'' under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* Although the Rule contains disclosure requirements, these disclosures are not covered under the Act because the disclosure language is mandatory and provided by the government. Repeal of the Rule, however, would eliminate any burdens on the public imposed by these disclosure requires.

VIII. Additional Information For Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 417

Quick-freeze aerosol spray trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23044 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

[3] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform ''regulatory impact analyses'' of proposed rule, but only if the rule will have certain ''significant'' economic or regulatory effects. The commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a ''significant'' economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

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16 CFR Part 418

Rule Concerning Deceptive Advertising and Labeling as to Length of Extension Ladders

AGENCY: Federal Trade Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'') announces the commencement of a rulemaking proceeding for the trade regulation rule concerning Deceptive Advertising and Labeling as to Length of Extension Ladders (''Extension Ladder Rule'' or ''Rule''), 16 CFR Part 418. The proceeding will address whether or not the Extension Ladder Rule should be repealed. The Commission invites interested parties to submit written date, views, and arguments on how the Rule has affected consumers, businesses and others, and on whether there currently is a need for the Rule. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in the proceeding.

DATES: Written comments must be submitted on or before October 18, 1995.

Notifications of interest in testifying must be submitted on or before October 18, 1995. If interested parties request the opportunity to present testimony, the Commission will publish a notice in the **Federal Register** stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interest parties who wish to present testimony must submit, on or before October 18, 1995, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2506. Comments and requests to testify should be identified as ''16 CFR Part 418—Comment—Extension Ladder Rule'' and ''16 CFR Part 418—Request to Testify—Extension Ladder Rule,'' respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: John A. Crowley, Attorney, Bureau of Consumer Protection, Division of Service Industry Practices, Room H–200, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–3280.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1995 the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') seeking comment on the proposed repeal of the Extension Ladder Rule, 60 FR 27245. In accordance with mandates of section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57a, the ANPR was sent to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives. The ANPR comment period closed on June 22, 1995. The Commission received no public comments.

Pursuant to the FTC Act, 15 U.S.C. 41–58, and the Administrative Procedure Act, 5 U.S.C. 551–59, 701–06, by this Notice of Proposed Rulemaking (''NPR'') the Commission initiates a proceeding to consider whether the Extension Ladder Rule should be repealed or remain in effect, and solicits public comments.[1] The Commission is also interested in comments on whether the Rule should be streamlined or otherwise amended. If the Commission determines, based on the data, views and arguments submitted, that the Commission should consider additional alternatives, it will publish a supplemental notice of proposed rulemaking and will request public comments on those alternatives.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need. This proceeding also responds to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urge agencies to eliminate obsolete or unnecessary regulations.

II. Background Information

The Extension Ladder Rule regulates the advertising, labeling and marking of extension ladders. The Commission had found that the industry practice of representing the sizes or lengths of their products in terms of the total length of their component sections, e.g., a ''20-foot'' or ''20-foot size'' extension ladder consisting of two 10-foot sections, tended to mislead the general public into the erroneous belief that such represented sizes or lengths were the maximum working or useful lengths of the products so described. To correct this misconception, the Commission in 1969 promulgated the Extension Ladder Rule, which makes it an unfair or deceptive act or practice and an unfair method of competition to represent the size or length of such product, in terms of the total length of the component sections thereof, unless:

(a) Such size or length representation is accompanied by the words ''total length of sections'' or words with similar meanings which clearly indicate the basis of the representation; and,

(b) Such size or length representation is accompanied by a statement in close proximity to the size or length representation which clearly and conspicuously shows the maximum length of the product when fully extended for use (i.e., excluding the footage lost in overlapping) along with an explanation for the basis of such representation.[2]

The Commission, as part of its oversight responsibilities, reviews rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Accordingly, on April 19, 1993, the Commission published in the **Federal Register** a request for public comments on its Trade Regulation Rule on Advertising and Labeling As To Length of Extension Ladders, 16 C.F.R. Part 418. 58 FR 21125.

In its Request for Comment, the Commission indicated that if this rule is retained, the Commission intended to revise the examples contained in the rule to include ''metric'' measurements. The Commission then asked commenters to address questions relating to the costs and benefits of the Rule, the burdens it imposes, and the basis for assessing whether it should be retained, or amended.

Six specific comments were received. One commenter, a consumer, opined that the only label that should be on ladders is the ''maximum working length'' since consumers should not have to do any figuring to determine the length of the ladder that would meet their needs.

Of the other five commenters, four are manufacturers or suppliers of ladders and one is a trade association. A number of these comments refer to the American National Standards Institute (ANSI) standard A14, which governs the labeling of ladders. ANSI standard A14 details the requirements for labeling portable wood ladders, portable metal ladders, fixed ladders, job made ladders and portable reinforced plastic ladders. The ANSI standard requires specification of the maximum working length of extension ladders, as well as several other pieces of information not required by the Extension Ladder Rule, including the total length of the ladder's sections and the highest standing level of the ladder. Compliance with the ANSI standard therefore ensures compliance with the labeling requirements of the Extension Ladder

[1] In accordance with mandates of section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, United States Senate, and the Chairman of the Subcommittee on Commerce, Trade and Hazardous Materials, United States House of Representatives, 30 days prior to publication of the NPR.

[2] The rule then gives an example of proper length representation when the product consists of two ten foot sections: ''maximum working length 17′, total length of sections 20′'' or ''17′ extension ladder''.

Rule. Several commenters noted this overlap in coverage of the Extension Ladder Rule and ANSI standard, A14, and recommended that the Rule be retained unchanged.

Another commenter stated that the Rule has imposed minor, incremental costs, but opined that the benefits have been significant in that consumers have a better understanding of extension ladder length. The commenter questioned whether there was a continuing need for this Rule given the existence of ANSI standard A14 and UL Standard 184.

In addition to these specific comments, one general comment, applicable to several rules being reviewed, was received from an advertising agency association. This organization recommended rescission of the Extension Ladder Rule because the general prohibitions of Section 5 of the FTC Act covering false and deceptive advertising apply to the ladder industry, and thus the Rule creates unnecessary administrative costs for the government, industry members and consumers. This commenter did not submit any analysis or data relating to the imposition of unnecessary administrative costs on affected industry members, government or consumers.

Commission staff also engaged in an informal review of industry practices by examining the marking of length on extension ladders available for retail sale at several chain stores. That review indicated general compliance with the requirements of the Rule. Additionally, a check of Commission records failed to find any complaints regarding non-compliance with the Rule, or any initiation of law enforcement actions alleging violations of the Rule's requirements. 60 FR 27245.

On May 23, 1995, the Commission issued an Advance Notice of Proposed Rulemaking (''ANPR'') based on a review of the submissions received in response to the Request for Comment. The Commission determined that there may no longer be a need to continue the Extension Ladder Rule in light of the apparent changes in industry practices and the existence of standards mandating the point-of-sale disclosures required by the Rule. 60 FR 27246. No comments were received in response to this request.

III. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. First, there do not appear to be any material issues of disputed fact to resolve in determining whether to repeal the Rule. Second, the use of expedited procedures will support the Commission's goal of eliminating obsolete or unnecessary regulations without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should repeal the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposal to repeal the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff and (5) announcing final Commission action in a notice published in the **Federal Register**.

IV. Invitation to Comment and Questions for Comment

Interested persons are requested to submit written data, views or arguments on any issue of fact, law or policy they believe may be relevant to the Commission's decision on whether to repeal the Rule. The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Commenters opposing the proposal repeal of the Rule should explain the reasons they believe the Rule is still needed and, if appropriate, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better protect consumers from unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45.

Although the Commission welcomes comments on any aspect of the proposed repeal of the Rule, the Commission is particularly interested in comments on questions and issues raised in this Notice. All written comments should state clearly the question or issue that the commenter is addressing.

Before taking final action, the Commission will consider all written comments timely submitted to the Secretary of the Commission and testimony given on the record at any hearings scheduled in response to requests to testify. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, Public Reference Room, Room H–130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, telephone number 202–326–2222.

Questions

(1) Does the existence of the ANSI standard governing the labeling of extension ladders eliminate or greatly lessen the need for the Rule?

(2) What are the benefits and the costs of the Rule to consumers?

(3) What are the benefits and the costs of the Rule to firms subject to the Rule's requirements?

(4) Are there other federal or state laws or regulations, or private industry standards, that eliminate a need for the Rule?

(5) Does the Rule overlaps or conflict with other federal, state, or local government laws or regulations?

(6) Is there a continuing need for the Rule or should the Rule be repealed?

V. Requests for Public Hearings

Because there does not appear to be any dispute as to material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this Notice.

VI. Preliminary Regulatory Analysis

The Regulatory Flexibility Act (RFA''), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the proposed repeal of the Rule on small businesses.[3] The analysis must contain, as applicable, a description of the reasons why action is being considered, the objectives of and legal basis for the proposed action, the class and number of small entities affected, the projected reporting, recordkeeping and other compliance requirements being proposed, any existing federal rules which may duplicate, overlap or conflict with the proposed action, and any significant alternatives to the

[3] Section 22 of the FTC Act, 15 U.S.C. 57b–3, also requires the Commission to perform ''regulatory impact analyses'' of a proposed rule, but only if the rule will have certain ''significant'' economic or regulatory effects. The Commission has determined that a preliminary regulatory analysis is not required by section 22 in this proceeding because the Commission has no reason to believe that repealing the Rule will have a ''significant'' economic or regulatory impact, either beneficial or detrimental, upon persons subject to the Rule or upon consumers.

proposed action that accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of the proposed repeal of the Rule have been explained elsewhere in this Notice. Repeal of the Rule would appear to have little or no effect on any small business. The Commission is not aware of any existing federal laws or regulations that would conflict with repeal of the Rule.

In light of these reasons, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C. 605, that if the Commission determines to repeal the Rule that action will not have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Paperwork Reduction Act

The Extension Ladder Rule does not impose ''information collection requirements' under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* The Rule, however, does contain disclosure requirements, which specify that when the size or length of an extension ladder is represented in terms of the total length of the component section such fact must be noted and a statement must be placed in close proximity to the notation which clearly and conspicuously discloses the maximum length of the product when fully extended for use.[4] Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

VIII. Additional Information for Interested Persons

A. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

B. Communications by Outside Parties to Commissioners of Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications relating to such oral communications. Memoranda prepared by a Commissioner or Commissioner's advisor setting forth the contents of any oral communications from members of Congress shall be placed promptly on the public record. If the communication with a member of Congress is transcribed verbatim or summarized, the transcript or summary will be placed promptly on the public record.

List of Subjects in 16 CFR Part 418

Advertising, Trade practices, Extension ladders.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23043 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

[4] Under amendments to the P.R.A. in the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163, to be codified at 44 U.S.C. 3501–20), which will become effective on October 1, 1995, these third-party disclosures may constitute a ''collection of information'' for which OMB clearance must be sought.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–36213, International Series Release No. 852, File No. S7–26–95]

RIN 3235–AG65

Exemption of the Securities of the United Mexican States Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and solicitation of public comments.

SUMMARY: The Commission proposes for comment an amendment to Rule 3a12–8 that would designate debt obligations issued by the United Mexican States (''Mexico'') as ''exempted securities'' for the purpose of marketing and trading of futures contracts on those securities in the United States. The amendment is intended to permit futures on Mexican government debt to be traded in the U.S. This change is not intended to have any substantive effect on the operation of the Rule.

DATES: Comments should be submitted by October 18, 1995.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7–26–95, and will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5–1), 450 Fifth Street, NW., Washington, DC 20549, at 202/942–0190.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act (''CEA''), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 (''Securities Act'') or the Securities Exchange Act of 1934 (''Exchange Act''). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission (''SEC'' or ''Commission''), however, has adopted Rule 3a12–8 under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, and the Kingdom of Spain (the ''Designated Foreign Governments''). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission today is soliciting comments on a proposal to amend Rule 3a12–8 (17 CFR 240.3a12–8) to add the debt obligations of Mexico to the list of Designated Foreign Government securities that are exempted by Rule 3a12–8. To qualify for the exemption,

futures contracts on debt obligations of Mexico would have to meet all the other existing requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984 [1] pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide limited relief from the CEA's prohibition on futures overlying individual securities.[2] As originally adopted, the Rule provided that the debt obligations of Great Britain and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of ''qualifying foreign futures contracts'' on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American depositary receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a ''qualifying foreign futures contract'' if the contract is deliverable outside the United States and is traded on a board of trade.[3]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, and the Kingdom of Spain.[4]

III. Discussion

The Chicago Mercantile Exchange (''CME'') has proposed that the Commission amend Rule 3a12–8 to include the sovereign debt of Mexico.[5] The CME intends to develop a contract market in Mexican Certificados de la Tesoreria de la Federacion (''Cetes''), which are short-term Mexican government securities, and in Mexican Brady bonds, a class of longer term sovereign Mexican debt issues.[6] Brady bonds are issued pursuant to the Brady plan which allowed developing countries to restructure their commercial bank debt by issuing long-term dollar denominated bonds.[7] The Commission understands that Mexican Brady bonds are currently traded primarily in the over-the-counter market in the United States.

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States,[8] the futures contracts require delivery outside the United States,[9] and the contracts be traded on a board of trade) would continue to apply.

There appears to be an active and liquid market in Mexican debt instruments. As of March 31, 1995, there was approximately US $87.5 billion face amount Mexican government debt issued and outstanding.[10] There are numerous classes of debt instruments with varying maturities. According to the CME petition, the cash market for Cetes evidences active trading; between 1993 and 1994, the monthly trading volume (in principal amount) of Cetes ranged from a low of approximately US $18.5 billion to a high of US $1.1 trillion.[11] There are, of course, less actively traded Mexican debt issues.

The Commission preliminarily believes that the trading of futures on Mexican sovereign debt would provide U.S. investors with a vehicle for hedging the risks involved in the trading of

[1] *See* Securities Exchange Act Release Nos. 20708 (''Adopting Release'') (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 (''Proposing Release'') (May 25, 1983), 48 FR 24725 (June 2, 1983).

[2] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (''CFTC'') had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Proposing Release, *supra* note 1, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982)(statements of Representatives Daschle and Wirth)).

[3] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[4] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Adopting Release, *supra* note 1. In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of ''West Germany'' to the ''Federal Republic of Germany,'' and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (January 14, 1992). Finally, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994).

[5] *See* Letter from William J. Brodsky, President and Chief Executive Officer, CME, to Arthur Levitt, Jr., Chairman, Commission, dated May 3, 1995.

[6] The marketing and trading of foreign futures contracts is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, and Rule 9 (17 CFR 30.9), promulgated under Section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through the CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991).

[7] There are several types of Brady bonds, but ''Par Bradys'' and ''Discount Bradys'' represent the great majority of issues in the Brady bond market. In general, both Par Bradys and Discount Bradys are secured as to principal at maturity by U.S. Treasury zero-coupon bonds. Additionally, usually 12 to 18 months of interest payments are also secured in the form of a cash collateral account, which is maintained to pay interest in the event that the sovereign debtor misses an interest payment.

[8] The Commission notes that Mexican Cetes are not currently registered in the United States. The Commission is aware, however, that certain Mexican sovereign debt is registered in the United States and that the trading of futures on these debt issues would not be exempted under Rule 3a12–8 from the CEA's prohibition on futures overlying individual securities that are not exempted securities. With respect to Brady bonds, the Commission notes that its Division of Corporation Finance issued a no-action letter relating to the offer and sale of Mexican Brady bonds in the United States without registration under the Securities Act. *See* Letter from Anita T. Klein, Attorney, Office of International Corporate Finance, Division of Corporation Finance, to Alan L. Beller, Esq., Cleary, Gottlieb, Steen & Hamilton, dated March 28, 1990.

[9] The CME's proposed futures contracts will be cash-settled (*i.e.*, settlement of the futures contracts will not entail delivery of the underlying securities). The Commission has recognized that a cash-settled futures contract is consistent with the requirement of the Rule that delivery must be made outside the United States. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

[10] *See* Exhibit D to Form 18–K, Annual Report for Foreign Governments and Political Subdivisions Thereof, 17 CFR 249.218, filed by Mexico.

[11] Moreover, according to a recent survey of members of the Emerging Markets Traders Association (''EMTA''), Mexican debt instruments are the most popularly traded of all emerging markets instruments. According to the survey, the total annual 1994 trading volume for Mexican Cetes amounted to approximately US $27.2 billion, and approximately US $282.3 billion for Mexican Brady bonds. The survey, which was responded to by 80 out of the 333 members of the EMTA, was prepared for the EMTA by Price Waterhouse LLP. *See* 1994 Debt Trading Volume Survey, Emerging Market Traders Association (May 1, 1995).

Mexican Cetes and Mexican Brady bonds. The Commission notes, however, that there are certain differences between the sovereign debt securities of Mexico and the debt securities of the Designated Foreign Governments. In connection with some of the prior amendments to the Rule, the Commission noted that the long-term sovereign debt of those countries was rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations (''NRSROs'').[12] This factor, according to the Commission, could be viewed as indirect evidence of an active and liquid secondary trading market.

Mexico's long-term sovereign debt obligations are not rated in one of the two highest rating categories.[13] Although the Commission in 1987 proposed to incorporate a rating standard specifically exempting securities issued by any country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two NRSROs,[14] it ultimately declined to adopt such a rule.[15] At the time of the 1987 Rule proposal, the Commission expressed concerns that in the absence of such a requirement, the Rule might be used as a subterfuge to market or trade unregistered sovereign foreign debt through futures trading. The Commission, however, indicated that it did not intend to preclude futures trading on foreign debt that did not meet this ratings requirement and indeed subsequently sought comment on the feasibility of other factors for consideration, such as volume and depth of trading in a sovereign issuer's debt.

IV. Request for Comments

The Commission seeks comments on designating the debt securities of Mexico as exempted securities under Rule 3a12–8. The Commission is particularly interested in receiving comments to the proposed amendment in light of the fact that Mexico would be the first emerging market country to be included as a Designated Foreign Government. Comments should address whether the trading or other characteristics of Mexican debt warrant an exemption for purposes of futures trading.

In addition, the Commission seeks comment on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted. Comment also is sought on the appropriateness of designating Mexican sovereign debt as exempted securities even though its long-term debt is not rated in one of the two highest rating categories by at least two NRSROs. The Commission seeks additional comment on whether debt ratings should continue to be used in evaluating proposals to add countries to the Rule and what alternative criteria, such as volume and depth of trading or amount of outstanding debt, could be used.[16]

The Commission further seeks comment on the CME's proposal to develop a contract market for Mexican Brady bonds, in light of the domestic trading activity in the over-the-counter market for these bonds. Commentators also are invited to discuss any unique issues associated with Brady bonds.

V. Cost-Benefit Analysis

Preliminarily, the Commission believes that the proposed amendment offers potential benefits for U.S. investors. If adopted, the proposed amendment would allow U.S. boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations.

The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others. The proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.[17]

The Commission solicits comments on the costs and benefits of the proposed amendment to Rule 3a12–8. Specifically, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A.

VII. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VIII. Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the *Code of Federal Regulations* as follows:

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

1. The authority citation for part 240 continues to read in part as follows:

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

* * * * *

2. § 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xiv), removing the ''period'' at the end of paragraph (a)(1)(xv) and adding ''; or'' in its place, and adding paragraph (a)(1)(xvi) to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xvi) the United Mexican States.

* * * * *

[12] *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988) (Austria, Denmark, Finland, the Netherlands, Switzerland, and [West] Germany); Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (Republic of Ireland and Italy); Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994) (Kingdom of Spain).

[13] As of June, 1995, Standard and Poor's Corp. (''S&P'') rated Mexico's long-term foreign currency debt BB and its long-term local currency debt BBB+. As of the same date, Mexico's Bonos de Desarrollo (Bondes) were rated Baa3 by Moody's Investors Service.

[14] *See* Securities Exchange Act Release No. 24428 (May 5, 1987), 52 FR 18237 (May 14, 1987).

[15] *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

[16] *See supra* notes 14 and 15 and accompanying text.

[17] The proposal represents the first time an emerging market sovereign debt would be added to the Rule. Additionally, the amendment would permit the trading of futures on Brady bonds. As noted above, the Commission is interested in the impact of this proposal on the objectives of the Rule.

By the Commission.

Dated: September 11, 1995.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 3a12–8 (''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') set forth in Securities Exchange Act Release No. 36213, which would define government securities of Mexico as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government securities of Mexico. Second, because futures contracts on the fifteen countries whose debt obligations are designated as ''exempted securities'' under the Rule, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because the level of interest presently evident in this country in the futures trading covered by the proposed rule amendment is modest and those primarily interested are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 27 CFR 240.0–10 and to the extent that it is defined for futures market participants in the Commodity Futures Trading Commission's ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act.'' [18]

Dated: September 8, 1995.

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 95–23019 Filed 9–15–95; 8:45 am]

BILLING CODE 8010–01–P

[18] 45 FR 18618 (April 30, 1982).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5296–2]

RIN 2060–AF33

Hazardous Air Pollutant List; Proposed Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule, upon promulgation, will amend the Clean Air Act (Act) list of hazardous air pollutants (section 112(b)(1), by removing the compound caprolactam (CAS No. 105–60–2). This action is being taken in response to a petition to delete the substance caprolactam which was filed by AlliedSignal, Inc., BASF Corporation, and DSM Chemicals North America under section 112(b)(3) of the Act. The EPA is granting the petition by issuance of this proposed rule. The decision to grant the petition is based on the Agency's examination of the available information concerning the potential hazards of and projected exposures to caprolactam. Based on this information, EPA has made an initial determination that there are adequate data on the health and environmental effects of caprolactam to determine that emissions, ambient concentrations, bioacccumulation, or deposition of the compound are not reasonably anticipated to cause adverse human health or environmental effects. This determination also takes into consideration the likelihood of adverse effects in light of the very limited potential for ambient inhalation exposure.

DATES: Written comments must be received on or before November 2, 1995. The EPA will hold a public hearing if EPA receives a written request for such a hearing on or before October 18, 1995. If a hearing is requested in a timely manner, EPA will keep the record open for thirty days after such hearing to receive rebuttal or supplementary information.

ADDRESSES: Submit written comments (duplicate copies preferred) to: Central Docket Section (A–130), Environmental Protection Agency, Attention: Docket No. A–94–33, 401 M St. SW., Washington, D.C. 20460. The docket includes a copy of the original petition, comments submitted concerning that petition, and additional materials supporting the proposed rule. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M St., SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy B. Pate, Office of Air Quality Planning and Standards, (MD–12), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5347.

SUPPLEMENTARY INFORMATION:

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I. Background

Section 112 of the Act contains a mandate for EPA to evaluate and control emissions of hazardous air pollutants. Section 112(b)(1) includes an initial list of hazardous air pollutants that is composed of specific chemical compounds and compound classes to be used to identify source categories for which the EPA will promulgate emissions standards. The listed categories are subject to emission standards subsequently developed under section 112. The EPA must periodically review the list of hazardous air pollutants and, where appropriate, revise this list by rule. In addition, any person may petition EPA under section 112(b)(3) to modify the list by adding or deleting one or more substances. A petitioner seeking to delete a substance must demonstrate that there are adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or the environment. To sustain this burden, a petitioner must provide a detailed evaluation of the available data concerning the substance's potential adverse health and environmental effects, and estimate the potential exposures through inhalation or other routes resulting from emissions of the substance.

On July 19, 1993, EPA received a petition from AlliedSignal, Inc., BASF Corporation, and DSM Chemicals North America, Inc. (''petitioners''), to delete caprolactam (CAS No. 105–60–2) from the hazardous air pollutant list in section 112(b)(1), 42 U.S.C., section 7412(b)(1). Following receipt of the petition, EPA conducted a preliminary evaluation to determine whether the petition was complete according to Agency criteria. To be deemed complete, a petition must consider all available health and environmental

effects data. A petition must also provide comprehensive emissions data, including current peak and annual average emissions for each source, and must estimate the resultant exposures of people living in the vicinity of the source. In addition, a petition must address the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions. The EPA found the petition to delete caprolactam to be complete and published a notice of receipt and request for comments in the **Federal Register** on August 26, 1993 (58 FR 45081).

The EPA received ten submissions in response to the request for comments concerning the caprolactam petition. Eight of these submissions related to an AlliedSignal facility that emits caprolactam which is located in Irmo, South Carolina. A number of Irmo residents reported health problems that they believed were associated with caprolactam emissions from this plant. The EPA subsequently met with a local citizens' group, representatives of AlliedSignal, and the South Carolina Department of Health and Environmental Control to discuss the citizens' concerns regarding caprolactam emissions from the facility, and to explore mechanisms which could lead to prompt installation of additional controls of such emissions.

On March 13, 1995, EPA executed two detailed agreements with AlliedSignal concerning the Irmo manufacturing facility and another facility located in Chesterfield, Virginia, copies of which are included in the public docket for this rulemaking. AlliedSignal agreed that, if caprolactam is delisted pursuant to this proposal, AlliedSignal will install emissions controls which EPA believes are equivalent to the controls which would have been required had EPA issued a standard to control these sources under section 112. The agreed emissions controls will be incorporated in federally enforceable operating permits for the affected facilities, and will be in place years earlier than controls would have otherwise been required. In addition, AlliedSignal has agreed to establish a citizen advisory panel concerning the Irmo facility in order to improve communications with the community and to assure that citizens have an ongoing role in implementation of the agreed emission reductions.

II. Criteria for Delisting

Section 112(b)(2) of the Act requires EPA to make periodic revisions to the initial list of hazardous air pollutants set forth in section 112(b)(1) and outlines criteria to be applied in deciding whether to add or delete particular substances. Section 112(b)(2) identifies pollutants that should be listed as:

> * * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise * * *

To assist EPA in making judgments about whether a pollutant causes an adverse environmental effect, section 112(a)(7) defines an ''adverse environmental effect'' as:

> * * * any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

Section 112(b)(3) establishes general requirements for petitioning EPA to modify the hazardous air pollutant list by adding or deleting a substance. Although the Administrator may add or delete a substance on his own initiative, the burden is on a petitioner to include sufficient information to support the requested addition or deletion under the substantive criteria set forth in sections 112(b)(3) (B) and (C). The Administrator must either grant or deny a petition within 18 months of receipt. If the Administrator decides to grant a petition, the Agency publishes a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. If the Administrator decides to deny the petition, the Agency publishes a written explanation of the basis for denial. A decision to deny a petition is final Agency action subject to review in the D.C. Circuit Court of Appeals under Section 307(b) of the Act.

To promulgate a final rule deleting a substance from the hazardous air pollutant list, section 112(b)(3)(C) provides that the Administrator must determine that:

> * * * there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

The EPA will grant a petition to delete a substance, and publish a proposed rule to delete that substance, if it makes an initial determination that this criterion has been met. After affording an opportunity for comment and for a hearing, EPA will make a final determination whether the criterion has been met.

The EPA does not interpret section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms ''adequate'' and ''reasonably'' indicate that the Agency must weigh the potential uncertainties and their likely significance. Uncertainties concerning the risk of adverse health or environmental effects may be mitigated if EPA can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, uncertainties concerning the magnitude of projected exposures may be mitigated if EPA can determine that the levels which might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels. However, the burden remains on a petitioner to resolve any critical uncertainties associated with missing information. The EPA will not grant a petition to delete a substance if there are major uncertainties which need to be addressed before EPA would have sufficient information to make the requisite determination.

III. Summary of the Petition

The petition to delete caprolactam stated that the petitioners comprise 100 percent of the U.S. caprolactam producers and caprolactam by-product ammonium sulfate manufacturers, 88 percent of the Nylon 6 fiber producers, 72 percent of the Nylon 6 plastic producers, and the only major supplier of Nylon 6 films. The petition contained the following information:

(A) Identification and location of all facilities producing or using caprolactam;

(B) Estimated current and future air emissions of caprolactam, atmospheric modeling and monitoring data supporting the estimation of peak short-term and annual average ambient concentrations, estimates of the number people potentially exposed to those concentrations, and estimated deposition of caprolactam to the land and surface water;

(C) Documentation of a literature search conducted within 6 months prior to the petition filing, including identification of the data bases searched, the search strategy, and printed results;

(D) Printed copies of all human, animal, in vitro, or other toxicity studies cited in the literature search. In addition, the petition contained unpublished occupational health data and studies collected at the AlliedSignal facility in Hopewell, Virginia;

(E) Printed copies of environmental effect data characterizing the fate of caprolactam when it is released into the atmosphere. This information includes atmospheric residence time, solubility, phase distribution, vapor pressure, octanol/water partition coefficient, particle size, adsorption coefficients, information on atmospheric transformations, potential degradation or transformation products, and bioaccumulation potential; and

(F) A list of all support documents in the petition.

IV. EPA Analysis of Petition

A. Hazard Evaluation

The EPA reviewed the discussion of health effects in the petition and determined that it comprehensively describes the toxicologic and epidemiologic data concerning caprolactam which is currently available. There is extensive toxicologic information concerning caprolactam, but most of the available studies involve ingestion rather than inhalation of the substance.

The toxicologic information on ingestion of caprolactam includes long-term bioassays in mice and rats, a three generation reproduction study in rats, subchronic studies in rats, developmental toxicity studies in rats and rabbits, and even administration to humans. In general, the oral studies indicate that caprolactam has low toxicity. In the available studies, caprolactam was not found to be carcinogenic or mutagenic. Caprolactam caused neurotoxicity in some acute studies at high doses. The most sensitive endpoint in the available oral studies was reduced mean body weight of offspring in a reproductive study in rats (no observed adverse effect level of 50 mg/kg/day).

The no-observed adverse effect level (NOAEL) for reduced mean body weight of offspring in the rat study was used by EPA to derive its current reference dose (RFD) for caprolactam of 0.5 mg/kg/day. The RFD is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of the daily exposure to the human population (including sensitive subpopulations) that is likely to be without deleterious effects during a life time. The EPA has assigned a ''high'' confidence level to the RFD for oral exposure to caprolactam.

The available animal data on inhalation of caprolactam consist of two acute toxicity studies, one in guinea pigs and the other in rats. Caprolactam is a highly water soluble solid with a very low vapor pressure at ambient temperatures. These physical properties make it difficult to generate stable atmospheres of caprolactam for use in inhalation toxicity studies and to exclude secondary exposure to caprolactam by other routes.

Given the present lack of suitable inhalation data, EPA concluded that derivation of an inhalation reference concentration (RfC) for caprolactam was infeasible. The petitioners sought to derive an equivalent human inhalation dose from the oral RFD for caprolactam by adjusting for human body weight and inhalation rate. The similarity between the LC_{50} by the inhalation route and the LD_{50} by the oral route in rats does not suggest any important differences in systemic effects from acute exposures between the two routes. However, it is inappropriate to utilize an inhalation dose derived from the oral RFD for all potential adverse effects because caprolactam is a respiratory irritant. Portal of entry effects preclude use of route-to-route extrapolation for such a purpose. Moreover, any comparison between the oral and inhalation routes must consider the possibility of pharmacokinetic and metabolic differences between the routes.

As noted above, the most sensitive endpoint in the available oral studies was reduced mean body weight of offspring in a reproductive toxicity study in rats (no observed adverse effect level of 50 mg/kg/day). The EPA is reluctant to make quantitative comparisons between the oral and inhalation routes and EPA has been unable to validate any general procedures for extrapolation between these routes. Although EPA considers it questionable to evaluate inhalation risks for many chronic effects based on oral data, EPA sometimes evaluates the risk of developmental/reproductive effects by the inhalation route based on an appropriate oral study. In this instance, the oral NOAEL of 50 mg/kg/day would be equivalent to approximately 175 mg/m^3, after adjusting for a human body weight of 70 kg, 100 percent absorption, and a human inhalation rate of 20 m^3/day.

Limited occupational studies of workers with chronic caprolactam exposure have not found any measurable change in pulmonary function compared to matched controls. Chronic workplace exposures to caprolactam in these studies ranged as high as 9,900 µg/m^3 (9.9 mg/m^3). However, respiratory tract irritation from caprolactam vapor has been recorded to occur in workers at 46 mg/m^3. The recommended worker exposure limit for caprolactam vapor, established to reduce the potential for irritation, is 23 mg/m^3 (ACGIH TWA). Both concentrations are far below the figure of 175 mg/m^3 extrapolated above.

B. Exposure Evaluation

The primary use of caprolactam is as the monomer for manufacture of Nylon 6 fiber, resin, and film. Approximately 83 percent of domestically-manufactured caprolactam is used in the production of Nylon 6 fibers, and virtually all of the rest is used to produce Nylon 6 resins and films.

The EPA believes that inhalation is the only important route of nonoccupational exposure resulting from caprolactam emissions. Dermal absorption is likely to be insignificant compared to inhalation. The rapid biodegradation of caprolactam in water as well as the ease of treatability in sewage treatment systems indicates that humans are unlikely to be exposed to significant amounts of caprolactam in drinking water. In addition, caprolactam emitted to the air would be unlikely to concentrate in food sources.

The EPA source category list identifies three categories of sources which emit caprolactam: caprolactam manufacturers, ammonium sulfate manufacturers, and Nylon 6 manufacturers. In their petition, the petitioners evaluated caprolactam releases by each of these types of facilities, as well as two additional categories of facilities: Nylon 6 film manufacturers and facilities that heat set Nylon 6 fiber as part of the manufacture of other products.

The highest annual emissions of caprolactam by an individual facility reported in the petition were at the AlliedSignal Nylon 6 manufacturing plants in Chesterfield, Virginia (233.5 tons/year), and Irmo, South Carolina (164.4 tons/year). As noted above, AlliedSignal has committed to install emission controls at each of these facilities which will be fully operational well before any controls would be required based on any standard promulgated under section 112. These commitments will be implemented through legally enforceable permit terms and are expected to reduce aggregate caprolactam emissions (including uncontrolled fugitive emissions) at these facilities by more than one half, to approximately 111 tons/year and 79 tons/year.

The petitioners presented modeled maximum exposure levels for every

major source of caprolactam (sources emitting more than 10 tons annually). The highest estimated caprolactam exposures were for AlliedSignal's Chesterfield manufacturing facility, at which the petitioners estimated that the maximum 1-hour concentration would be 1107.8 μg/m^3 and the maximum annual concentration would be 44.7 μg/m^3. After controls are installed at the Chesterfield and Irmo facilities, the projected maximum 1-hour concentrations will be 543 μg/m^3 and 482 μg/m^3 respectively, and the projected maximum annual concentrations will be 19 μg/m^3 and 21 μg/m^3.

Once the agreed emission controls are installed at the AlliedSignal facilities, the highest modeled caprolactam concentrations will be at certain of the facilities that heat set Nylon 6 fiber. However, the annual caprolactam emissions at these facilities will still be less than the emissions at the AlliedSignal manufacturing facilities, even after controls have been installed at the AlliedSignal facilities. The higher modeled concentrations at facilities that heat set Nylon 6 fiber reflect the more conservative modeling techniques used for these facilities (the petitioners used ISCST modeling for their own manufacturing facilities and Tier II screen modeling for other sources).

C. Human Risk Determination

The maximum modeled concentrations for caprolactam of approximately 1 mg/m^3 for 1-hour, 0.25 mg/m^3 for 24-hour, and 0.05 mg/m^3 for annual are well below the lowest documented nose and throat irritation level of 46 mg/m^3. Moreover, the emission controls which AlliedSignal has agreed to install at its manufacturing facilities will significantly reduce the prospect that any person will be exposed to caprolactam concentrations as great as the maximum estimates presented in the petition.

As noted above, some citizens living near the AlliedSignal facility in Irmo, South Carolina, report that they have experienced adverse health effects in the past which they believe are a result of caprolactam emissions from that facility. The EPA has discussed these concerns at length with local citizens, and has made considerable efforts to assure that prompt and enforceable reductions in caprolactam emissions are achieved at the Irmo facility. However, EPA cannot conclude that there is any relation between caprolactam emissions and the reported health effects based on the information currently available. In 1993, in response to the concerns of citizens living near the Irmo facility, the Agency for Toxic Substance and Disease Registry (ATSDR) conducted a preliminary screening study and recommended that a full study not be conducted since ''the concentrations of hazardous substances found in the ambient air sampling were not of health concern and were not plausibly related to the release of hazardous substances.'' While the ATSDR investigators acknowledged that hazardous substances were present in air releases from the facility, they also stated that the reported symptoms could be associated with naturally occurring allergens in the local environment.

The available oral toxicology data do not suggest that caprolactam is appreciably toxic in humans or test animals. The emission controls which AlliedSignal has agreed to install at its manufacturing plants should further reduce the prospect for actual exposures as great as the maximum exposures estimated in the petition. Even though extrapolation of oral data to the inhalation route of exposure is suspect and uncertainties remain about portal of entry effects from long-term exposure, the available information as a whole indicates that adverse health effects would not be reasonably anticipated in the human populations located near facilities emitting caprolactam. This conclusion is reinforced by consideration of the likelihood of adverse effects given the very limited potential for ambient inhalation exposure. Based on this information, EPA has made an initial determination that there are adequate data on the health and environmental effects of caprolactam to determine that emissions, ambient concentrations, bioacccumulation, or deposition of caprolactam are not reasonably anticipated to cause adverse human health effects.

As explained above, the physical properties of caprolactam tend to make additional inhalation testing difficult to conduct and to interpret. As a result of discussions with EPA, the petitioners conducted an inhalation feasibility study and have now agreed to conduct a 90-day subchronic inhalation study in rats. The variations in exposure concentrations at the targeted exposure levels in the 90 day subchronic inhalation study will likely be high. In addition, the inhalation concentrations generated may not reach the levels which would cause any of the potential systemic effects predicted by studies using the oral route but may achieve concentrations that would produce portal of entry effects.

The EPA anticipates that the results from the 90-day study which the petitioners have agreed to conduct will not materially alter the current EPA assessment. Moreover, EPA does not intend to defer final action in this rulemaking pending submission and analysis of the results from this inhalation study. If the results of this study indicate that there are portal of entry effects or systemic effects from inhalation exposure at levels significantly below those suggested by the Agency's present assessment, EPA will review any final action taken in this rulemaking in light of such data.

D. Environmental Effects

In order to delete a substance from the hazardous air pollutant list, EPA must also evaluate potential environmental effects associated with emissions of the substance. In the case of caprolactam, the information in the petition demonstrates that caprolactam will be rapidly degraded, and is not likely to bioaccumulate, in aquatic ecosystems. Caprolactam also has low toxicity to fish, invertebrates, and higher terrestrial plants. Based on this information, EPA has made an initial determination that there are adequate data on the health and environmental effects of caprolactam to determine that emissions, ambient concentrations, bioacccumulation, or deposition of caprolactam are not reasonably anticipated to cause environmental effects.

V. Proposal to Delete

The EPA hereby proposes to modify the Act list of hazardous air pollutants (section 112(b)(1), 42 U.S.C. 7412(b)(1)) by deleting the compound caprolactam (CAS No. 105–60–2).

VI. Interim Relief

Although EPA has proposed to modify the hazardous air pollutant list by deleting caprolactam, it will remain on the list for most purposes during the pendency of the rulemaking initiated by this notice. However, if caprolactam remains on the hazardous air pollutant list for all purposes during the pendency of the rulemaking to delist caprolactam, certain facilities which would not otherwise be required to obtain operating permits under title V of the Act will be required to prepare and submit applications for operating permits. The EPA has determined that retention, during the rulemaking to delist caprolactam, of permit application requirements which will no longer exist after the delisting process has been completed would result in unnecessary private and public expenditures on preparation, submission, and processing of such

applications, and would yield no environmental benefits.

Because retention of the listing of caprolactam for purposes of determining the applicability of title V operating permit requirements during the rulemaking to delist would be burdensome and costly, and would not effectuate the objectives of the Act, and because it would be impracticable and contrary to the public interest to defer administrative relief until after the rulemaking has been completed, EPA has determined that there is good cause to immediately suspend the listing of caprolactam for this limited purpose. Accordingly, EPA is today suspending the listing of caprolactam, for the duration of the rulemaking to delist caprolactam, for purposes of determining the applicability of title V permitting requirements. This action provides sensible regulatory relief for those facilities which manufacture or utilize Nylon 6 products, and who will not otherwise be subject to title V requirements once the delisting of caprolactam has been completed. Any facilities which emit caprolactam but which are otherwise subject to title V requirements are not affected by this action, and must satisfy the applicable permitting requirements.

While the proposed rule to delist caprolactam is pending, State permitting authorities should make any revisions or adjustments in their title V operating programs necessary to implement today's action suspending caprolactam from the hazardous air pollutant list for purposes of determining the applicability of permitting requirements. In the event that the Agency decides at the conclusion of the rulemaking not to delete caprolactam from the list, the Agency will work with affected facilities and State permitting authorities to assure that any title V requirements resulting solely from that decision are implemented in a fair and orderly manner.

VII. Miscellaneous

A. Executive Order 12866

Under Executive Order 12866 (58 FR 57735, October 4, 1993), the Agency must determine whether this regulation, if promulgated, is ''significant'' and therefore subject to review by the Office of Management and Budget under the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action will not result in an annual effect on the economy of $100 million or another adverse economic impact, does not create a serious inconsistency or interfere with another agency's action, and does not materially alter the budgetary impacts of entitlements, grants, user fees, etc. However, since this proposal reflects the Agency's first decision to grant a petition to modify the hazardous air pollutant list, EPA has concluded that it might be construed as raising novel legal or policy issues and has therefore submitted the proposal for OMB review under Executive Order 12866.

B. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an ''initial regulatory flexibility analysis'' in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The ''initial regulatory flexibility analysis'' describes the effect of the proposed rule on small business entities. However, section 605(b) of the Act provides that an analysis not be required when the head of an agency certifies that the rule will not, if promulgated, have a significant impact on a substantial number of small entities.

Because adoption of this proposal would reduce regulatory burdens which would otherwise result from retention of caprolactam on the hazardous air pollutant list, EPA believes that this rule will have no adverse effect on small businesses. For the preceding reason, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a written statement to accompany any rules that have ''Federal mandates'' that may result in the expenditure by the private sector of $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising small governments that may be significantly and uniquely affected by the rule.

The Unfunded Mandates Act defines a ''Federal private sector mandate'' for regulatory purposes as one that, among other things, ''would impose an enforceable duty upon the private sector.'' This proposal to modify the hazardous air pollutant list to delete caprolactam is deregulatory in nature and does not impose any enforceable duties upon the private sector. Therefore, this rulemaking is not a ''Federal private sector mandate'' and is not subject to the requirements of section 202 or section 205 of the Unfunded Mandates Act. As to section 203, EPA finds that small governments will not be significantly and uniquely affected by this rulemaking.

Dated: September 8, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 95–22954 Filed 9–15–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD-FRL–5296–8]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Arizona Department of Environmental Quality, Maricopa County Environmental Services Department, Pima County Department of Environmental Quality, Pinal County Air Quality Control District, Arizona: Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Extension of comment period.

SUMMARY: The EPA is extending the comment period for a proposed rule published July 13, 1995 (60 FR 36083) in which EPA proposed interim approval of the title V operating permits program submitted by the State of Arizona. The Arizona program is comprised of programs from the Arizona Department of Environmental Quality, the Maricopa County Environmental Services Department, the Pima County Department of Environmental Quality, and the Pinal County Air Quality Control District.

At the request of the Arizona Center for Law in the Public Interest, EPA is

extending the comment period for 30 days.

DATES: The comment period on the proposed rule is extended until September 25, 1995.

ADDRESSES: Comments should be addressed to Regina Spindler, Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Regina Spindler at (415) 744–1251.

Dated: September 5, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–23108 Filed 9–15–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 941084–4284; I.D. 083095C]

Endangered and Threatened Species; Proposed Threatened Status for Southern Oregon and Northern California Steelhead

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

ACTION: Supplementary proposed rule; request for comments.

SUMMARY: NMFS is issuing this supplementary proposed rule to rectify the inadvertent omission of proposed protective regulations from the proposed rule to protect natural steelhead (*Oncoryhnchus mykiss*) populations occurring between Cape Blanco, OR, and the Klamath River Basin in Oregon and California inclusive; hereinafter referred to as the Klamath Mountains Province (KMP). The species was proposed for listing as threatened under the Endangered Species Act (ESA) of 1973 on March 16, 1995. Public comments on the supplementary proposed rule are being accepted.

DATES: Comments must be received by October 16, 1995.

ADDRESSES: Comments on the language in this supplementary proposed rule only should be sent to Environmental and Technical Services Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin,503–231-2005; R. Craig Wingert, 310–980–4021; or Marta Nammack, 301–713–1401.

SUPPLEMENTARY INFORMATION: The KMP steelhead ''species (distinct population segment)'' was proposed for listing under the ESA on March 16, 1995 (60 FR 14253). The **Federal Register** document of that proposal should be consulted for all relevant background information.

Public Comments Solicited

To ensure that the final action resulting from the KMP steelhead proposed rule will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties (see **ADDRESSES**) regarding this supplementary proposed rule. The final decision on the KMP steelhead proposal will take into consideration the comments received during the initial comment period, comments on this supplementary proposed rule and any additional information received by NMFS, and may differ from the proposed rule.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of National Environmental Policy Act (48 FR 4413, February 6, 1984).

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

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: September 11, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.21 is revised to read as follows:

§ 227.21 Threatened Salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened species of salmon listed in § 227.4(g), except as provided in paragraph (b) of this section.

(b) *Exceptions.* The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations implementing such exceptions, also apply to the threatened species of salmon listed in § 227.4(g). This section supersedes other restrictions on the applicability of parts 217 and 222 of this chapter, including, but not limited to, the restrictions specified in § 217.2 and 222.22(a) of this chapter with respect to the species identified in § 227.21(a).

[FR Doc. 95–23034 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 649

[Docket No. 950912229–5229–01; I.D. 082895B]

RIN 0648–AF39

Management Options for the American Lobster Fishery

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is seeking comment on options for improving management of the American lobster fishery. Two options specifically being considered are withdrawing the American Lobster Fishery Management Plan (FMP) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implementing regulations to govern the lobster fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), or preparing a Secretarial amendment to the FMP under the Magnuson Act.

DATES: Written comments on this ANPR must be received on or before November 2, 1995.

ADDRESSES: Comments on the ANPR should be sent to Dr. Andrew A. Rosenberg, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Dr., Gloucester, MA 01930. Copies of current Effort Management Team (EMT) proposals or Amendment 5 to the American Lobster Fishery Management Plan are available from Douglas

Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The American lobster fishery is prosecuted primarily in state waters, and is managed under an FMP developed by the New England Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC). The primary objective of the FMP is to serve as a vehicle for coordinated management of the American lobster fishery throughout its range, which encompasses both inshore waters under state jurisdictions and offshore waters under Federal jurisdiction. Because the lobster resource supports important inshore fisheries for States from Maine through New Jersey, these States have developed regulations in compliance with the ASMFC Interstate Management Plan. The Federal FMP and regulations both strengthen and unify the state programs by implementing complementary measures in Federal waters.

In 1993, an assessment of the status of the lobster resource determined that it is overfished. In response, the Council developed Amendment 5 to the FMP, which was implemented on July 20, 1994 (59 FR 31938, June 21, 1994). Amendment 5 established a limited access permit system and an EMT for each of the four management areas. EMTs were made up of industry members, state and Federal government personnel, and Council staff. This approach provided a unique opportunity for members of the industry to participate directly in the development of management measures. Each EMT was required to develop a stock rebuilding program for its area and make recommendations to the Council by January 20, 1995 (50 CFR 649.43(a)). The Council would then determine whether to adopt or modify the EMT's recommendations, provide opportunity for public testimony, and submit management measures sufficient to achieve the objectives of the FMP to the Director, Northeast Region, NMFS (Regional Director), on or before July 20, 1995 (§ 649.43(c)). If the Council failed to submit management measures sufficient to achieve the objectives of the FMP on or before July 20, 1995, NMFS, acting on behalf of the Secretary of Commerce, was to determine whether to prepare an amendment to the FMP (§ 649.42(a)(3)) (Secretarial amendment).

The EMT proposals were submitted on schedule. However, on June 28–29, 1995, the Chair of the Council's Lobster Oversight Committee reported that it would not meet the July 20, 1995, deadline. In addition, several state directors informed the Council that they would be unable to implement the EMT proposals, specifically with reference to achieving the fishing mortality rate reduction rates and administration of a trap-tag system embodied in Amendment 5. Consequently, as called for by Amendment 5, NMFS must now consider whether to prepare a Secretarial amendment or take other action, which could include the option of withdrawal of the FMP.

Options

FMP Withdrawal

One option available to NMFS is to withdraw the FMP and implement regulations under the ACFCMA. Under ACFCMA, these regulations must be: (1) Necessary to support the effective implementation of an ASMFC Interstate Fishery Management Plan and (2) consistent with the national standards set forth in section 301 of the Magnuson Act. These regulations could include continuation of the limited access permit system as well as implementation of the EMT proposals to the extent that such proposals are consistent with ACFCMA. This option would remove management responsibility for the lobster fishery from the Council's purview.

Secretarial Amendment

A second option provided under the Magnuson Act is for NMFS to prepare a Secretarial amendment to the existing FMP, in accordance with the national standards, the other provisions of the Magnuson Act, and any other applicable law. The Magnuson Act provides that such action can be taken if the Council fails to develop and submit, after a reasonable period of time, any necessary amendment to an FMP, if the fishery requires conservation and management.

Under this option, a Secretarial amendment could maintain current regulations, such as the limited access permit system, and implement some or all of the measures proposed by the EMTs as deemed consistent with the objectives of the FMP. However, without the full commitment by the States to implement complementary measures to an FMP amendment, the EMT proposals may no longer be sufficient to achieve the fishing mortality reduction goals. Therefore, additional measures, such as time and/or area closures, for federally permitted vessels would be considered. Under this option, the Council would have the opportunity to comment on a Secretarial amendment and to amend the FMP in the future.

Request for Comments

NMFS is interested in receiving comments on the options explained above. The options discussed are not all-inclusive; suggestions for alternative approaches are encouraged. After consideration of the comments, NMFS will decide whether to proceed with any of the options above or other options, as appropriate.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 5101 *et seq.*

Dated: September 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–23120 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Parts 672 and 675

[Docket No. 950905226–5226–01; I.D. 083095A]

RIN 0648–AH00

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS publishes a proposed rule that would implement through December 31, 1998, allocations of Pacific cod and pollock for processing by the inshore and offshore components in the Gulf of Alaska (GOA) and pollock for processing by the inshore and offshore components in the Bering Sea and Aleutian Islands management area (BSAI). It would also continue the Western Alaska Community Development Quota (CDQ) Program. These provisions are contained in proposed Amendment 40 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and proposed Amendment 38 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, which the North Pacific Fishery Management Council (Council) has submitted to NMFS for review and approval under the Magnuson Fishery Conservation and Management Act (Magnuson Act). If

approved, these amendments would continue measures that were contained in Amendments 18 and 23 to the GOA and BSAI FMPs, respectively. The proposed rule is intended to promote management and conservation of groundfish, enhance stability in the fisheries, and further the goals and objectives contained in the FMPs that govern these fisheries.

DATES: Comments are invited on or before November 2, 1995.

ADDRESSES: Send comments to Ronald J. Berg, Chief, Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 or deliver them to Room 457, Federal Building, 709 W. 9th Street, Juneau, AK. Individual copies of the proposed amendments and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Send comments and suggestions regarding Paperwork Reduction Act (PRA) requirements to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the BSAI and GOA FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92, 50 CFR part 672, and 50 CFR part 676; the BSAI FMP, at 50 CFR 611.93, 50 CFR part 675, and 50 CFR part 676. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620. The fisheries for pollock (*Theragra chalcogramma*) and Pacific cod (*Gadus macrocephalus*) and the affected human environment are described in the FMPs, in the environmental impact statements prepared by the Council for each FMP, and in the EA/RIR/IRFA prepared for this action.

Amendments 38 and 40 will extend the provisions of Amendment 18 to the BSAI FMP and Amendment 23 to the GOA FMP. The only significant change is moving the western border of the Catcher Vessel Operational Area (CVOA) 30 minutes to the east, from 168°00′ to 167°30′ W. long. Because Amendments 18 and 23 and their implementing regulations expire on December 31, 1995, and because the Council has yet to complete development of its comprehensive plan to address problems caused by the open access nature of the Alaska groundfish fisheries, the Council voted unanimously at its June 1995 meeting to extend the provisions of the expiring amendments through December 31, 1998, by Amendments 38 and 40.

The problems and issues addressed by Amendments 38 and 40 are discussed in the proposed rule notice for Amendments 18 and 23 (56 FR 66009, December 20, 1991; corrected at 57 FR 2814, January 23, 1992), the final rule implementing Amendment 23 and the initially approved portions of Amendment 18 (57 FR 23321, June 3, 1992); a proposed rule to implement a revision of the parts of Amendment 18 that were disapproved earlier (57 FR 46133 (October 7, 1992); and a final rule to implement the revised parts of Amendment 18 (57 FR 61326, December 24, 1992; corrected at 58 FR 14172, March 16, 1993).

The following text covers separately two issues. The first addresses the allocation of Pacific cod and pollock for processing by the inshore and offshore components in the GOA and pollock for processing by the inshore and offshore components in the BSAI. The second addresses the Western Alaska Community Development Program and its allocation of pollock.

1. The Inshore-Offshore Issue

A. Summary of the Inshore-Offshore Issue of Amendments 18 and 23

Early in 1989, several catcher-processor vessels (factory trawlers) harvested substantial amounts of pollock in the BSAI and GOA. This large, quick harvest forced an early closure of the GOA pollock fishery and prevented inshore harvesters and processors from realizing their anticipated economic benefit from pollock later in the fishing year. Thus, at the April 1989 Council meeting, fishermen and processors from Kodiak Island requested that the Council consider specific allocations of fish for processing by the inshore and offshore components of the fishery to prevent future preemption of resources by one sector of the industry. The Council considered the request and the impacts on coastal community development and stability of the fisheries and prepared Amendments 18 and 23.

NMFS' review of the amendments began on December 1, 1991. On March 4, 1992, the NMFS approved the proposed pollock and Pacific cod allocations for the GOA and the proposed pollock allocation for the BSAI for 1992, but disapproved the proposed allocations for the BSAI in 1993 through 1995. The approved allocations were implemented on June 1, 1992 (57 FR 23321, June 3, 1992).

In his March 4, 1992, letter notifying the Council of his approval of Amendment 23 and partial disapproval of Amendment 18, the Under Secretary and Administrator of NOAA (Administrator) stated that NOAA is not opposed to the concept of an allocation between onshore and offshore interests as an interim measure pending development of a solution to overcapitalization—ideally, a market-based solution. NMFS' disapproval of the BSAI pollock allocations for 1994 and 1995 was based in part on a cost-benefit analysis prepared by NMFS that indicated a significant net economic loss to the Nation under the proposed allocations for years 1993 through 1995. The Administrator urged the Council to work as expeditiously as possible toward some other method of allocating fish than either the olympic system or direct government intervention. Meanwhile, he noted, preventing preemption by one fleet of another, safeguarding capital investments, protecting coastal communities that are dependent on a local fleet, and encouraging fuller utilization of harvested fish are desirable objectives that are provided for under the Magnuson Act.

At its April 21–26, 1992, meeting, the Council considered the NMFS' actions and recommendations and decided to revise Amendment 18. The Council supplemented its previous analysis of allocation alternatives for the original Amendments 18 and 23.

At a special meeting to consider this issue on August 4–5, 1992, the Council again considered the comments of its advisory bodies and the public, adopted its preferred alternative, and submitted it to NMFS as revised Amendment 18. This action would have allocated pollock in the BSAI for processing by the inshore and offshore components, respectively, of 35 percent and 65 percent in 1993, and of 37.5 percent and 62.5 percent in 1994 and 1995. In addition, it would have created a catcher vessel operational area for the second season pollock fishery in the years 1993 through 1995, and it would have allowed vessels in the offshore component that process only (i.e., motherships) to operate in the CVOA so that the catcher vessels that deliver to these vessels also could operate in the CVOA.

In September 1992, the Council submitted revised Amendment 18 to NMFS for review, approval, and implementation under section 304(a) of the Magnuson Act.

On November 23, 1992, after careful consideration of the revised amendment, public comments, the record developed by the Council, and the analyses of the potential effects of the proposed amendment, NMFS approved pollock allocations of 35 percent for processing by the inshore component and 65 percent for processing by the offshore component for the years 1993 through 1995. NMFS also approved the CVOA, including the provision that motherships could operate within that area, and certain other changes of the regulations proposed by NMFS to clarify the regulations implementing Amendments 18 and 23. The final rule implementing these decisions became effective January 19, 1993 (57 FR 61326, December 24, 1992).

B. The Need for and Development of Amendments 38 and 40

The Council stipulated (e.g., sections 14.4.11.7, BSAI FMP) that Amendments 18 and 23 would expire on December 31, 1995, or earlier if replaced with another management regime approved by NMFS. It did so with the understanding that by December 31, 1995, it would have adopted and NMFS would have approved a more comprehensive long-term management program to address the overcapitalization and allocation problems facing the industry, not only for pollock and Pacific cod, but for all groundfish and crab under the Council's authority.

The Council has made some progress on its long-term plan. For example, in June 1995 it adopted a license-limitation programs for the groundfish and crab fisheries. However, the Council estimates that it will take 2 or 3 more years to develop and implement a comprehensive management regime. Consequently, the Council decided it would be necessary to extend the provisions of Amendments 18 and 23 for an additional 3 years to maintain stability in the industry, facilitate further development of the comprehensive management regime, and allow for realization of the goals and objectives of the pollock CDQ program. In making this decision, the Council continued the mandate it established for itself in 1992 when it recognized that a more permanent solution to overcapacity and preemption was needed.

The Council decided that if the provisions of Amendments 18 and 23 expired, then the fishery would return to the ''free-for-all'' state it was in before Amendments 18 and 23, and the inshore sector again would be faced with the threat of preemption by the large and efficient offshore sector. Thus, the Council began the process to extend the provisions of Amendments 18 and 23.

In June 1994, the Council reaffirmed that its staff should begin analyzing the impacts of the potential extension of Amendments 18 and 23, including the CDQ program in the BSAI. At its October 1994 meeting, the Council identified this issue as highest priority for analysis. In December 1994, the Council presented a draft statement of the problem and reviewed a plan for analyzing the merits and impacts of continuing Amendments 18 and 23. It also requested a detailed reexamination of the CVOA. Further, it identified the treatment of vessels that fish with longline gear and freeze their catch for possible reevaluation under the definitions of inshore and offshore components. At its January 1995 meeting, the Council reviewed a detailed outline for the analyses and noted that the formal analyses would be presented at its April 1995 meeting, the analyses would undergo public review and comment, and the Council would make its final decision in June 1995. At its April 1995 meeting, the Council released a draft EA and RIR of the proposed reauthorization of Amendments 18 and 23 for public review.

Finally, at its meeting in June 1995, the Council reviewed written comments and considered testimony presented at the meeting by the public and its advisory bodies. It voted unanimously to reauthorize the provisions of Amendments 18 and 23 through December 31, 1998, with two changes. First, it moved the western boundary of the CVOA 30 minutes to the east. Second, it allowed catcher-processor vessels to use the CVOA if the pollock quota for processing by the inshore sector had been harvested for the year.

The Council decided to move the western boundary of the CVOA 30 minutes to the east because (a) that part of the CVOA between 168°00′ W. long. and 167°30′ W. long. was not being used by catcher vessels delivering to inshore processors, (b) some operators of catcher-processor vessels of the offshore component requested that they be allowed to operate there, and (c) the area was not critical for protected species.

In deciding to move the western boundary, the Council considered the impact of this move on the accounting of chum salmon caught as bycatch and the chum salmon savings area (§ 675.22(h)). An analysis of chum salmon bycatch data led the Council to conclude that moving the western boundary would have no significant impact on the controls governing chum salmon bycatch.

Furthermore, because the CVOA and statistical area 518 (the Bogoslof District) overlapped, probably only the northern half of the area removed from the CVOA would be open to the offshore component. Roughly the southern half of the area is in statistical area 518 and is closed to directed fishing for pollock under 1995 regulations (60 FR 8479, February 14, 1995), and likely will be closed to directed fishing for pollock in 1996, 1997, and 1998.

C. Summary of Amendments 38 and 40

Because Amendments 18 and 23 were due to expire on December 31, 1995, the June 1995 Council action led to new amendments. The provisions of Amendment 18 became the basis of Amendment 38, and those of 23 became the basis of Amendment 40. The only significant difference between Amendments 18 and 23 and Amendments 38 and 40 is that Amendment 38 moves the western boundary of the CVOA.

Thus, in the BSAI, the apportionments of pollock for domestic processing in each subarea or district and each season would be allocated 35 percent for processing by the inshore component and 65 percent for processing by the offshore component. The western border of the CVOA is moved 30 minutes to the east, from 168°00′ to 167°30′ W. long., thereby reducing its area by about 15 percent. The CVOA will exist from the start of the second season for directed pollock fishing (§ 675.23(e)) until the quota of pollock for processing by the inshore component has been harvested for the year or until December 31. Processor vessels of the offshore component would be allowed to conduct directed fishing operations for pollock in the CVOA only when they were operating under a valid Community Development Plan. Processor vessels in the offshore component that do not catch groundfish would be allowed to process pollock in the CVOA.

In the GOA, the apportionment of pollock for domestic processing in all regulatory areas will be allocated entirely for processing by the inshore component after subtraction of an amount that is projected by the Director, Alaska Region, NMFS (Regional Director) to be caught by or delivered to

the offshore component incidental to directed fishing for other groundfish species. The apportionment of Pacific cod for domestic processing in all regulatory areas will be allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component.

In both amendments the definitions of the terms ''inshore component'' and ''offshore component'' are clarified. Also, both amendments continue the requirement that processor vessels will be included with the inshore component or the offshore component based upon a declaration by the owner of that vessel on the annual application for a Federal permit (§§ 672.4 and 675.4).

Separately, Amendment 40 changes two sections of the GOA FMP. First, section 4.3.1.1, Permit Requirements, is revised to emphasize that certain permits are required of participants in the GOA groundfish fisheries. These requirements are found in regulations implementing the GOA FMP. Second, section 4.3.1.6, Inshore/offshore allocations of pollock, is amended by revising the heading to include Pacific cod, by rewriting the text for clarity, and by noting that the provisions of the section will end on December 31, 1998, or earlier if replaced with another management regime approved by NMFS.

Along the same lines, Amendment 38 changes two sections of the BSAI FMP. First, section 14.4.1, Permit requirements, is also revised to emphasize that certain permits are required of participants in the BSAI groundfish fisheries, and that these requirements are found in regulations implementing the BSAI FMP. Second, section 14.4.11, Inshore/offshore allocations of pollock, is rewritten for clarity and to note that the provisions of the section will end on December 31, 1998, or earlier if replaced with another management regime approved by NMFS. Further, Amendment 38 revises § 14.4.11.6, Bering Sea Catcher Vessel Operational Area, moving the western boundary of the CVOA 30 minutes longitude to the east.

Regulations are also proposed to continue the delay in the opening of the first directed fishery for pollock until February 5 for vessels used before January 26 to fish for BSAI or GOA groundfish or BSAI king or Tanner crab. The Council voted at its June 1994 meeting to change the start of the first directed fishery for pollock (the ''A-Season'' or ''roe season'') for processing by the offshore component to January 26. It did so to ensure optimum roe quality and increase the associated revenues. It included the delay to February 5 to discourage pollock vessels from shifting into other fisheries before January 26. NMFS published a final rule to implement these measures on December 16, 1994 (59 FR 64867). They expire December 31, 1995.

D. Summary of the Proposed Inshore-Offshore Regulations

The definitions of the terms (§§ 672.2 and 675.2) ''inshore component'' and ''offshore component'' would be clarified and extended through December 31, 1998 and the term ''catcher vessel operational area'' (CVOA) would be added for clarity.

The general prohibitions against vessels operating during any year in more than one category of the inshore component (§§ 672.7(h)(1) and 675.7(i)(1)) or vessels operating in both the inshore and offshore components (§§ 672.7(h)(2) and 675.7(i)(2)) would be extended through December 31, 1998.

The allocations of Pacific cod and pollock for processing by the inshore and offshore components (§§ 672.20(a)(2)(v) and 675.20(a)(2)(iii)) and specifications of annual allocations (§§ 672.20(c)(1)(ii) and 675.20(a)(3)(i)) would be extended through December 31, 1998.

In the regulations governing the CVOA (§ 675.22(g)), the western boundary would be moved 30 minutes to the east to 167°30′ W. long. The regulations would clarify that the CVOA will exist from the start of the second season for directed fishing for pollock (§ 675.23(e)) until the quota of pollock for processing by the inshore component has been harvested for the year or until December 31. These regulations would be extended through December 31, 1998.

Regulations concerning the bycatch of chum salmon (§ 675.22(h)) refer to the definition of the CVOA as found at § 675.22(g). Under these regulations chum salmon caught in the CVOA as bycatch in the nonroe pollock fishery are attributed towards a 42,000 fish bycatch limit. The Council's decision to move the western boundary of the CVOA and, thereby, reduce its size would affect the area of chum salmon accounting. The Council recognized this effect on its program for reducing chum salmon bycatch and expressed its intent to have the chum salmon accounting take place within the revised boundaries of the CVOA. Because, under this proposed rule, the definition of the CVOA would be moved to § 675.2, NMFS now proposes to amend § 675.22(h)) so it will be consistent with this change.

Also, in accordance with Council intent, NMFS proposes to reimplement until December 31, 1998, regulations governing delays in the start of the first directed fishing seasons for pollock for processing by the offshore component (§ 675.23(e)(2)(ii)).

2. Western Alaska Community Development Quota (CDQ) Program

A. Summary of the History and Provisions of the CDQ Program

The approved portion of Amendment 18 and the final rule implementing Amendment 18 (57 FR 23321, June 3, 1992) allocated pollock for the CDQ program only for a temporary period from 1992 through 1995. The amendment allocated 7.5 percent of the pollock total allowable catch for each BSAI subarea or district to be set aside for the CDQ program. A regulatory amendment (57 FR 54936, November 23, 1992) implemented the CDQ program for 1992 and 1993 by specifying the process for applying for CDQ and the required contents of the Community Development Plan applications. A subsequent regulatory amendment (58 FR 32874, June 14, 1993) implemented the CDQ program for 1994 and 1995.

At its June 1995 meeting, the Council reauthorized the provisions of Amendment 18 through December 31, 1998, including the CDQ program. Much has been learned about the CDQ program since 1992. NMFS has worked closely with the State of Alaska's Departments of Community and Regional Affairs, Fish and Game, and Commerce and Economic Development, as well as the CDQ industry, to develop proposed changes to the pollock CDQ regulations.

B. Proposed Changes to the CDQ Implementing Regulations

This proposed rule extends the definitions of ''community development plan (CDP),'' ''community development quota,'' ''community development quota program,'' and ''community development quota reserve'' until December 31, 1998; and makes the following nine changes to the CDQ implementing regulations that have been in effect, but which expire on December 31, 1995.

1. The phrase ''applicable through December 31, 1995'' at the beginning of the CDQ regulations at part 675.27 is proposed to be replaced by the phrase ''applicable through December 31, 1998''. This would implement the Council's recommendation to reauthorize the CDQ program for 3 additional years. In addition, the phrase

''applicable through December 31, 1995'' is deleted from the beginning of paragraphs (e) and (f) because it is unnecessary.

2. Introductory text is added in § 675.27 to describe the goals and purpose of the CDQ program as follows: to allocate CDQ pollock to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing regionally based commercial seafood or related businesses. This statement is a distillation of previous CDQ proposed and final rules that describe the goals and purpose of the CDQ program and is proposed to be added to these regulations to state precisely the purpose and goals of this program.

3. Under current regulations, paragraph (b)(1)(i) states that the CDP must include the goals and objectives of the CDP. However, a CDP does not have goals and objectives that are separate from those of the CDQ program. Therefore, (b)(1)(i) is replaced with a more correct statement. Specifically, CDPs are project-based documents, and should include a description of the CDP projects that are proposed to be funded by the pollock allocation and how the CDP projects satisfy the goals and purpose of the CDQ program.

4. Paragraph (b)(1)(vii) states that a CDP must include a description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations. However, an applicant may have both fishing and processing operations, so it would be more accurate to state that a CDP must include a description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations.

5. Paragraph (b)(2)(vii), states that a CDP should include a budget for implementing a CDP. This level of budget oversight has proven to be inadequate for managing the CDQ program. This paragraph is proposed to be expanded, requiring a general budget to be included in the CDP that would be a general account of estimated income and expenditures for each CDP project for each year of the life of the project.

An annual budget would be required at (e)(1)(ii), and it would be a detailed account of the estimated income and expenditures for each CDP project prior to the beginning of a calendar year. An initial annual budget would be required as part of a CDP application. For each subsequent year, the annual budget would be required to be submitted to NMFS in a report by December 15 of the year preceding the year for which the annual budget applies. Annual budgets would be approved upon receipt by NMFS unless subsequently disapproved by NMFS in writing. The annual budget would be reconciled in a report to NMFS by May 15 after the year for which the annual budget applies. The annual budget reconciliation report would list the actual income and expenditures and highlight the variance between the estimated and actual income/expenditures for each CDP project. If the general budget included in the CDP is no longer valid due to the reconciliation of the annual budget, then the general budget would also be required to be revised and submitted to NMFS with the annual budget reconciliation report.

6. Paragraph (b)(3)(ii)(B) states that the CDP must document the legal relationship between the CDP applicant and the managing organization. This implies that the CDP applicant and the managing organization are different entities. However, in some cases, the CDP applicant is the same as the managing organization. Therefore, this paragraph would be changed to state that the CDP must document the legal relationship between the CDP applicant and the managing organization only if the managing organization is different from the CDP applicant.

7. The definition of a CDP amendment under paragraph (e)(3)(i)(A)–(C) has required unnecessary amendments to be submitted to NMFS. Under the current regulations, paragraph (e)(3)(i)(B) states that any change to the budget of a CDP is a CDP amendment. Minor changes (for example, revisions of a CDP's budget for office supplies) were not meant to be amendments. Therefore, the existing paragraphs at (e)(3)(i)(A)–(C) would be deleted and paragraphs (e)(3)(i)(A)–(F) would be added, specifying in more detail what would constitute a CDP amendment.

8. In 1993, when the first CDP amendments were received by NMFS, guidance at paragraph (e)(3)(ii) regarding the contents of a CDP amendment was not sufficient, and more specific guidance was needed. The existing requirements for the contents of CDP amendments resulted in the submission of CDP amendments in different formats and lacking critical information, making them difficult to evaluate and process. Therefore, the Regional Director provided guidance to the Governor in a letter dated November 3, 1993. Since that date, all CDP amendments have followed the suggested format that was provided in that letter. This guidance is proposed to be added at paragraph (e)(3)(ii)(A)–(F).

9. Currently, a CDQ management organization is not required to notify NMFS of any change to a CDP that does not meet the criteria for a CDP amendment at (e)(3)(i)(A)–(C). Such minor changes are technical amendments. However, a CDP is a working business plan and must be kept up-to-date. NMFS proposes to require that CDQ groups notify the Governor and NMFS in writing of any technical amendments to a CDP before any change occurs. Technical amendments would be approved when the CDQ group receives a written notice from NMFS of the receipt of a technical amendment. The notification should include the pages of the CDP with the text highlighted to show additions and deletions, and the amended pages of the CDP would be included for replacement in the CDP.

Environmental and Regulatory Analyses

The Council prepared an EA/RIR/IRFA for Amendments 38 and 40 in accordance with the National Environmental Policy Act, Executive Order 12866, Regulatory Planning and Review, and the Regulatory Flexibility Act. A copy of the EA/RIR/IRFA may be obtained from the Council (see ADDRESSES).

The EA/RIR/IRFA reviews events leading up to Amendments 18 and 23, examines the fisheries since Amendments 18 and 23 went into effect, and examines the alternatives of (a) letting the provisions of Amendments 18 and 23 expire and (b) continuing those provisions as Amendments 38 and 40.

The EA/RIR/IRFA concludes that the potential environmental impacts of Amendments 38 and 40 are expected to be consistent with those previously predicted for Amendments 18 and 23 in the 1992 final supplemental environmental impact statement. They are also consistent with the findings in the supplemental analysis of September 1992 regarding the probable impacts of the CVOA on marine mammals, seabirds, and prohibited species. Total removals of pollock and Pacific cod are controlled by the total allowable catches, and their monitoring has been enhanced recently to guard against overruns. Catches of prohibited species and impacts on marine mammals are expected to be unchanged. Section 7 consultations by NMFS during consideration of Amendments 18 and 23 and again for Amendments 38 and 40 concluded that the groundfish fisheries are unlikely to jeopardize the continued existence or recovery of any endangered or threatened species.

For the analysis of economic and social impacts of Amendments 38 and

40 and the proposed regulations, the Council did not attempt to redo the previous cost-benefit or distributional analyses; rather, the EA/RIR/IRFA provides a review of the current state of the fisheries and identified significant changes that would affect the overall findings of the previous analyses. It also examined stability within the industry, future tradeoffs for affected industry sectors, and potential impacts on the Council's attempts to develop a more comprehensive plan for managing the groundfish, crab, and halibut fisheries.

The EA/RIR/IRFA concluded that reauthorizing the provisions of Amendments 18 and 23 would result in the same general cost-benefit impacts as projected in the 1992 analyses, although the expected net losses to the Nation's economy were probably overstated in the original analyses, and with changes in product recovery rates and prices since 1992, they were expected to move more towards neutral.

The EA/RIR/IRFA found that continuation of the inshore-offshore program would maintain stability and that disruption of this stability could have serious and adverse implications for successful development of a comprehensive management regime for the fisheries (EA/RIR/IRFA, p. E–9). Continuation of the inshore-offshore program would negatively affect Ballard-Seattle, WA; however, the absence of the program would result in negative social and economic impacts on many coastal Alaskan communities, particularly in those participating in the CDP that have developed additional infrastructure since 1992.

In examining the community development program, the EA/RIR/IRFA asked two questions: (a) Can the development projects and initiative underway now be brought to fruition without a continuation of the allocation? and (b) Once the development projects are complete, can they be sustained in the absence of a direct allocation of pollock? For the first question, the EA/RIR/IRFA concluded that the individual projects as well as the overall development objectives of the program would not be realized if the program ends in 1995. For the second question, the EA/RIR/IRFA stated that this was a difficult question to answer at this time and it remained a critical question, likely to be answered within the context of the comprehensive rationalization process.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an FMP or an amendment of an FMP and regulations. At this time, NMFS has not determined that either Amendment 38 of the BSAI FMP or Amendment 40 of the GOA FMP (which these rules would implement) is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an IRFA as part of the regulatory impact review, which describes the impact this proposed rule would have on small entities, if adopted. The IRFA analysis indicates that specific allocations to the inshore and offshore components could benefit small harvesting and processing operations associated with one component and, conversely, negatively impact small operations associated with the other. The magnitudes of the impacts are related to the sizes of the allocations. The continuation of specific allocations to the inshore component as well as the specific allocations of pollock to the CDQ program will continue direct benefits to many small jurisdictions of Southwest and Western Alaska. The support industry benefits directly from the economic activity in both the inshore and offshore sector. Probably, the loss in revenue associated with one component will be offset by gains obtained from the other. Overall, this proposal will impact more than 20 percent of those small entities, and NMFS considers that amount to be a ''substantial number.'' A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

This proposed rule contains collection-of-information requirements related to the Community Development Quota Program that are subject to the PRA. These requests for collection of information have been submitted to the Office of Management and Budget for approval. The public reporting burden for each year of this collection is estimated to average 40 hours per response for completing annual reports, 40 hours per response for completing annual budget reconciliation reports, 30 hours per response for completing substantial amendments, and 4 hours per response for completing technical amendments. For the first year of the CDQ program, completion of CDP applications is estimated to average 160 hours per response. For each of the last 2 years of the program, completion of annual budget reports is expected to average 40 hours per response. OMB approval has been obtained under OMB control number 0648–0269 for the CDQ-managing organization representative requirement to inform NMFS within 24 hours after the CDQ has been reached and fishing ceased. This requirement has an estimated response time of 2 minutes per response.

All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to the OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 11, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.2, the definitions of ''Inshore component'' and ''Offshore component'' are revised to read as follows:

§ 672.2 Definitions.

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) All shoreside processing operations;

(2) Any processor vessel less than 125 ft (38.1 m) in length overall that processes no more than 126 mt per week in round-weight equivalents of an aggregate of those fish and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88–155) under § 672.4; and

(3) Any processor vessel that processes those fish at a single geographic location in Alaska State waters (waters adjacent to the State of

Alaska and shoreward of the EEZ) during a fishing year and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88–155) under § 672.4. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§ 672.5(c)(1) and § 675.5(c)(1) of this chapter) when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all processor vessels in the U.S. groundfish fisheries not included in the definition of ''inshore component'' that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

3. In § 672.7, paragraph (h) heading, and paragraph (h)(2) are revised to read as follows:

§ 672.7 Prohibitions.

* * * * *

(h) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the ''inshore component'' and ''offshore component'' definitions at §§ 672.2 and 675.2 of this chapter during the same fishing year.

* * * * *

§ 672.20 [Amended]

4. In § 672.20, the headings of paragraphs (a)(2)(v), (c)(1)(i), (c)(1)(ii), (c)(2)(i) and (c)(2)(ii) are revised to read: *''Applicable through December 31, 1998.''*.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for 50 CFR part 675 continues to read as follows:

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

6. In § 675.2, a definition for ''Catcher vessel operational area'' is added, and the definitions for ''Community Development Plan,'' ''Community Development Quota,'' Community Development Quota Program,'' Community Development Quota Reserve,'' ''Inshore component,'' and ''Offshore component'' are revised to read as follows:

§ 675.2 Definitions.

* * * * *

Catcher vessel operational area (CVOA) (applicable through December 31, 1998) means that part of the Bering Sea subarea south of 56°00′ N. lat. and between 163°00′ and 167°30′ W. long.

Community Development Plan (CDP) (applicable through December 31, 1998) means a plan for a specific Western Alaska community or group of communities approved by the Governor of the State of Alaska and recommended to NMFS under § 675.27.

Community Development Quota (CDQ) (applicable through December 31, 1998) means a Western Alaska community development quota for pollock assigned to an approved CDP. All CDQs, in the aggregate, equal 7.5 percent of the total allowable catch specified for pollock that is placed in reserve under § 675.20(a)(3).

Community Development Quota Program (CDQ program) (applicable through December 31, 1998) means the Western Alaska Community Development Program implemented under § 675.27.

Community Development Quota Reserve (CDQ reserve) (applicable through December 31, 1998) means 7.5 percent of the total allowable catch specified for pollock in each subarea or district that is placed in reserve under § 675.20(a)(3).

* * * * *

Inshore component (applicable through December 31, 1998) means the following three categories of the U.S. groundfish fishery that process pollock harvested in a directed fishery for pollock, or Pacific cod harvested in a directed fishery for Pacific cod in the Gulf of Alaska, or both:

(1) All shoreside processing operations;

(2) Any processor vessel less than 125 ft (38.1 m) in length overall that processes no more than 126 mt per week in round-weight equivalents of an aggregate of those fish and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88–155) under § 675.4; and

(3) Any processor vessel that processes those fish at a single geographic location in Alaska State waters (waters adjacent to the State of Alaska and shoreward of the EEZ) during a fishing year and that is declared to be part of the inshore component by its owner in the annual application for a Federal Permit (NOAA Form 88–155) under § 675.4. For the purposes of this definition, NMFS will determine the single geographic location in a fishing year for an individual processor from the geographic coordinates the vessel operator reports on the check-in notice (§ 672.5(c)(1) of this chapter and § 675.5(c)(1)) when that vessel first engages in processing those fish.

* * * * *

Offshore component (applicable through December 31, 1998) means all processor vessels in the U.S. groundfish fisheries not included in the definition of ''inshore component'' that process pollock caught in directed fisheries for pollock, or Pacific cod caught in directed fisheries for Pacific cod in the Gulf of Alaska, or both.

* * * * *

7. In § 675.7, paragraph (i) heading, paragraph (i)(2), and paragraph (j) heading are revised to read as follows:

§ 675.7 Prohibitions.

* * * * *

(i) *Applicable through December 31, 1998.* * * *

(2) Operate any vessel under both the ''inshore component'' and ''offshore component'' definitions at §§ 672.2 of this chapter and 675.2 during the same fishing year.

(j) *Applicable through December 31, 1998.*

* * * * *

8. In § 675.20, the headings of paragraphs (a)(2)(iii), (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) are revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(2) * * *

(iii) *Applicable through December 31, 1998.*

* * * * *

(3) * * *

(i) *Applicable through December 31, 1998.* * * *

(ii) *Applicable through December 31, 1998.* * * *

(iii) *Applicable through December 31, 1998; application for approval of a CDP and CDQ allocation.* * * *

* * * * *

9. In § 675.22, paragraphs (g) and (h)(2) are revised to read as follows:

§ 675.22 Time and area closures.

* * * * *

(g) *Catcher vessel operational area (applicable through December 31, 1998).* (1) This area is established annually for directed fishing for pollock from the beginning of the second season of directed fishing for pollock (defined at § 675.23(e)) until either the date that NMFS determines that the pollock quota for processing by the inshore component has been harvested or December 31.

(2) Catcher vessels may conduct directed fishing in this area.

(3) Processor vessels in the offshore component are prohibited from conducting directed fishing for pollock in this area unless they are operating under a CDP approved by NMFS.

(4) Processor vessels in the offshore component that do not catch groundfish but do process pollock caught in a directed fishery for pollock may operate within this area to process pollock.

(5) Processor vessels that catch or process groundfish in directed fisheries for species other than pollock may operate within this area.

(h) * * *

(2) When the Regional Director determines that 42,000 nonchinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA (defined in § 675.2), NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area defined under paragraph (h)(1) of this section.

10. In § 675.23, paragraph (e)(2) heading is revised to read as follows:

§ 675.23 Seasons.

* * * * *

(e) * * *

(2) *Applicable through December 31, 1998.* * * *

* * * * *

11. In § 675.27, the section heading is revised, introductory text is added, and paragraphs (b)(1)(i), (b)(1)(vii), (b)(2)(vii), (b)(3)(ii)(B), (e), and the heading of paragraph (f) are revised to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1998).

The goals and purpose of the CDQ program are to allocate CDQ pollock to eligible Western Alaska communities to provide the means for starting or supporting commercial seafood activities that will result in ongoing regionally based commercial seafood or related businesses.

* * * * *

(b) * * *

(1) * * *

(i) A description of the CDP projects that are proposed to be funded by the pollock allocation and how the CDP projects satisfy the goals and purpose of the CDQ program;

* * * * *

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing and/or processing operations;

* * * * *

(2) * * *

(vii) A general budget for implementing the CDP. A general budget is a general account of estimated income and expenditures for each CDP project that is described at paragraph (b)(1)(i) of this section for the total number of calendar years that the CDP is in effect. An annual budget is required to be submitted with a CDP as described at paragraph (e)(1)(ii) of this section;

* * * * *

(3) * * *

(ii) * * *

(B) Documentation of a legal relationship between the CDP applicant and the managing organization (if the managing organization is different from the CDP applicant), which clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

* * * * *

(e) *Monitoring of CDPs*—(1) *CDP reports.* The following reports must be submitted to NMFS.

(i) *Annual progress reports.* CDP applicants are required to submit annual progress reports to the Governor by June 30 of the year following a CDQ allocation. Annual progress reports will include information describing how the CDP has met its milestones, goals, and objectives. On the basis of those reports, the Governor will submit an annual progress report to NMFS and recommend whether CDPs should be continued. NMFS must notify the Governor in writing within 45 days of receipt of the Governor's annual progress report, accepting or rejecting the annual progress report and the Governor's recommendations on multiyear CDQ projects. If NMFS rejects the Governor's annual progress report, NMFS will return it for revision and resubmission. The report will be deemed approved if NMFS does not notify the Governor in writing within 45 days of the report's receipt.

(ii) *Annual budget report.* An annual budget report is a detailed estimation of income and expenditures for each CDP project as described in paragraph (b)(1)(i) of this section for a calendar year. The first annual budget report shall be included in the CDP. Each additional annual budget report must be submitted to NMFS by December 15 preceding the year for which the annual budget applies. Annual budget reports are approved upon receipt by NMFS unless disapproved in writing by December 31. If disapproved, the annual budget report may be revised and resubmitted to NMFS. NMFS will approve or disapprove a resubmitted annual budget report in writing.

(iii) *Annual budget reconciliation report.* A CDQ group must reconcile each annual budget by May 15 of the year following the year for which the annual budget applied. Reconciliation is an accounting of the annual budget's estimated income and expenditures with the actual income and expenditures, including the variance in dollars and variance in percentage for each CDP project that is described in paragraph (b)(1)(i) of this section. If a general budget as described at paragraph (b)(2)(vii) of this section is no longer correct due to the reconciliation of an annual budget, then the general budget must also be revised to reflect the annual budget reconciliation, and the revised general budget must be included in the annual budget reconciliation report.

(2) If an applicant requests an increase in CDQ allocation under a multiyear CDP, the applicant must submit a new CDP application for review by the Governor and approval by NMFS as described in paragraphs (b) and (c) of this section.

(3) *Substantial amendments.* A CDP is a working business plan and must be kept up-to-date. Substantial amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and NMFS before any change in a CDP can occur. The Governor may recommend to NMFS that the request for an amendment be approved. NMFS may notify the Governor in writing of approval or disapproval of the amendment within 30 days of receipt of the Governor's recommendation. The Governor's recommendation for approval of an amendment will be deemed approved if NMFS does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If NMFS determines that the CDP, if changed, would no longer meet the criteria under paragraph (d) of this section, or if any of the requirements under this section would not be met, NMFS shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, substantial amendments are defined as changes in a CDP, including, but not limited to, the following:

(A) Any change in the applicant communities or replacement of the managing organization;

(B) A change in the CDP applicant's harvesting or processing partner;

(C) Funding a CDP project in excess of $100,000 that is not part of an approved general budget;

(D) More than a 20 percent increase in the annual budget of an approved CDP project;

(E) More than a 20 percent increase in actual expenditures over the approved annual budget for administrative operations; or

(F) The Governor recommends to NMFS that the following is a substantial amendment:

(*1*) A material change in the contractual agreement(s) between the CDP applicant and their harvesting or processing partner; or

(*2*) A material change in a CDP project.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) The background and justification for the amendment that explains why the proposed amendment is necessary and appropriate;

(B) An explanation of why the proposed change to the CDP is an amendment according to paragraph (e)(3)(i) of this section;

(C) A description of the proposed amendment, explaining all changes to the CDP that result from the proposed amendment;

(D) A comparison of the original CDP text with the text of the proposed changes to the CDP, and the changed pages of the CDP for replacement in the CDP binder;

(E) Identification of any NMFS' findings that would need to be modified if the amendment is approved along with the proposed modified text;

(F) A description of how the proposed amendment meets the requirements of the CDQ regulations in this section. Only those CDQ regulations that are affected by the proposed amendment need to be discussed.

(4) *Technical amendments.* Any change to a CDP that is not a substantial amendment as defined at paragraph (e)(3)(i) of this section, is a technical amendment. It is the responsibility of the CDQ group to coordinate with the Governor to ensure that a proposed technical amendment does not meet the definition for a substantial amendment. Technical amendments require written notification to the Governor and NMFS before the change in a CDP occurs. A technical amendment will be approved when the CDQ group receives a written notice from NMFS announcing the receipt of the technical amendment. The Governor may recommend to NMFS in writing that a technical amendment be disapproved at any time. NMFS may disapprove a technical amendment in writing at any time with the reasons therefor. Notification should include:

(i) The pages of the CDP with the text highlighted to show deletions and additions; and

(ii) The changed pages of the CDP for replacement in the CDP binder.

(5) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

(f) *Suspension or termination of a CDP.*

* * * * *

[FR Doc. 95–23029 Filed 9–13–95; 12:03 pm]

BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

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

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on October 3 and 4, 1995, in Woodland, Washington, at the Oak Tree Restaurant, near Exit No. 21 on Interstate 5. The meeting will begin at 9 a.m. and continue until 4:30 p.m.

Meeting purpose is to assess watershed health conditions within the Cowlitz, Lewis, Wind River, and White Salmon Basins. The Advisory Committee will apply this information in advising Federal land managers on implementing the President's Northwest Forest Plan. Agenda items to be covered include: (1) Basin Health Assessment findings, (2) Basin Goals and Objectives, (3) Forest Program priorities, (4) Public Open Forum, (5) Forest Monitoring Program, and (6) Committee Progress Assessment.

All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled near the conclusion of this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Mark Maggiora, Public Affairs, at (360) 750–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E. Fourth Plain Blvd., PO Box 8944, Vancouver, WA 98668–8944.

Dated: September 11, 1995.

J. Sharon Heywood,

Deputy Forest Supervisor.

[FR Doc. 95–23084 Filed 9–15–95; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Notice of Formal Determinations

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on August 28th and August 29th, 1995, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice the Review Board complies with the section of the JFK Act that request the Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, NW., Washington, DC 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the *President John F. Kennedy Assassination Records Collection Act of 1992*, 44 U.S.C. 2107.9(c)(4)(A) (1992). On August 28th and August 29th, 1995, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted as well as the number of sustained postponements.

REVIEW BOARD DETERMINATIONS

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
FBI Documents				
124–10035–10168	8	0	Open in Full	n/a
124–10037–10020	1	0	Open in Full	n/a
124–10076–10024	8	0	Open in Full	n/a
124–10085–10330	1	2	Postponed in Part	08/28/2005
124–10085–10333	2	1	Postponed in Part	08/28/2005
124–10104–10238	8	0	Open in Full	n/a
124–10157–10384	8	0	Open in Full	n/a
124–10171–10238	1	0	Open in Full	n/a
124–10191–10089	3	0	Open in Full	n/a
124–10242–10180	1	0	Open in Full	n/a
124–10263–10085	1	0	Open in Full	n/a
CIA Documents				
104–10004–10257	11	3	Postponed in Part	12/1995
104–10015–10010	1	0	Open in Full	n/a

REVIEW BOARD DETERMINATIONS—Continued

Record No.	ARRB releases	Sustained postponements	Status of document	Next review date
104–10015–10017	7	0	Open in Full	n/a
104–10015–10026	4	0	Open in Full	n/a
104–10015–10040	2	0	Open in Full	n/a
104–10015–10046	0	1	Postponed in Part	12/1995
104–10015–10050	1	0	Open in Full	n/a
104–10015–10055	2	0	Open in Full	n/a
104–10015–10059	1	1	Postponed in Part	12/1995
104–10015–10060	2	0	Open in Full	n/a
104–10015–10063	3	0	Open in Full	n/a
104–10015–10066	1	0	Open in Full	n/a
104–10015–10067	4	0	Open in Full	n/a
104–10015–10069	4	0	Open in Full	n/a
104–10015–10071	1	0	Open in Full	n/a
104–10015–10072	3	0	Open in Full	n/a
104–10015–10075	4	0	Open in Full	n/a
104–10015–10077	3	0	Open in Full	n/a
104–10015–10078	3	0	Open in Full	n/a
104–10015–10081	4	1	Postponed in Part	12/1995
104–10015–10082	3	0	Open in Full	n/a
104–10015–10086	7	0	Open in Full	n/a
104–10015–10095	1	0	Open in Full	n/a
104–10015–10098	4	0	Open in Full	n/a
104–10015–10099	1	0	Open in Full	n/a
104–10015–10101	2	0	Open in Full	n/a
104–10015–10102	1	0	Open in Full	n/a
104–10015–10104	0	2	Postponed in Part	12/1995
104–10015–10105	0	1	Postponed in Full	2017
104–10015–10106	2	0	Open in Full	n/a
104–10015–10109	1	0	Open in Full	n/a
104–10015–10111	1	3	Postponed in Part	12/1995
104–10015–10115	3	2	Postponed in Part	12/1995
104–10015–10117	0	2	Postponed in Part	12/1995
104–10015–10122	0	1	Postponed in Part	12/1995
104–10015–10128	1	0	Open in Full	n/a
104–10015–10132	1	2	Postponed in Part	12/1995
104–10015–10136	1	0	Open in Full	n/a
104–10015–10139	1	1	Postponed in Part	12/1995
104–10015–10141	2	1	Postponed in Part	12/1995
104–10015–10152	0	1	Postponed in Part	12/1995
104–10015–10156	5	1	Postponed in Part	12/1995
104–10015–10161	1	2	Postponed in Part	12/1995
104–10015–10162	1	3	Postponed in Part	12/1995

Dated: September 12, 1995.

David G. Marwell,

Executive Director.

[FR Doc. 95–23013 Filed 9–15–95; 8:45 am]

BILLING CODE 6820–TD–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950911228–5228–01]

The American Community Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of consideration.

SUMMARY: Notice is hereby given that the Bureau of the Census is considering a proposal to conduct The American Community Survey under the authority of Title 13, United States Code, Sections 182 and 225. On the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of other government agencies and the public. The survey will provide data for small areas and small subpopulations that are necessary to evaluate a continuous measurement system to collect, on a continual basis, data that have traditionally been collected only once every ten years in the decennial census. These data are not publicly available from nongovernment or other governmental sources.

DATES: Any suggestions or recommendations concerning the proposed survey should be submitted in writing by October 18, 1995.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Lawrence S. McGinn, Chief, Continuous Measurement Office, U.S. Census Bureau, on (301) 763–8327.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major census authorized by Title 13, United States Code. The data from this survey will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade for small areas and small subpopulations. Currently, the decennial census is the only source of data available for small area levels and, therefore, these data are collected only once every ten years. A continuous measurement system also would provide a mechanism for identifying

and sampling subpopulation groups for future surveys which will be of great benefit to the Federal Statistical System and provide data needed by other agencies.

This survey will be a full-scale implementation of continuous measurement in six test sites. The survey will also include a national sample to test response rates and the Census Bureau's ability to obtain telephone numbers for nonresponse households. The data collected in this survey will be within the general scope and nature of those inquiries covered in the decennial census every ten years.

The Census Bureau will select the housing units for the survey from a sample of six sites selected to test full continuous measurement operations and a sample from designated areas around the country to obtain mail response rates. The Bureau will mail questionnaires to the households covered by this survey and require the submission as soon as possible after receipt. Participation of the selected households will be mandatory in accordance with the provisions of Title 13.

This survey was approved by the Office of Management and Budget (OMB) for public use, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was given approval number 0607–0810. A previous notice was published in the Federal Register on June 15, 1995, Volume 60, Number 115, page 31447, informing the public of this submission and inviting public comment. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that a test be conducted for the purpose of collecting these data for evaluation of the procedures related to a continuous measurement operation.

Dated: September 12, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–23085 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

[Docket No. 2101–01]

In the Matter of: Francesco Grazi, Chez Pietro Grazi, V Cantonale, 6532 Castione, Ticino, Switzerland, Respondent; Final Decision and Order

On August 22, 1995, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the above-referenced matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. The Respondent failed to respond to the charges in this matter. After describing the facts of the case and his findings based on those facts, the ALJ found that the Respondent, Francesco Grazi, on two separate occasions violated Section 787.2 of the Export Administration Regulations (EAR). The Respondent caused, aided, abetted, counselled, or induced a third party to reexport U.S.-origin commodities from Switzerland to Bulgaria, without obtaining the reexport authorization required by Section 774.1 of the EAR.

The ALJ found that the appropriate penalty for the violations should be that the Respondent and all successors, assignees, officers, representatives, agents and employees be denied for a period of fifteen years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the entire record, I AFFIRM the Recommended Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: September 4, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended

On January 14, 1992, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued a Charging Letter alleging that Francesco Grazi (Grazi) committed two violations of Section 787.2 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1995)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[1] As established in the Status Report the Department filed in this matter on May 1, 1992, the Charging Letter was served on Grazi on or about April 21, 1992. Grazi has not answered or otherwise responded to the allegations set forth in the Charging Letter. On June 19, 1995, I issued an Order directing that the Department make its submission pursuant to Section 788.8 of the Regulations by August 18, 1995. In accordance with that Order, the Department made the submission required by Section 788.8 of the Regulations on August 18, 1995.

Background

The January 14, 1992 Charging Letter alleges that, on two separate occasions, on or about January 14, 1987 and on or about May 8, 1987, Grazi caused, aided, abetted, counseled, or induced a third party to reexport U.S.-origin commodities from Switzerland to Bulgaria without first obtaining the reexport authorization required by Section 774.1 of the Regulations. Schedule A to the Charging Letter, which was attached thereto and incorporated by reference therein, identified the approximate date of reexport from Switzerland, the commodity involved, the Samata S.A. (Samata) Purchase Order number, the Air Waybill number for the export from the United States, and the Fincosid[2] Order Number.

Finding

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that Grazi committed the violations alleged in the Charging Letter issued against him on January 14, 1992.

For those violations, the Department urges as a sanction that Grazi's export privileges be denied for 15 years. In light of the nature of the violations, I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which Grazi appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of Grazi's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Francesco Grazi, Chez Pietro Grazi, V Cantonale, 6532 Castione, Ticino, Switzerland, and all of

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[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706 (1991)).

[2] At the time of the alleged violations, Grazi was the president of Fincosid SA, a Swiss company. A Charging Letter was also issued against Fincosid. On April 2, 1992, in responding to the Administrative Law Judge's March 4, 1992 Order, the Department advised the Administrative Law Judge that it had learned that Fincosid no longer exists and, therefore, withdrew the Charging Letter issued to Fincosid.

his successors, assigns, officers, representatives, agents, and employees, shall, for a period of 15 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to the respondent by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on Grazi and the Department in accordance with section 778.16(b)(2) of the Regulations.

Fourth, that this Order, is affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C.A. app. § 2412(c)(1) and the Regulations (15 CFR 788.23).

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., N.W., Room 3898B, Washington, D.C., 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Dated: August 22, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

FR Doc. 95–23059 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DT–M

Bureau of Export Administration 9–18

[Docket No. 1107–07]

In the Matter of: Herman Van Croonenburg, Urb. El Paraiso, Parc. 145—Villa Favorita, E–29680 Estepona—Malaga, Spain; Respondent; Final Decision and Order

On August 22, 1995, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the above-referenced matter. The Recommended Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action.

After describing the facts of the case and his findings based on those facts, the ALJ found that the Respondent on four separate occasions reexported U.S.-origin commodities from Switzerland to Austria, without obtaining the reexport authorization required by Section 774.1 of the Export Administration Regulations.

The ALJ recommended that the appropriate penalty for the violations should be that the Respondent and all successors, assignees, officers, representatives, agents and employees be denied for a period of fifteen years from this date all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities or technical data exported or to be exported from the United States and subject to the Export Administration Regulations.

Based on my review of the record in this proceeding, I AFFIRM the Recommended Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: September 4, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

Recommended Decision and Order

On August 30, 1991, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued a Charging Letter alleging that Herman Anton van Croonenburg (van Croonenburg) committed four violations of Section 787.6 of the Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1995)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. § § 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994)) (the Act).[1] On November 4, 1991, van Croonenburg answered the Charging Letter, but did not request a hearing.[2]

On September 6, 1991, this matter was consolidated with several other related matters and has proceeded through the administrative process since that time. On March 22, 1995, I issued an Order urging the parties to begin settlement discussions and directed the parties to report to me regarding the progress of those discussions. On April 5, 1995, in accordance with that Order, the Department wrote to van Croonenburg to determine if he was interested in pursuing a possible settlement in this matter. To date, van Croonenburg has not responded to the Department's offer to discuss a possible settlement. However, settlement discussions in several of the other

[1] The Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § § 1701–1706 (1991)).

[2] Indeed, other than his answer, van Croonenburg has not filed any pleadings or responded either to any of my Orders or any of the Department's pleadings in this matter.

related matters were successful. On June 19, 1995, following the submission of settlement proposals in these other related proceedings, I issued an Order directing the Department to file the submission required under Section 788.14 of the Regulations by August 18, 1995 against van Croonenburg. In accordance with that Order, the Department made the submission required by Section 788.14 of the Regulations on August 18, 1995.

Background

The August 30, 1991 Charging Letter alleges that, on four separate occasions between on or about September 2, 1986 and on or about June 8, 1987, van Croonenburg, in his capacity as President of Marli S.A. (Marli),[3] reexported U.S.-origin commodities from Switzerland to Austria without first obtaining the reexport authorization required by Section 774.1 of the Regulations. Schedule A to the Charging Letter, which was attached thereto and incorporated by reference therein, identifies the approximate date of reexport from Switzerland to Austria, the commodity involved, the Samata S.A. (Samata) Purchase Order number, the House Air Waybill number for the exports from Switzerland to Austria that were made by air.

Finding

On the basis of the Department's submission and all of the supporting evidence presented, I have determined that van Croonenburg committed the violations alleged in the Charging Letter issued against him on August 30, 1991.

For those violations, the Department urges as a sanction that van Croonenburg's export privileges be denied for 15 years. In light of the nature of the violations, I concur in the Department's recommendation.

Accordingly, it is therefore ordered,

First, that all outstanding individual validated licenses in which van Croonenburg appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Exporter Services for cancellation. Further, all of van Croonenburg's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

Second, that Herman van Croonenburg, Urb. El Paraiso, Parc. 145—Villa Favorita, E–29680 Estepona—Malaga, Spain, and all of his successors, assigns, officers, representatives, agents, and employees, shall, for a period of 15 years from the date of final agency action, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, and subject to the Regulations.

A. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

B. After notice and opportunity for comment as provided in Section 788.3(c) of the Regulations, any person, firm, corporation, or business organization related to the respondent by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

C. As provided by Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Exporter Services, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Third, that a copy of this Order shall be served on van Croonenburg and the Department in accordance with Section 788.16(b)(2) of the Regulations.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the final action by the Under Secretary for Export Administration, in accordance with the Act (50 U.S.C. A. app. § 2412(c)(1)) and the Regulations (15 CFR 788.23).

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 389B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Dated: August 22, 1995.

Edward J. Kuhlmann,

Administrative Law Judge.

[FR Doc. 95–23060 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DT–M

[3] A Charging Letter was also issued against Marli. However, on January 6, 1992, after several attempts to serve Marli has failed, the Department withdrew that Charging Letter after it determined that Marli had ceased to exist. *See* Notice of Withdrawal of Charging Letter, filed January 6, 1992.

Foreign-Trade Zones Board

[Order No. 774]

Grant of Authority For Subzone Status, Brother Industries (U.S.A.) Inc. (Typewriters and Word Processors) Bartlett, Tennessee

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 Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Memphis, Tennessee, grantee of Foreign-Trade Zone 77, for authority to establish special-purpose subzone status for the typewriter and word processor manufacturing facilities of Brother Industries (U.S.A.) Inc., located in Bartlett, Tennessee, was filed by the Board on November 22, 1994, and notice inviting public comment was given in the Federal Register (FTZ Docket 38–94, 59 FR 62709, 12/6/94); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 77B) at the Brother Industries (U.S.A.) Inc. facilities in Bartlett, Tennessee, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 11th day of September 1995.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–23119 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 51–95]

Foreign-Trade Zone 167—Green Bay, WI Application for Subzone Status Robin Manufacturing U.S.A., Inc., Plant (Internal-Combustion Engines) Hudson, WI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Brown County, Wisconsin, grantee of FTZ 167, requesting special-purpose subzone status for the small internal-combustion engine manufacturing plant of Robin Manufacturing U.S.A., Inc. (RMI) (a joint venture between Polaris Industries, Inc. (Minneapolis, MN), and Fuji Heavy Industries (Japan)), located in Hudson, Wisconsin. 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 September 5, 1995.

The RMI plant (2 acres/56,000 sq.ft.) is located at 1201 Industrial Road in Hudson (St. Croix County), Wisconsin, some 15 miles east of Minneapolis—St. Paul, Minnesota. The facility (19 employees) is used to produce spark-ignition internal combustion engines (up to 500 cc in size) for recreational vehicles such as golf carts and all-terrain vehicles (up to 100,000 units per year). The company also plans to manufacture industrial engines (up to 1,000 cc) for farm, lawn, and garden equipment (HTS# 8407.32.20, 8407.33.30). Currently all of the engines' components are sourced abroad including: crankcases, cylinder heads, manifolds, balancer shafts, connecting rods, pistons, rocker arms, intake/exhaust valves, bearings and housings, flywheels, pulleys, gaskets, magnetos, fasteners, housings, fuel pumps, electrical components, and spark plugs (1995 duty rate range: 0.2—9.3%). The application indicates that 50 percent of all parts (by value) will be purchased from U.S. suppliers within three years after approval of subzone status.

Zone procedures would exempt RMI from Customs duty payments on the foreign components used in export production. On its domestic sales, RMI would be able to choose the lower duty rates that apply to finished engines (duty free, 2.5%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the plant'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 on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 17, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 4, 1995.

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

U.S. Department of Commerce District Office, 108 Federal Building, 110 South Fourth Street, Minneapolis, MN 55401.

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

Dated: September 11, 1995.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 95–23118 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 090795C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) will convene a public meeting of its salmon stock review teams.

DATES: The meeting will begin on September 28, 1995, at 10 a.m.

ADDRESSES: The meeting will be held at the Natural Resource Building, 1111 Washington Street, SE, Room 630, Olympia, WA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to initiate a review of the status of some stocks of Puget Sound and Quillayute chinook, and Strait of Juan de Fuca coho. This review is required under the Council's salmon fishery management plan when a stock fails to meet its spawning escapement objective for 3 consecutive years.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Lawrence D. Six, Executive Director, at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 12, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–23121 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

September 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On the request of the Government of the Dominican Republic, the Government of the United States has agreed to increase the current guaranteed access level (GAL) for Category 442.

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 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 12, 1995.

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 March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 19, 1995, you are directed to increase the guaranteed access level for Category 442 to 105,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23061 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DR–F

Import Charges for Certain Cotton Textile Products Produced or Manufactured in Malaysia

September 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs applying charges to 1994 levels.

EFFECTIVE DATE: September 19, 1995.

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).

Based on investigations conducted by the Government of the United States, CITA has determined that in 1994 textile products, produced or manufactured in Malaysia and entered into the United States with the incorrect country of origin, were transshipped in circumvention of the Bilateral Textile Agreement, effected by exchange of notes dated January 12 and 28, 1994, between the Governments of the United States and Malaysia. Consultations were held between the Governments of the United States and Malaysia on this matter on June 6–7, 1994. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1994 quota levels, as notified to the Textiles Monitoring Body, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), for the categories listed below. The 1994 level for Category 339 is currently filled. Therefore, charges in the amount of 12,835 dozen will be applied to the 1995 limit for Category 339.

Category	Amount to be charged
339	12,835 dozen.
341	4,455 dozen.

The U.S. Government is taking this action pursuant to the January 12 and 28, 1994 Agreement.

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 59 FR 65531, published on December 20, 1994). Also see 58 FR 65580, published on December 15, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the ATC, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 12, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Textile Agreement, effected by exchange of notes dated January 12 and 28, 1994, between the Governments of the United States and Malaysia, I request that, effective on September 19, 1995, you charge the following amounts to the following categories for the period which began on January 1, 1994 and extended through December 31, 1994 (see the directive dated December 9, 1993), as notified to the Textiles Monitoring Body, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Amount to be charged
339	12,835 dozen.
341	4,455 dozen.

This letter will be published in the Federal Register.

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23063 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 12, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 443, 647/648 and 659–H are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17334, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 12, 1995.

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 March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on September 19, 1995, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Levels in Group I	
443	41,888 numbers.
647/648	973,502 dozen.
659–H [2]	1,223,903 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–23062 Filed 9–15–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources 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 November 17, 1995.

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, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

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 Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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: September 12, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Extension

Title: Addendum to Federal District PLUS Loan Promissory Note Endorser

Frequency: One Time

Affected Public: Individuals or households

Reporting Burden:

Responses: 34,000

Burden Hours: 17,000

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: Applications for Federal Direct PLUS Loans who have adverse credit may obtain endorsers. The information collected on this form is used to check credit of endorsers. The respondents are endorsers.

Office of Postsecondary Education

Type of Review: Extension

Title: Federal Direct PLUS Loan Application and Promissory Note

Frequency: One Time

Affected Public: Individuals or households

Reporting Burden:

Responses: 135,000

Burden Hours: 67,000

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This information is used to determine applicant eligibility for Federal Direct PLUS Loans. The respondents are parents applying for benefits.

Office of Postsecondary Education

Type of Review: Extension

Title: Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Promissory Note and Disclosure

Frequency: One Time

Affected Public: Individuals or households

Reporting Burden:

Responses: 2,757,000

Burden Hours: 459,316

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This information is used to determine eligibility for Federal Direct Stafford/Ford Loans and/or Federal Direct Unsubsidized Stafford/Ford Loans. The respondents are students applying for benefits.

[FR Doc. 95–23035 Filed 9–15–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG95–88–000, et al.]

Central Termoélectrica Buenos Aires S.A., et al.; Electric Rate and Corporate Regulation Filings

September 11, 1995.

Take notice that the following filings have been made with the Commission:

1. Central Termoélectrica Buenos Aires S.A.

[Docket No. EG95–88–000]

On August 30, 1995, Central Termoélectrica Buenos Aires S.A., Avda. Espana 3301, (1107) Capital Federal, Buenos Aires, Argentina, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992. The applicant is a corporation that seeks exempt wholesale generator status with regard to its eligible facility under construction in Buenos Aires, Argentina. The facility will consist initially of one 200 MW simple cycle combustion turbine generator, fueled by oil or gas. In a second phase, the facility will be converted to combined cycle operation and enlarged to 320 MW. The facility will include such interconnection components as are necessary to interconnect the facility with the utility grid.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Entergy S.A.

[Docket No. EG95–89–000]

On August 30, 1995, Entergy S.A., c/o Entergy Power Group, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992. The applicant is a corporation that is engaged directly and indirectly and exclusively in owning and operating natural gas/oil-fired generating units located in and around the greater metropolitan area of Buenos Aires, Argentina. The total installed generating capacity of the facilities currently in operation is 1260 MW.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Entergy Power Development Corporation

[Docket No. EG95–90–000]

On September 1, 1995, Entergy Power Development Corporation, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that is engaged directly or indirectly and exclusively in owning or operating, or both owning and operating, several electric power facilities. The applicant has previously been found to be an exempt wholesale generator. This application is occasioned by the applicant's intended acquisition of an indirect ownership interest in an eligible facility under construction in Buenos Aires, Argentina. The facility will consist initially of one 200 MW simple cycle combustion turbine generator, fueled by oil or gas. In a second phase, the facility will be converted to combined cycle operation and enlarged to 320 MW. The facility will include such interconnection components as are necessary to interconnect the facility with the utility grid.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Northeast Utilities Service Company

[Docket No. ER95–1686–000]

Take notice that Northeast Utilities Service Company (NUSCO) on September 1, 1995, tendered for filing revisions to its Long-Term Firm, Short-Term, Non-Firm and Network Transmission Tariffs. NUSCO states that the revised tariffs reflect the Commission's fixed charge methodology and satisfy the comparability standards contained in the Commission's Open Access NOPR, Docket No. RM95–8.

NUSCO states that a copy of this filing has been mailed to all customers with

whom it has entered into service agreements under its transmission tariffs, to parties in the ongoing compliance proceeding in Docket No. EC90–10–007 and to the state commissions in each of the six New England states and New York.

NUSCO requests that the Tariffs become effective on November 1, 1995.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Power Holding I, Ltd.

[Docket No. EG95–91–000]

On September 1, 1995, Entergy Power Holding I, Ltd., Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that is engaged directly or indirectly and exclusively in owning or operating, or both owning and operating, several electric power facilities. The applicant has previously been found to be an exempt wholesale generator. This application is occasioned by the applicant's intended acquisition of an indirect ownership interest in an eligible facility under construction in Buenos Aires, Argentina. The facility will consist initially of one 200 MW simple cycle combustion turbine generator, fueled by oil or gas. In a second phase, the facility will be converted to combined cycle operation and enlarged to 320 MW. The facility will include such interconnection components as are necessary to interconnect the facility with the utility grid.

Comment date: September 29, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. New York State Electric & Gas Corporation

[Docket No. ER95–1589–000]

Take notice that on August 18, 1995, New York State Electric & Gas Corporation (NYSEG) tendered for filing a letter advising the Commission why no termination notice was filed in the agreement scheduled to terminate on June 30, 1995, between NYSEG and the New York Power Authority.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER95–1662–000]

Take notice that on August 31, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tender and request the Commission to accept a Transmission Service Agreement which provides for 50 MW of Reserved Transmission Service to Wisconsin Power and Light Company. The source party is Otter Tail Power Company and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of August 5, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreement may be accepted for filing effective on the date requested.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER95–1663–000]

Take notice that on August 31, 1995, Illinois Power Company (IPC), tendered for filing an Interchange Agreement between IPC and Wisconsin Power and Light Company (WP&L). IPC states that the purpose of this agreement is to provide for the selling of capacity and energy by IPC to WP&L.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota)

[Docket No. ER95–1664–000]

Take notice that on August 31, 1995, Northern States Power Company (Minnesota) (NSP), tendered for filing a Supplemental Power Agreement among NSP, the City of Glencoe (City) and the Central Minnesota Municipal Power Agency (CMMPA) dated July 30, 1995. This agreement allows CMMPA to purchase additional power and energy from NSP on behalf of the City.

NSP requests that the Commission accept for filing this agreement effective as of December 1, 1995.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Hampshire

[Docket No. ER95–1665–000]

Take notice that on August 31, 1995, Public Service Company of New Hampshire (PSNH) pursuant to Section 205 of the Federal Power Act, filed proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under PSNH Federal Energy Regulatory Commission Rate Schedules Nos. 133, 134, 135 and 142. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the funding requirements for decommissioning Seabrook Unit 1.

PSNH has requested an effective date of November 1, 1995 for the adjusted charges.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Great Bay Power Corporation

[Docket No. ER95–1666–000]

Take notice that on August 31, 1995, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Phibro Inc. and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreement is proposed to be effective September 1, 1995.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER95–1667–000]

Take notice that on August 31, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement between itself and Central Illinois Light Company (CILCo). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on CILCo, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER95–1668–000]

Take notice that on August 31, 1995, Northeast Utilities Service Company tendered for filing: (1) a Notice of Termination of Transmission Tariff No. 4; and (2) a request for waiver of compliance filing.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER95–1669–000]

Take notice that on August 31, 1995, Virginia Electric and Power Company (the Company), tendered for filing a letter agreement implementing the rate schedules included in the Interconnection and Operating Agreement between the Company and Old Dominion Electric Cooperative.

Copies of the filing were served upon Old Dominion Electric Cooperative, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER95–1670–000]

Take notice that on August 31, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Consolidated Edison Company of New York, Inc. and Virginia Power, dated August 31, 1994, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Consolidated Edison Company of New York, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the New York Public Service Commission, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. The Washington Water Power Company

[Docket No. ER95–1671–000]

Take notice that on August 31, 1995, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with TransCanada Northridge Power Ltd. along with a Certificate of Concurrence with respect to exchanges. WWP requests waiver of the prior notice requirement and requests an effective date of September 1, 1995.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Northern Indiana Public Service Company

[Docket No. ER95–1672–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Heartland Energy Services, Inc. (Heartland). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to Heartland under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER95–1673–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Michigan South Central Power Agency (the Agency). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to the Agency under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Northern Indiana Public Service Company

[Docket No. ER95–1674–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and NorAm Energy Services, Inc. (NES). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to NES under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER95–1675–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Enron Power Marketing, Inc. (EPU). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to EPU under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Northern Indiana Public Service Company

[Docket No. ER95–1676–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Citizens Lehman Power Sales (Citizens). Under this Service Agreement, Northern Indiana Public Service Company agrees to provide services to Citizens under Northern Indiana Public Service Company's Power Sales Tariff, which

was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Northern Indiana Public Service Company

[Docket No. ER95–1677–000]

Take notice that on August 31, 1995, Northern Indiana Public Service Company (Northern), pursuant to Section 35.13 of the Federal Energy Regulatory Commission's Rules and Regulations, 18 CFR 35.13, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Tennessee Power Company (TPCO). Under this Service Agreement, Northern Indiana Public Service agrees to provide services to TPCO under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER95–1680–000]

Take notice that on August 29, 1995, Commonwealth Edison Company (ComEd) submitted two Service Agreements, establishing Heartland Energy Services (Heartland), and Catex Vitol Electric, L.L.C. (Catex Vitol), as customers under the terms of ComEd's Transmission Service Tariff FTS–1 (FTS–1 Tariff). The Commission has previously designated the FTS–1 Tariff as FERC Electric Tariff, Original Volume No. 4.

ComEd requests an effective date of August 4, and August 14, 1995, respectively, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Heartland, Catex Vitol and the Illinois Commerce Commission.

Comment date: September 25, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23064 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11142–000 Maine]

Consolidated Hydro Maine, Inc., Notice of Availability of Draft Environmental Assessment

September 12, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Estes Lake Hydroelectric Project, located in the townships of Sanford and Alfredin York County, Maine and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please affix ''Estes Lake Hydroelectric Project No. 11142'' to all comments. For further information, please contact Frankie Green at (202) 501–7704.

Lois D. Cashell,

Secretary

[FR Doc. 95–23021 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–56–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 12, 1995.

Take notice that on September 1, 1995, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with a proposed effective date of October 1, 1995:

Eighth Revised Sheet No. 1101

Algonquin states that the purpose of this filing is to reflect a change in Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23020 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–118–001]

Arkansas Western Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

September 12, 1995.

Take notice that on September 6, 1995, Arkansas Western Pipeline Company (AWP) tendered for filing a corrected hard copy of First Revised Sheet No. 4 to its FERC Gas Tariff First Revised Volume No. 1.

AWP states that the purpose of this filing is to file a corrected hard copy of the tariff sheet (originally filed on August 28, 1995) to implement for the first time an ACA charge in its rates. Specifically, the hard copy of the ACA filing erroneously omitted the word ''any'' in the following sentence, which appears at the bottom of the First

Revised Sheet No. 4: ''All rates exclusive of any fuel usage and applicable shrinkage of zero percent (0%).''

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23026 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–400–001]

Distrigas of Massachusetts Corporation; Notice of Tariff Filing

September 12, 1995.

Take notice that on September 6, 1995, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing pursuant to Part 154 of the regulations of the Federal Energy Regulatory Commission (Commission) compliance tariff sheets as specified in the letter order issued in this proceeding on August 28, 1995.

DOMAC states that copies of the filing were served upon all of DOMAC's customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23023 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–4–000]

Granite State Gas Transmission Inc.; Notice of Change in Annual Charge Adjustment

September 12, 1995.

Take notice that on September 6, 1995, Granite State Gas Transmission, Inc. (Granite State) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below containing changes in rates for effectiveness on October 1, 1995:

Fifth Revised Sheet No. 21
Sixth Revised Sheet No. 22
Fifth Revised Sheet No. 22

According to Granite State, the revised tariff sheets are submitted to reflect the Annual Charge Adjustment authorized for the 1996 fiscal year in its transportation rate schedules.

Granite State further states that copies of its filing have been mailed to its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23024 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–185–008]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 12, 1995.

Take notice that on September 5, 1995, Northern Natural Gas Company (Northern) tendered for filing to become part of the Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective September 1, 1995:

First Revised Sheet No. 105

Northern states that such tariff sheet is being submitted in compliance with the Commission's ''Order on Rehearing'', issued August 3, 1995, in Docket No. RP95–185–002, to clarify the tariff provision addressing turnback of TFF capacity.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23022 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES95–37–001 and ES95–37–002]

Texas-New Mexico Power Company and Texas Generating Company II; Notice of Amended Application

September 12, 1995.

Take notice that on September 8, 1995, Texas-New Mexico Power Company (TNP) and Texas Generating Company II (TGC II) filed amendments the application filed in Docket No. ES95–37–000. Such amendments provide explanations of both an existing credit agreement which was authorized by the Commission in Docket No. ES94–12–000 et al.[1] and an amended credit agreement which TNP and TGC II are proposing to enter into. The amendments differentiate between the two agreements, as well as noting the anticipated benefits to be realized by entry into the proposed amended credit agreement. TNP notes that entry into the amended credit agreement will allow the refinancing of currently outstanding long-term debt with debt under the amended credit agreement which will bear a cost lower than the existing long-term debt. TNP also notes that its long-term debt is not anticipated to be of investment grade until 1998 and would therefore have a cost higher than the

[1] 66 FERC ¶ 62,054 (1994).

debt under the amended credit agreement. In addition to savings to be realized through the refinancing the existing long-term debt, TNP further notes that, under the terms of the amended credit agreement, it will also realize cost savings as compared to borrowings under the present credit agreement which would be replaced by the proposed credit agreement.

TNP and TGC II also note that the proposed credit agreement is, in essence, an extension of the existing credit agreement for an additional two years but under terms that are simpler and more favorable than the terms of the existing credit agreement.

TNP and TGC II also submitted amended Exhibit C, Balance Sheet; Exhibit D, Income Statement; and E, Statement of Cash Flows and Computation of Interest Coverage, for the twelve months ended June 30, 1995, as well as supplemental information on TNP's anticipated financial condition. The amendments also corrected a reference to TGC II in the original filing which should have been a reference to TNP.

TNP and TGC II also request Commission action by September 25, 1995, instead of September 15, 1995 as originally requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants partiers to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23027 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–76–000]

Wyoming Interstate Company, Ltd.; Notice of Filing

September 12, 1995.

Take notice that on August 30, 1995, Wyoming Interstate Company, Ltd. (WIC) filed of the following tariff sheets to its FERC Gas Tariff, with an effective date of September 1, 1995:

First Revised Volume No. 1
First Revised Sheet No. 5.1
Second Revised Volume No. 2
First Revised Sheet No. 4A
Fourth Revised Sheet No. 5

WIC proposes to reduce its current Fuel Gas and Unaccounted-for Gas (''FL&U'') percentage from one percent to a new level of zero percent. This filing is a non-annual filing pursuant to Section 24 of WIC's First Revised Volume No. 1 and Article 31 of WIC's Second Revised Volume No. 2. Since the December 1, 1994 effective date of the current FL&U percentage WIC states it has experienced a FL&U percentage of less than one percent on its system and a change at this time will result in WIC's transportation customers receiving the benefit of a lower FL&U percentage during the winter heating season.

WIC states that copies of this filing were served on its customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–23025 Filed 9–15–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL–5296–8]

Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the California Air Resources Board (CARB) access to information that has been, or will be, submitted to the EPA under Section 114 of the Clean Air Act (CAA), as amended.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to the EPA will occur no sooner than ten days after issuance of this notice.

FOR FURTHER INFORMATION CONTACT: Doris Maxwell, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5312.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under Section 114 of the CAA that the EPA may provide the above-mentioned State agency access to these materials on a need-to-know basis.

In accordance with 40 CFR 2.301(h), the EPA has determined that CARB requires access to CBI concerning consumer and commercial products submitted to the EPA under Section 183(e) and Section 114 of the CAA in order to carry out its duties under California environmental protection laws and the CAA. Some of the information may be claimed or determined to be CBI. The CARB will be required to sign a nondisclosure agreement and will be briefed on appropriate security procedures before being permitted access to CBI. All CARB access to CAA CBI will take place at CARB's facilities. The CARB will have appropriate procedures and facilities in place to safeguard the CAA CBI to which CARB has access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 1998.

Dated: September 11, 1995.

Mary Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–23110 Filed 9–15–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5297–2]

Jack's Creek/Sitkin Smelting Superfund Site de Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: United States Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The United States Environmental Protection Agency is

proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liability under CERCLA of Joseph Smith and Sons, Inc. (''Joseph Smith''), for response costs incurred by the United States Environmental Protection Agency at the Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania.

DATES: Comments must be provided on or before October 18, 1995.

ADDRESS: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania, U.S. EPA Docket No. III–94–40–DC.

FOR ADDITIONAL INFORMATION CONTACT: Daniel Isales (215) 597–4774, or Pamela Lazos (215) 597–8504, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

Notice of De Minimis Settlement

In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), and Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), notice is hereby given of a proposed administrative settlement concerning the Jack's Creek/Sitkin Smelting Superfund Site in Maitland County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on June 30, 1995 and is subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for damages to natural resources, is also subject to agreement in writing by the Department of the Interior (''DOI'').

The settling party has agreed to pay $14,066.18 to United States Environmental Protection Agency toward EPA CERCLA response costs and $506.25 to DOI for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. The grant of a covenant not to sue for damages to natural resources by DOI to those parties paying their share of such allocated costs is subject to agreement in writing by DOI pursuant to Section 122(j) of CERCLA, 42 U.S.C. 9622(j).

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. Moreover, pursuant to Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. 6973(d), the public may request a meeting in the affected area. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Daniel Isales at (215) 597–4774 or Pamela Lazos at (215) 597–8504.

W.T. Wisniewski,

Acting Regional Administrator, EPA Region III.

[FR Doc. 95–23109 Filed 9–15–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

September 11, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0106.

Expiration Date: 08/31/98.

Title: Reports of Overseas Telecommunications Traffic—Section 43.61.

Estimated Annual Burden: 2,370 total annual hours; 14.81 hours per response; 160 respondents.

Description: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0511.

Expiration Date: 08/31/98.

Title: ARMIS Access Report, FCC Report 43–04.

Estimated Annual Burden: 172,500 total annual hours; 1150 hours per response; 150 respondents.

Description: The Access Report is needed to administer our accounting, jurisdictional separations and access charge rules, and to analyze revenue requirements and rates of return and to collect financial and operating data from all Tier 1 local exchange carriers.

OMB Control No.: 3060–0512.

Title: ARMIS Quarterly Report.

Estimated Annual Burden: 132,000 total annual hours; 220 hours per response; 150 respondents.

Description: The Quarterly Report is needed to administer the accounting, jurisdictional separations and access charge rules, and to analyze revenue requirements and rates of return and to collect financial and operating data from all Tier 1 local exchange carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23008 Filed 9–15–95; 8:45 am]

BILLING CODE 6712–01–F

[Report No. AUC–95–06]

Auction Notice and Filing Requirements for 493 BTA Authorizations for Multipoint Distribution Service in the 2 GHz Band, Scheduled for November 13, 1995

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This Public Notice, released September 5, 1995, announced the auction and filing requirements for the 493 BTA authorizations for the Multipoint and/or Multichannel Distribution Service (MDS) in the 2 GHz

Band, scheduled to begin November 13, 1995. The Public Notice included, as an Appendix, an upfront payment schedule. On September 12, 1995, the FCC's Wireless Telecommunications Bureau issued another Public Notice with a revised upfront payment schedule, which differed slightly from September 5, 1995 Appendix and supersedes the schedule previously published. Both the September 5, 1995 and the September 12, 1995 Public Notices should be read together. These Public Notices are directed toward the Commission's goal of efficiently distributing the unused MDS spectrum through competitive bidding, and are designed to assist prospective bidders in preparing for the upcoming MDS auction.

FOR FURTHER INFORMATION CONTACT: The FCC auction contractor, Tradewinds International, Inc., at (202) 637–FCC1 (637–3221).

The complete text of the Public Notice dated September 5, 1995 follows. Copies of this item is available for public inspection in Room 207, 2033 M Street, NW., Washington, DC and may also be obtained from the FCC copy contractor, ITS, Inc. at (202) 418–0620, and the FCC auction contractor, Tradewinds International, Inc. at (202) 637–FCC1 (637–3221).

Report No. AUC–95–06, Auction No. 6, September 5, 1995

I. Introduction

On Monday, November 13, 1995, the Federal Communications Commission (FCC or Commission) will commence a simultaneous multiple round auction for 493 authorizations to provide single channel Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS), collectively referred to as MDS. The frequencies allocated to MDS are as follows: 2150–2156 MHz (designated as Channel 1); 2156–2162 MHz (designated as Channel 2) or 2156–2160 (designated as Channel 2A); 2596–2602 MHz, 2608–2614 MHz, 2620–2626 MHz, and 2632–2638 MHz (designated as Channels E1, E2, E2, and E4, respectively); 2602–2608 MHz, 2614–2620 MHz, 2626–2632 MHz, and 2638–2644 MHz (designated as Channels F1, F2, F3 and F4, respectively); 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz (designated as Channels H1, H2 and H3, respectively). In 1992, the frequency spectrum of 2160–2162 MHz was reallocated to emerging technologies, and thus, any subsequent MDS use of these 2 MHz will be secondary. The authorizations to be auctioned will authorize the construction of facilities to provide service on the usable MDS channels within the 493 Basic Trading Area (BTAs) and BTA-like areas in the United States. A channel is usable if the proposed station design is in compliance with the Commission's interference standards. The channels allocated to MDS, when supplemented with leased channels from the Instructional Television Fixed Service (ITFS), are generally used to provide multichannel video programming service (popularly referred to as ''wirless cable'') to subscribers.

In each of the 493 BTAs, one authorization will be offered for bid. Bidders should note that MDS is a service heavily encumbered with previously authorized and proposed MDS and ITFS facilities. Most of the thirteen MDS channels have already been authorized in the largest metropolitan areas, especially in the eastern half of the United States. Given the limited amount of usable MDS spectrum remaining and the presence of incumbents in most BTAs, each prospective bidder should carefully evaluate the BTAs in which it is interested prior to the commencement of bidding. The attached Appendix lists the market number, authorization number and population of each BTA, as well as the upfront payment amount associated with each BTA and reduced upfront payment amount for eligible small businesses.

The precise schedule for bidding in the first week of the auction will be announced approximately two weeks prior to the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all BTA service areas. Bidding in this auction will only be permitted from remote locations, either electronically (by computer) or telephonically.

Those wishing to participate in the auction must submit a ''short-form'' application on FCC Form 175–M in accordance with the Commission's rules and instructions in this Public Notice and in the Bidder Information Package. Applicants should be aware that the FCC Form 175–M is a revised form specifically for this MDS auction and will be the only form accepted for filing. The FCC Form 175–M must be received no later than 5:30 p.m. Eastern Daylight Time on Tuesday, October 10, 1995, and must be received either electronically or manually pursuant to the instructions set forth in the Bidder Information Package. Applicants for the MDS auction are encouraged to file their FCC Form 175–M electronically. Applicants should also be aware that only those applicants who file applications electronically will be permitted the option to bid electronically. Applicants who file their applications manually will only be permitted to bid telephonically. Limited instructions regarding electronic filing are contained in this Public Notice. More detailed instructions on electronic filing will be contained in the Bidder Information Package. Applicants whose FCC Forms 175–M have been accepted will be required to submit an upfront payment (in U.S. dollars) to be eligible to participate in the auction. As detailed in Section II.B. of this Public Notice, the upfront payment must be made by wire transfer or cashier's check payable to the ''Federal Communications Commission'' or ''FCC'' and must be received on or before Monday, October 30, 1995, at the Mellon Bank in Pittsburgh, Pennsylvania. No other form of payment will be accepted.

A. Bidder Information Package

Prospective bidders who have already contacted the FCC Auction Hotline expressing an interest in MDS will receive the Bidder Information Package for the MDS auction approximately ten to fifteen business days from the issuance of this Public Notice. Other prospective applicants may obtain the Bidder Information Package for the MDS auction by contacting Tradewinds International, Inc., at (202) 637–FCC1 (637–3221).

The FCC recently issued a Report and Order (WT Docket No. 95–69, 60 Fed. Reg. 38,276 (July 26, 1995)) establishing fair and reasonable fees for Bidder Information Packages. Although all prospective applicants who request a Bidder Information Package will receive their first copy of this package for free, additional copies will be provided at a cost of $16.00 per package (including postage). Payment for additional Bidder Information Packages may be made by Visa/Master Card or check payable to the ''Federal Communications Commission'' or ''FCC'' and mailed to Tradewinds International, Inc.

The Bidder Information Package will contain the following information:

1. A list of BTA authorizations to be offered simultaneously;
2. Detailed procedures, terms and conditions of the auction;
3. Detailed instructions regarding the completion and filing of the FCC Form 175–M, including instructions on electronic filing and remote access of FCC Form 175–M applications filed with the Commission;
4. Electronic and telephone bidding procedures;
5. All applications/forms needed to participate in the FCC Auction:

a. A short-form application to participate in the auction (FCC Form 175–M) for bidders who intend to file manually, Additionally, a supplemental form (FCC Form 175–S) will be included for those who wish to apply for more than five markets.

b. An FCC Remittance Advice Form (FCC Form 159) to be submitted by each bidder with its upfront payment, and by each winning bidder with its down payment, final payment and installment payments, if applicable (as described below), including instructions on filling out the form and samples of completed FCC Form 159s;

c. A registration form to participate in the FCC's Auction Seminar to be held at the FCC's auction facility in Washington, D.C. on Tuesday, October 24, 1995. This seminar is only for applicants whose FCC Forms 175–M have been filed;

d. An order form for the purchase of remote electronic bidding software;

6. Wire transfer instructions;

7. A partial bibliography of auction specific FCC rules and regulations;

8. The Report and Order in MM Docket No. 94–131 and PP Docket No. 93–253, FCC 95–230 (released June 30, 1995), summarized at 60 Fed. Reg. 36,524 (July 17, 1995) (MDS Report and Order), which modified the MDS application process and adopted competitive bidding procedures for MDS. This MDS Report and Order contains the amended part 21 rules pertaining to MDS and a draft application for an MDS authorization (FCC Form 304 or ''long-form'' application) to be submitted after the auction by winning bidders to obtain a station license;

9. An FCC Licensee Qualification Report (FCC Form 430), which must be submitted after the auction by winning bidders as part of their Form 304 long-form applications or statements of intention; and

10. Other general auction information.

B. Relevant Authority

Prospective Bidders must familiarize themselves thoroughly with the procedures, terms and conditions (collectively, ''Terms'') contained in the Second Report and order in PP Docket No. 93–253, 9 FCC Rcd 2348 (1994), 59 Fed. Reg. 22,980 (May 4, 1994), Second Memorandum Opinion and Order in PP Docket No. 93–253, 9 FCC Rcd 7245 (1994), 59 Fed. Reg. 44,272 (Aug. 26, 1994); the Erratum to the Second Memorandum Opinion and Order in PP Docket No. 93–253 (Oct. 19, 1994); and the MDS Report and Order (collectively referred to as ''the Relevant Orders''). The rules contained in the Relevant Orders, this Public Notice, and Terms in the Bidder Information Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the Terms before participating in the auction.

Potential bidders should also be aware of several items pending before the Commission that affect MDS. Thirteen petitions for reconsideration have been filed requesting that the Commission reconsider and/or clarify certain aspects of the MDS Report and Order. In addition, numerous members of the wireless cable industry have filed a request for a declaratory ruling asking that the Commission examine current MDS and ITFS operational requirements that were adopted before digital compression technology was envisioned, and reinterpret them appropriately for digital operations. Further, the Commission has announced the opening of an ITFS filing window from October 16–20, 1995. Prospective bidders should consider the impact of these pending matters in their valuation of the BTA service areas before submitting any bids in the auction.

The information contained in this Public Notice and in the Bidder Information Package may be amended or supplemented by the Commission at any time. The Commission will issue Public Notices to convey the new or supplemental information to prospective bidders. It is the responsibility of all prospective bidders to remain current with all FCC rules and with all Public Notices pertaining to this auction. Copies of FCC documents, including Public Notices, may be obtained for a fee by calling International Transcription Service, Inc. at (202) 857–3800. Additionally, prospective bidders may retrieve some of these documents from the FCC Internet node via anonymous FTP@fcc.gov.

II. Bidder Eligibility

In order to be eligible to bid in the MDS auction, bidders must (i) satisfy the Commission's eligibility requirements; (ii) submit a short-form application on FCC Form 175–M (and Form 175–S if necessary); and (iii) remit an upfront payment in compliance with applicable FCC rules and regulations. To meet the eligibility requirements for participation in this auction, prospective bidders must be qualified to receive a BTA authorization and an MDS station license. See 47 C.F.R. § 21.923. All prospective applicants should review carefully each of the rules contained in subparts A, B, C, D, E and K of Part 21 of the Commission's rules, as amended by the MDS Report and Order, as well as Subparts I and Q of Part 1 of the Commission's rules.

Bidders that qualify as small businesses or as small business consortia are eligible for reduced upfront payments (see Section II.B), bidding credits of 15% (a discount on the winning bid price) and installment payments (which allow eligible winning bidders to pay the net amount of their winning bids in installments). Small businesses are entities that, together with their affiliates, have average annual gross revenues that are not more than $40 million for the preceding three calendar years. See 47 C.F.R. §§ 21.960 and 21.961 for eligibility criteria and other terms pertaining to reduced upfront payments, bidding credits and installments payments. These special measures available to small businesses in the MDS auction are also discussed in the Bidder Information Package.

Winning bidders claiming eligibility as small businesses should note that they will be required to file supporting documentation to establish that they qualify as small businesses. See 47 C.F.R. § 21.960(e). Winning bidders claiming eligibility as small businesses may be subject to audits by the Commission to confirm bidder eligibility. See 47 C.F.R. § 21.960(f) and (g).

A. Short-Form Application (FCC Form 175–M)

In order to be eligible to bid, applicants must submit an FCC Form 175–M application to the Commission. This application must be received by the FCC no later than 5:30 p.m. Eastern Daylight Time on Tuesday, October 10, 1995. Late applications will not be accepted. Applications may be submitted electronically, by hand delivery, by certified U.S. mail (return receipt requested) or by private courier. Applicants should consult the detailed application procedures provided in the Bidder Information Package before submitting their FCC Form 175-M.

1. Completion of Form 175–M

Because of the significance of the FCC Form 175-M application to the auction, it is important to take note of the following requirements. Applicants will be required to complete all the items on the FCC Form 175-M. Applicants should carefully review §§ 1.2105(a)(2), 21.952 and 21.960(e) of the Commission's rules prior to completing FCC Form 175-M. In completing an FCC Form 175-M, applicants should note the following:

a. Applicants should apply for all authorizations for which they seek bidding eligibility. Bids will not be accepted for authorizations for which a applicant has not applied on its FCC Form 175–M.

b. For ''Auction Number,'' applicants filing manually should enter ''6''.

c. Applicants will be required to create a ten-digit FCC Account Number, which the Commission will use to identify and track applications. Applicants must create this FCC Account Number by using their taxpayer identification number (TIN) with a prefix of ''O'' (i.e., 0123456789). If, and only if, an applicant does not have a taxpayer identification number, the applicant may use its ten-digit area code and telephone number (i.e., 5552345678). Each applicant must use this same number when submitting additional information or material regarding its application, including on its FCC Form 159 (FCC Remittance Advice) accompanying any required auction deposits or payments submitted to the Commission. This number also must be used whenever an applicant writes, calls, or otherwise inquires about its application. Qualified bidders will need this number to participate in the auction.

d. Applicants must indicate on their FCC Form 175–M, if applicable, their status as a rural telephone company, minority-owned business, women-owned business and/or small business. See 47 C.F.R. §§ 1,2110(b), 21.961. The indication of applicants' status as a rural telephone company, minority-owned business or woman-owned business is for statistical purposes only. In Item #10, by checking the appropriate box to indicate status as a small business, an applicant certifies that it is eligible for the special measures available to small businesses, i.e., that, together with its affiliates, the applicant has annual gross revenues of less than $40 million. See 47 C.F.R. §§ 21.960, 21.961(b). All applicants should pay particular attention to the provisions of 47 C.F.R. §§ 1.2110, 21,960 and 21.961, relating to designed entities.

e. Applicants must identify on the FCC Form 175–M the market number for each authorization on which they seek bidding eligibility. The market number for each BTA is listed in the attached Appendix. The upfront payment amounts for each BTA are also included in this Appendix so that applicants can calculate upfront payments amounts required to be eligible to bid on the largest combination of ''activity'' or ''bidding'' units on which the applicants anticipate being active in any single round of bidding. See Section II.B below and the MDS Report and Order for detailed information about upfront payments. Applicants should note that the BTAs in the attached Appendix have been organized within the corresponding Major Trading Area (MTA). BTA service areas are based on Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38–39. Rand McNally organizes the 50 states and the District of Columbia into 487 BTAs. Six additional BTA-like areas will be licensed separately. They are:

(1) American Samoa;

(2) Guam;

(3) Northern Mariana Islands;

(4) Mayagüez/Aguadilla-Ponce, Puerto Rico. Consisting of the following municipos: Adjuntas, Aguada, Aguadilla, Añasco, Arroyo, Cabo Rojo, Coama, Guánica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Díaz, Lajas, Las Marías, Mayagüez, Maricao, Maunago, Moca, Patillas, Peñuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San Germán, Santa Isabel, Villalba, and Yauco;

(5) San Juan, Puerto Rico (including all other municipos not included in Mayagüez/Aguadilla-Ponce); and

(6) United States Virgin Islands.

f. Applicants must list the name(s) of the person(s) authorized to represent them at the auction (up to a maximum of three). Only those individuals listed on the Form 175–M will be authorized to submit and withdraw high bids for the applicant during the auction.

g. Applicants should read the ''certifications'' on the FCC Form 175–M carefully before submitting their application. Applicants who file their FCC Form 175–M applications electronically will not be required to transmit an original or electronic signature. However, similar to a manually filed FCC Form–M, upon submission, the certifying official has made the representation that he/she is an authorized representative of the applicant for the authorization(s) selected, and that he/she has read the instructions and the certifications and that all matters and things stated in the application and attachments, including exhibits, are true and correct. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure of certain information on agreements or arrangements concerning the auction. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, BTA authorization and/or station license forfeitures, and ineligibility to participate in future auctions, and/or criminal prosecution.

h. If the Commission wishes to communication with the applicant by mail, telephone or fax, such communications will be directed to the contact person identified on the FCC Form 175–M. A space has been provided for both a telephone number and a fax number. All written communications will be directed to the applicant at the address specified on the FCC Form 175–M. (Applicants must provide a street address; P.O. Box addresses should not be used.)

i. Applicants must attach an exhibit providing the name, citizenship and address of all partners, if the applicant is a partnership; of a responsible officer or director, if the applicant is a corporation; of the trustee, if the applicant is a trust; or, if the applicant is none of the foregoing, list the name, address and citizenship of a principal or other responsible person.

j. Applicants must attach an exhibit identifying all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to this auction.

k. Microfiche copies of the FCC Form 175–M and 175–S are required for all manual submissions in excess of five pages. For this auction, the FCC will allow submission of a 3.5″ diskette, in lieu of microfiche, which contains ASCII text (.TXT) files of all exhibit documentation attached to the FCC Form 175–M.

2. Electronic Filing of FCC Form 175–M Applications

The Commission recently implemented a remote access system to allow applicants to submit their FCC Form 175–M applications electronically. The remote access system for initial filing of the FCC Form 175–M applications will generally be available 24 hours per day beginning at approximately the same time as the release of the Bidder Information Package. FCC Form 175–M applications that are filed electronically using this remote access system must be submitted and confirmed by 5:30 p.m. Eastern Daylight Time on Tuesday, October 10, 1995. Late applications or unconfirmed submissions of electronic data will not be accepted. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections. (*See* Paragraph 5. *Procedures after FCC Form 175–M Applications are Filed and Process for Minor Corrections* below.) Detailed filing instructions will be provided in the Bidder Information Package.

Those applicants who wish to file their FCC Form 175–M electronically or review other FCC Form 175–M applications on-line will need the following hardware and software.

Hardware Requirements

- CPU: Intel 80386 or above (80486 or faster recommended).
- RAM: 8MB RAM (more recommended if you have multiple applications open).
- Hard Disk: 10MB available disk space.
- 1.44MB 3.5″ Floppy Drive (to install the remote system).
- Modem: v.32bis 14.4kbps Hayes compatible Modem.
- Monitor: VGA or above.
- Mouse or other pointing device.
- Three 1.44MB Floppy Disks.

Software Requirements

- FCC-provided application software (will be available via Internet or the FCC Bulletin Board Service).
- PPP Asynchronous Communications Package that is Winsock v1.1 compliant (tested—Trumpet v2.0b, NetManage Chaneleon v4.1, Wollongong Pathway Access for Windows v3.2.[1]
- Microsoft Windows 3.1 or above, or Microsoft Windows for WorkGroups v.3.11 or above.[1]

Applicants who wish to file their FCC Form 175–M applications electronically through the FCC Remote Access System must first download the FCC-provided application software from either the Internet or the FCC Bulletin Board System. Applicants should note that previous versions of the Remote FCC Form 175 software will not work. Applicants must download the version specific to this auction, FCC175v3.exe.

Internet Access

In order to download the compressed file from Internet, you will need to have access to the Internet and an ftp client software as follows:

FTP: The following instructions are for the command line version of ftp.

(1) Connect to the FCC ftp server by typing ftp fcc.gov.

(2) At the user name prompt, type anonymous [Enter].

(3) At the password prompt, type your Internet e-mail address [Enter].

(4) To allow the file to be downloaded type: binary [Enter].

(5) Change your current directory to the FCC175 directory by typing: cd/pub/Auctions/MDS/BTA/FCC175 [Enter].

(6) Use the get command to download files from the FCC ftp server by typing: get F175V3.EXE [Enter].

(7) If you wish to exit, type: bye [Enter].

Gopher: gopher.fcc.gov or use any gopher to get to ''all the gophers in the world'' then 'U.S.' then 'DC' then 'FCC'.

World Wide Web: ftp://fcc.gov.

Dial—In Access to the FCC Auction Bulletin Board System (BBS)

The FCC Auction Bulletin Board System provides dial-in access for the FCC-provided application software. In order to access the FCC Auction BBS, use a communications package that can handle at least xmodem protocol (e.g., pcAnyWhere, Telix, Procomm) to dial in to (202) 682–5851. Use the settings of 8 data bits, no parity and 1 stop bit (8,N,1).

For New Users Follow Steps 1–6, Otherwise Go to Step 7

(1) Type New, [Enter]. If the word ANSI is blinking, type Y for yes. If the word ANSI is not blinking, type N for No.

(2) Type in your first and last name and press [Enter]. This will be your login name.

(3) Type in your Telephone number and press [Enter].

(4) Type in your Fax number and press [Enter].

(5) Type in what you want your password to be and press [Enter].

(6) Retype the password for verification and press [Enter].

Once the Account Is Generated

(7) Type M for MDS Auction Files and press [Enter].

(8) Type P for Programs and Applications and press [Enter].

(9) Move the cursor to the file named F175V3.EXE and type [Control]–D (hold the Ctrl key down and press the D key) for Download and press [Enter].

(10) Type the letter representing the transfer protocol desired and press [Enter]. How the file is downloaded and where it gets downloaded depends on the transfer protocol package used.

(11) Repeat steps 10 and 11 to download additional files, or press X and [Enter] to Exit the screen.

To Exit

(12) Type X to Exit and press [Enter] and continue to do so until asked if you want to Exit the BBS. Press Y for Yes when asked to verify your leaving.

The FCC-provided application software available through Internet and the Auction BBS will be in a self-extracting compressed file format. Once the compressed file has been downloaded, you will need to generate the installation disks.

To generate the installation disks, type F175V3.EXE/! and press [Enter].

The extracted files will be executable programs for submitting and reviewing FCC Form 175-M applications along with a README.TXT file. The text file will provide instructions for installing the software on the applicant's personal computer. For technical assistance in downloading, extracting, installing or using the FCC application software contact the FCC Technical Support Hotline at (202) 414–1260.

3. Manual Filing of FCC Form 175–M

For those applicants who file manually, whether mailed, hand delivered or sent by private courier, applications must be addressed to: Office of the Secretary, Attn: Auction 6 Short-Form Processing, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554.

Applications will not be accepted if delivered to any other location. Applicants who wish to file manually should note that the FCC Form 175–M has been revised specifically for this auction. Only the revised FCC Form 175–M will be accepted for filing. Additionally, applicants should be aware that if they file manually they will only be permitted to submit their bids telephonically. Electronic bidding is reserved for parties who submit their applications electronically.

4. Application Fee

No application fee need accompany the FCC Form 175–M for the auction.

5. Procedures After FCC Form 175–M Applications Are Filed and Procedures for Minor Corrections

After the deadline for filing the FCC Form 175–M applications has passed, the Commission will process all applications to determine whether they are acceptable for filing. The Commission will issue a Public Notice listing all applications which are accepted for filing, rejected, and those which have minor defects that may be corrected. The Public Notice will also announce the deadline for filing corrected applications. As described more fully in the Commission's general auction rules and in the MDS Report and Order, applicants may make minor corrections to their FCC Form 175–M applications. Applicants will not be permitted to make major modifications to their applications. In particular, failure to sign a manually filed FCC Form 175–M cannot be corrected and will cause the application to be

[1] The FCC is in the process of testing Windows95. Contact the FCC Technical Support Hotline at (202) 414–1260.

dismissed and the applicant to be ineligible to participate in the auction. See 47 C.F.R. §§ 1.2105(b); 21.952(c). Applicants who file their FCC Form 175–M application electronically will not be required to transmit an original or electronic signature.

After the deadline for resubmitting corrected applications, the Commission will release another Public Notice announcing all applications that have been accepted for filing, including applicants who have corrected defective applications.

B. Upfront Payments

In order to be eligible to bid in the auction, applicants must submit an upfront payment together with an FCC Remittance Advice, FCC Form 159. The upfront payment will be due on Monday, October 30, 1995. A sample FCC Form 159 and further instructions for making auction payments will be included in the Bidder Information Package.

All payments must be made in U.S. dollars, must be in the form of a wire transfer or cashier's check, and must be made payable to the ''Federal Communications Commission'' or ''FCC.'' No other form of payment will be accepted. Cashier's checks must be drawn on a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). All payments whether by wire transfer or cashier's check, must be made to the Mellon Bank by Pittsburgh, Pennsylvania. Payments made by cashier's check must be received by 11:59 p.m. Eastern Standard Time, Monday, October 30, 1995. Payments made by wire transfer must be received by 3:00 p.m. Eastern Standard Time, Monday, October 30, 1995. Bidders making payments by wire transfer should allow sufficient time for the wire transfer to be confirmed.

Failure to deliver the upfront payment in a timely manner will result in dismissal of the application and inability to participate in the auction.

A bidder should calculate its upfront payment on the basis of the largest combination of ''activity'' or ''bidding'' units on which the bidder anticipates being active in any single round of bidding. (The number of bidding units associated with any particular BTA equals the amount of the upfront payment for that BTA, as set forth in the attached Appendix. These upfront payments were calculated by the Commission, taking into account the population and the approximate amount of usable spectrum in each BTA.) The combination of bidding units on which a bidder is active in a round equals the sum of the bidding units associated with the BTAs on which the bidder has submitted a bid, or on which the bidder is the standing high bidder. The upfront payment submitted by each applicant is not attributed to specific BTA service areas but instead will define the largest combination of bidding units on which the applicant will be permited to bid in any single round of bidding. Thus, if an applicant submits a $100,000 total upfront payment, the applicant could be active in any single round on two BTA service areas with 50,000 bidding units each, on five BTAs with 20,000 bidding units each, on ten BTAs with 10,000 bidding units each, or on any combination of BTAs for which the sum of associated bidding units totals 100,000 or less. See MDS Report and Order at ¶¶ 135–137.

An applicant may, on its FCC Form 175-M, apply for every authorization being offered, but the total upfront payment submitted by the applicant will determine the combinations of BTA service areas on which the applicant will actually be permitted to be active in any single round of bidding.

A prospective bidder in the MDS auction that claims status as a small business will be eligible for a 25% reduction in its upfront payment requirement. Thus, a bidder claiming eligibility as a small business and wishing to be eligible to bid on a particular BTA service area will be required to submit an upfront payment equal to 75% of the upfront payment specified for bidders who don't qualify for the small business credits. A small business eligible for this reduction in its upfront payment will not have the number of its bidding units decreased as a result of submitting a reduced upfront payment. For example, if a small business applicant wants to be eligible to bid on a BTA with an upfront payment of $100,000, it will be required, under the reduced upfront payment measure, to submit only $75,000 to qualify to bid on that BTA. This applicant will still, however, receive 100,000 bidding units—the number of bidding units equivalent to the full upfront payment amount associated with that BTA. See MDS Report and Order at ¶ 138.

The Commission will issue a Public Notice announcing all qualified bidders for the MDS auction. Qualified bidders are those whose FCC Form 175-M applications have been accepted for filing and who have submitted timely upfront payments sufficient to make them eligible to bid on at least one of the BTA authorizations applied for on the FCC Form 175-M application.

III. Auction Event and Bidding Rounds

The MDS auction will begin at 9:00 a.m. Eastern Standard Time on Monday, November 13, 1995. The precise schedule for bidding in the first week of the auction will be announced two weeks prior to the start of the auction.

Generally bids will be submitted twice each day during the first three days of bidding. The Commission may, however, increase or decrease the amount of time for bid submission as well as the number of rounds per day depending upon such factors as the bidding activity level or the aggregate amount of high bids.

IV. Auction Procedures

The BTA authorizations will be awarded through a simultaneous multiple round auction. Bids will be accepted on all BTA service areas in each round of the auction until bidding stops on all BTAs. See Section IV.E for specific information about stopping rules. High bid amounts will be posted after the end of the bid submission period in each round of bidding. Information regarding all valid bids submitted and all bid withdrawals in each round also will be provided along with the minimum accepted bids for the next round.

A. Number of Authorizations That May Be Acquired

The Commission has imposed no limitations on the number of BTA authorizations that any one entity may acquire in the MDS auction.

B. Bid Submission and Withdrawal Procedures

Bidders that are eligible to bid electronically, those that filed their FCC Form 175–M electronically, may order the auction bidding software by filling out the order form contained in the Bidder Information Package. The cost of the bidding software is $175 plus $25 for shipping and handling. Qualified bidders that use the remote electronic auction system will be charged $2.30 per minute pursuant to the recently issued Report and Order (WT Docket No. 95–69, 60 Fed. Reg. 38,276 (July 26, 1995)). All qualified bidders also have the option to submit and withdraw high bids telephonically through an ''800'' number which will be provided in the registration materials.

1. Bid Submission

Details will be set forth in the Bidder Information Package on the procedures to be used in bidding.

2. Bid Withdrawals

A high bidder that wants to withdraw one or more of its high bids during the course of the auction may do so during the bid withdrawal period subject to the withdrawal penalty specified in Section 21.959(a)(1) of the Commission's rules, 47 C.F.R. § 21.959(a)(1).

C. Minimum Bid Increments and Tie Bids

The minimum bid increment is the amount or percentage by which a bid must be raised above the previous high bid in order to be accepted as a valid bid in the current round. The amount of the minimum accepted bid for each BTA service area (the sum of the minimum bid increment and the high bid from the previous round) will be announced before the beginning of each round. The Commission may, in its discretion, raise or lower the amount of the minimum bid increment at any time during the auction. The Commission generally will raise the amount of the minimum bid increments early in the auction and when bidding activity is high. Conversely, the Commission will generally lower the minimum bid increments towards the end of the auction and when bidding activity is low. There will be no minimum opening bids for any of the BTA service areas in the MDS auction and no minimum bid increment for a BTA service area until that BTA has received a bid.

Each bid will be date and time stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid.

D. Activity Rule

In order to ensure that the auction closes within a reasonable period of time, the Commission will impose an activity rule to discourage bidders from waiting until the end of the auction before participating. The activity rule provides for three stages with increasing levels of bidding activity required in each stage in order for a bidder to maintain its current eligibility.

We note that the required activity level in Stage I and Stage II of the MDS auction will be relatively high so as to increase the pace of the auction, which is needed to ensure a timely completion given the large number of authorizations being offered. In Stage III of the auction the required activity level will be higher than in Stages I and II, but will still provide bidders with some flexibility to shift their bids to other BTA service areas.

A bidder will be considered active on a BTA service area in the current round if it is either the high bidder at the end of the bid withdrawal period in the previous round or submits a bid in the current round which meets or exceeds the minimum accepted bid. A bidder's activity level in a round is the sum of the ''activity'' or ''bidding'' units associated with the BTA service areas on which the bidder is active. The minimum required activity levels for each stage of the MDS auction are as follows:

Stage One: During the first stage of the auction, a bidder that wishes to maintain its current eligibility is required to be active on BTA service areas encompassing at least 50% of the bidding units for which it is currently eligible. Failure to maintain the requisite activity level will result in a reduction in the amount of bidding units associated with BTAs upon which a bidder will be eligible to bid in the next round of bidding (unless an activity rule waiver is used). During the first stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by two (2/1).

Stage Two: In each round of the second stage, a bidder who wishes to maintain its current eligibility is required to be active on BTA service areas encompassing at least 80% of the bidding units for which it is eligible in that particular round. During the second stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Three: In each round of the third stage, a bidder who wishes to maintain its current eligibility is required to be active on BTA service areas encompassing 95% of the bidding units for which it is eligible in that particular round. In the final stage, if activity in the current round is below 95% of current edibility, eligibility in the next round will be calculated by multiplying the current round activity by twenty-nineteenths (20/19).

As stated above, activity requirements increase in each auction stage; therefore, it is especially important for bidders to check current activity during the bid submission period in the first round following a stage transition. Bidders who do not wish to submit any new bids in that round can confirm their current activity level (measured in terms of their standing high bids) telephonically or electronically through the FCC remote access system by entering the bid submission module and comparing the current activity to the activity required.

Bidders will be provided five activity rule waivers that may be used in any round during the course of the auction. If a bidder's activity level is below the required activity level a waiver will be applied automatically, if a bidder still has waivers remaining and does not submit a bid or an automatic waiver override. That is, if a bidder fails to submit a bid in a round or does not submit an automatic waiver override, and its activity level from any standing high bids (high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver will be applied automatically. A waiver will preserve current eligibility in the next round. An activity rule waiver applies to an entire round of bidding and not to a particular BTA service area. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

Bidders will be afforded an opportunity to override the automatic waiver mechanism if they wish to intentionally reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility will be permanently reduced and it will not be permitted to retain its bidding eligibility for a previous round.

Bidders also will have the option of proactively entering an activity rule waiver during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open. Therefore in the later rounds of the auction, if a bidder does not intend to bid but wants to ensure that the auction does not close, it should enter a proactive waiver in place of a bid. The submission of a proactive waiver will prevent the auction from closing.

E. Stopping Rules

Bidding will normally remain open on all BTA service areas until bidding stops on every service area. The auction will close after one round passes in which no new bids or proactive waivers are submitted. The Wireless Telecommunications Bureau retains the discretion, however, to keep an auction open even if no new valid bids and no proactive waivers are submitted. In the event the Bureau exercises this discretion, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, if a bidder has any activity rule waivers left, an automatic waiver will be applied if its activity

from standing high bids does not meet its required activity level. Bidders whose activity from the standing high bids does not meet its required activity level and that have no activity rule waivers remaining will have their maximum eligibility reduced according to the activity rules described above.

The Bureau may also declare at any time after 40 rounds that the auction will end after a specified number of additional rounds. If the Bureau invokes this stopping rule, it will accept bids in the final round(s) only for BTA service areas on which the high bid increased in at least one of the preceding three rounds. The Bureau also retains the discretion to close bidding on a particular BTA service area or areas individually. In the unlikely event that the Bureau uses such a market-by-market stopping rule, we would anticipate doing so only after 40 rounds, applying it first to the largest BTAs, and only if three or more rounds have passed without any bids on these BTA service areas.

The Bureau does not intend to exercise these options except in extreme circumstances, such as where the auction is proceeding very slowly, there is minimal overall bidding activity and it appears unlikely that the auction will close within a reasonable period of time. Before exercising these options, however, the Bureau would first attempt to increase the pace of the auction by announcing that the auction will move into the next stage, where bidders would be required to maintain a higher level of bidding activity. Under these circumstances, the Bureau may also first increase the number of bidding rounds per day and increase the amount of the minimum bid increments for those limited number of BTA service areas where there is still a high level of bidding activity.

F. Delay, Suspension or Cancellation of the Auction

The Commission may, by Public Notice or by announcement during the auction, delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Commission may, in its sole discretion, resume the auction starting from the beginning of the current or some previous round or cancel the auction in its entirety. The Commission will delay the auction in the event of technical failure involving the electronic bidding system or the telephone lines.

G. Default and Disqualification Penalties

Any high bidder who defaults by failing to remit the required down payment within the prescribed time or is disqualified after bidding is declared closed will be subject to the penalties described in Section 21.959(a)(2) of the Commission's rules, 47 C.F.R. § 21.959(a)(2). In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations or station licenses held by the applicant. See Second Report and Order in PP Docket No. 93–253, 9 FCC Rcd 2348 (1994), 59 Fed. Reg. 22,980 (May 4, 1994) at ¶ 198.

H. Releasing Bidder Identities

Bidders' identities and FCC Account Numbers will be disclosed prior to the auction. Thus, bidders will know in advance of the auction the identities of the bidders against whom they are bidding.

V. Post-Auction Procedures for High Bidders

A. Down Payment

The winning bidder for each BTA authorization must submit FCC Form 159 along with sufficient additional funds (a ''down payment'') to bring the amount of money on deposit with the government to 20% of its winning bid within five business days after bidding is declared closed and the high bidders are announced by Public Notice. However, a winning bidder that is a small business eligible for installment financing will be required to bring its total deposit up to only 10% of its winning bid (less any applicable bidding credits) within five business days after bidding is declared closed and the high bidders are announced. The remainder of the down payment, an additional 10% of the applicant's net winning bid, will be due from the small business winning bidder within five business days following the public notice announcing that its BTA authorization is ready to be issued. See MDS Report and Order at ¶¶ 142–144.

In the event that any winning bidder has withdrawn a bid or bids and is subject to a bid withdrawal penalty or penalties, the bidder's upfront payment will be applied to satisfy such bid withdrawal penalties before being applied toward its down payment on the authorizations it has won.

B. Submission of Long-Form Application (FCC Form 304) or Statement of Intention

Within 30 business days after bidding is declared closed and high bidders are announced, a winning bidder must timely submit for each BTA service area for which it is the winning bidder wither: (i) a properly completed FCC Form 304 application for an MDS station license within the BTA service area; or (ii) a statement of intention with regard to the BTA service area, showing the encumbered nature of the BTA, identifying all previously authorized or proposed MDS and ITFS facilities, and describing in detail the winning bidder's plan for obtaining the previously authorized and/or proposed MDS stations within the BTA. See MDS Report and Order at ¶¶ 150–154. FCC Form 304s, with the applicable filing fees, must be sent to Mellon Bank in Pittsburgh, Pennsylvania. Statements of intention must be sent to the Office of the Secretary, Attn: MDS Post-Auction Processing Section, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554.

C. Construction Build-out Requirement

Each BTA authorization holder must submit a showing to the Commission five years after the BTA authorization is issued demonstrating that it is providing a signal level sufficient to provide adequate service to approximately two-thirds of the population of the area within its control in the licensed BTA. The holder of the BTA authorization must submit maps and other supporting documents showing compliance with this construction build-out requirement. See MDS Report and Order at ¶ 43.

VI. Bidder Alert

The terms contained in the Commission's Report and Orders, Public Notices and in the Bidder Information Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the Terms before making any bid.

All applicants must certify under penalty of perjury on their FCC Form 175–M applications that they are legally, technically and financially qualified. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe

penalties including monetary forfeitures, station license or BTA authorization revocations, preclusion from participation in future auctions, and/or criminal prosecution.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

BILLING CODE 6712–01–M

Appendix

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED					
MDS AUCTION					
Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M001 - New York				
B321	New York, NY	MDB321	18,050,615	$113,904.67	$85,428.50
B184	Hartford, CT	MDB184	1,123,678	$16,208.29	$12,156.22
B007	Albany-Schenectady, NY	MDB007	1,028,615	$7,515.38	$5,636.53
B318	New Haven-Waterbury-Meriden, CT	MDB318	978,311	$14,499.56	$10,874.67
B438	Syracuse, NY	MDB438	791,140	$6,017.33	$4,513.00
B010	Allentown-Bethlehem-Easton, PA	MDB010	686,688	$23,279.47	$17,459.61
B412	Scranton-Wilkes Barre-Hazleton, PA	MDB412	678,410	$10,259.99	$7,694.99
B361	Poughkeepsie-Kingston, NY	MDB361	424,766	$6,002.84	$4,502.13
B063	Burlington, VT	MDB063	369,128	$4,832.40	$3,624.30
B319	New London-Norwich, CT	MDB319	357,482	$16,854.55	$12,640.91
B043	Binghamton, NY	MDB043	356,645	$10,342.26	$7,756.69
B453	Utica-Rome, NY	MDB453	316,633	$3,832.48	$2,874.36
B127	Elmira-Corning-Hornell, NY	MDB127	315,038	$8,959.33	$6,719.50
B463	Watertown, NY	MDB463	296,253	$23,224.52	$17,418.39
B352	Plattsburgh, NY	MDB352	123,121	$2,585.36	$1,939.02
B164	Glens Falls, NY	MDB164	118,539	$7,712.49	$5,784.37
B333	Oneonta, NY	MDB333	107,742	$8,043.71	$6,032.78
B388	Rutland-Bennington, VT	MDB388	97,987	$2,500.00	$1,875.00
B435	Stroudsburg, PA	MDB435	95,709	$2,681.69	$2,011.27
B208	Ithaca, NY	MDB208	94,097	$2,500.00	$1,875.00
	M002 - Los Angeles-San Diego				
B262	Los Angeles, CA	MDB262	14,549,810	$51,737.86	$38,803.40
B402	San Diego, CA	MDB402	2,498,016	$7,229.64	$5,422.23
B245	Las Vegas, NV	MDB245	857,856	$8,328.74	$6,246.56
B028	Bakersfield, CA	MDB028	543,477	$8,520.34	$6,390.26
B406	Santa Barbara-Santa Maria, CA	MDB406	369,608	$15,783.93	$11,837.95
B405	San Luis Obispo, CA	MDB405	217,162	$8,537.07	$6,402.80
B124	El Centro-Calexico, CA	MDB124	109,303	$2,500.00	$1,875.00

	M003 - Chicago				
B078	Chicago, IL	MDB078	8,182,076	$48,790.70	$36,593.02
B155	Ft. Wayne, IN	MDB155	646,736	$6,994.71	$5,246.03
B344	Peoria, IL	MDB344	455,643	$2,500.00	$1,875.00
B380	Rockford, IL	MDB380	412,120	$6,739.14	$5,054.35
B424	South Bend-Mishawaka, IN	MDB424	330,821	$7,033.22	$5,274.91
B426	Springfield, IL	MDB426	254,696	$9,420.82	$7,065.61
B109	Decatur-Effingham, IL	MDB109	247,808	$2,500.00	$1,875.00
B126	Elkhart, IN	MDB126	235,152	$5,134.10	$3,850.58
B071	Champaign-Urbana, IL	MDB071	222,312	$2,500.00	$1,875.00
B046	Bloomington, IL	MDB046	215,795	$3,785.61	$2,839.21
B039	Benton Harbor, MI	MDB039	161,378	$5,169.14	$3,876.85
B243	La Salle-Peru-Ottawa-Streator, IL	MDB243	148,331	$14,414.10	$10,810.57
B225	Kankakee, IL	MDB225	127,042	$11,824.75	$8,868.57
B103	Danville, IL	MDB103	114,241	$4,255.34	$3,191.51
B294	Michigan City-La Porte, IN	MDB294	107,066	$2,500.00	$1,875.00
B161	Galesburg, IL	MDB161	75,574	$2,500.00	$1,875.00
B213	Jacksonville, IL	MDB213	70,795	$2,500.00	$1,875.00
B286	Mattoon, IL	MDB286	62,314	$2,500.00	$1,875.00
	M004 - San Francisco-Oakland-San Jose				
B404	San Francisco-Oakland-San Jose, CA	MDB404	6,420,984	$53,204.29	$39,903.21
B389	Sacramento, CA	MDB389	1,656,581	$17,790.79	$13,343.10
B157	Fresno, CA	MDB157	755,580	$5,667.82	$4,250.86
B434	Stockton, CA	MDB434	512,626	$2,500.00	$1,875.00
B372	Reno, NV	MDB372	439,279	$8,549.13	$6,411.85
B303	Modesto, CA	MDB303	418,978	$5,089.38	$3,817.04
B458	Visalia-Porterville-Hanford, CA	MDB458	413,390	$10,004.12	$7,503.09
B397	Salinas-Monterey, CA	MDB397	355,660	$2,500.00	$1,875.00
B371	Redding, CA	MDB371	253,255	$9,218.40	$6,913.80
B079	Chico-Oroville, CA	MDB079	206,918	$2,500.00	$1,875.00
B291	Merced, CA	MDB291	192,705	$9,556.47	$7,167.35
B134	Eureka, CA	MDB134	142,578	$13,237.37	$9,928.03
B485	Yuba City-Marysville, CA	MDB485	122,643	$2,500.00	$1,875.00

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M006 - Detroit				
B112	Detroit, MI	MDB112	4,705,164	$54,188.03	$40,641.02
B169	Grand Rapids, MI	MDB169	916,060	$22,111.29	$16,583.47
B444	Toledo, OH	MDB444	782,184	$7,777.96	$5,833.47
B390	Saginaw-Bay City, MI	MDB390	615,364	$12,906.02	$9,679.52
B145	Flint, MI	MDB145	500,229	$6,397.44	$4,798.08
B241	Lansing, MI	MDB241	489,698	$9,196.20	$6,897.15
B223	Kalamazoo, MI	MDB223	362,384	$10,980.88	$8,235.44
B255	Lima, OH	MDB255	249,734	$2,500.00	$1,875.00
B033	Battle Creek, MI	MDB033	227,541	$6,255.68	$4,691.76
B310	Muskegon, MI	MDB310	206,974	$8,483.03	$6,362.27
B446	Traverse City, MI	MDB446	204,600	$11,079.16	$8,309.37
B209	Jackson, MI	MDB209	193,187	$2,712.35	$2,034.26
B143	Findlay-Tiffin, OH	MDB143	147,523	$6,266.50	$4,699.87
B307	Mt. Pleasant, MI	MDB307	118,558	$8,255.35	$6,191.51
B005	Adrian, MI	MDB005	91,476	$2,500.00	$1,875.00
B345	Petoskey, MI	MDB345	85,863	$9,161.93	$6,871.44
B011	Alpena, MI	MDB011	63,429	$6,391.43	$4,793.57
B409	Sault Ste. Marie, MI	MDB409	51,041	$4,926.67	$3,695.00
	M008 - Charlotte-Greensboro-Greenville-Raleigh				
B074	Charlotte-Gastonia, NC	MDB074	1,671,037	$28,236.03	$21,177.02
B174	Greensboro-Winston-Salem-High Point, NC	MDB174	1,241,349	$35,028.00	$26,271.00
B368	Raleigh-Durham, NC	MDB368	1,089,423	$27,991.77	$20,993.83
B177	Greenville-Spartanburg, SC	MDB177	788,212	$10,758.93	$8,069.20
B072	Charleston, SC	MDB072	624,369	$7,363.81	$5,522.86
B141	Fayetteville-Lumberton, NC	MDB141	571,328	$39,667.58	$29,750.69
B091	Columbia, SC	MDB091	568,754	$7,960.63	$5,970.47
B020	Asheville-Hendersonville, NC	MDB020	510,055	$39,927.14	$29,945.36
B016	Anderson, SC	MDB016	305,120	$2,723.77	$2,042.83
B189	Hickory-Lenoir-Morganton, NC	MDB189	292,409	$27,556.23	$20,667.18

B478	Wilmington, NC	MDB478	249,711	$9,168.82	$6,876.61
B147	Florence, SC	MDB147	239,208	$3,193.58	$2,395.19
B176	Greenville-Washington, NC	MDB176	218,937	$12,331.20	$9,248.40
B165	Goldsboro-Kinston, NC	MDB165	217,319	$11,839.15	$8,879.37
B382	Rocky Mount-Wilson, NC	MDB382	199,296	$7,680.82	$5,760.61
B316	New Bern, NC	MDB316	154,955	$9,954.97	$7,466.23
B214	Jacksonville, NC	MDB214	149,838	$5,890.43	$4,417.82
B436	Sumter, SC	MDB436	149,524	$2,500.00	$1,875.00
B312	Myrtle Beach, SC	MDB312	144,053	$2,500.00	$1,875.00
B335	Orangeburg, SC	MDB335	114,458	$3,745.32	$2,808.99
B062	Burlington, NC	MDB062	108,213	$2,734.76	$2,051.07
B377	Roanoke Rapids, NC	MDB377	76,314	$2,500.00	$1,875.00
B178	Greenwood, SC	MDB178	68,435	$2,746.85	$2,060.14
	M007 - Dallas-Ft. Worth				
B101	Dallas-Ft. Worth, TX	MDB101	4,329,924	$25,728.24	$19,296.18
B027	Austin, TX	MDB027	899,361	$4,670.74	$3,503.06
B419	Shreveport, LA	MDB419	583,266	$23,757.84	$17,818.38
B264	Lubbock, TX	MDB264	392,901	$7,914.57	$5,935.93
B013	Amarillo, TX	MDB013	380,341	$17,094.24	$12,820.68
B304	Monroe, LA	MDB304	324,397	$9,215.19	$6,911.39
B260	Longview-Marshall, TX	MDB260	292,659	$7,415.78	$5,561.84
B441	Temple-Killeen, TX	MDB441	291,768	$2,500.00	$1,875.00
B459	Waco, TX	MDB459	270,052	$5,560.81	$4,170.61
B452	Tyler, TX	MDB452	269,762	$20,545.31	$15,408.98
B443	Texarkana, TX/AR	MDB443	255,983	$5,366.46	$4,024.84
B003	Abilene, TX	MDB003	253,174	$15,702.59	$11,776.94
B327	Odessa, TX	MDB327	213,420	$17,631.90	$13,223.93
B473	Wichita Falls, TX	MDB473	209,339	$6,295.31	$4,721.48
B400	San Angelo, TX	MDB400	155,845	$4,498.57	$3,373.93
B418	Sherman-Denison, TX	MDB418	151,914	$2,500.00	$1,875.00
B296	Midland, TX	MDB296	111,567	$7,205.44	$5,404.08
B341	Paris, TX	MDB341	89,422	$5,156.80	$3,867.60
B087	Clovis, NM	MDB087	71,024	$3,994.74	$2,996.05
B057	Brownwood, TX	MDB057	57,684	$3,001.54	$2,251.16

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M007 - Dallas-Ft. Worth (cont.)				
B191	Hobbs, NM	MDB191	55,765	$3,740.40	$2,805.30
B040	Big Spring, TX	MDB040	34,589	$2,680.12	$2,010.09
	M008 - Boston-Providence				
B051	Boston, MA	MDB051	4,133,895	$6,285.90	$4,714.43
B364	Providence-Pawtucket, RI-New Bedford-Fall River, MA	MDB364	1,509,789	$8,820.25	$6,615.19
B480	Worcester-Fitchburg-Leominster, MA	MDB480	709,705	$6,240.08	$4,680.06
B427	Springfield-Holyoke, MA	MDB427	672,970	$17,273.69	$12,955.27
B274	Manchester-Nashua-Concord, NH	MDB274	540,704	$11,828.81	$8,871.61
B357	Portland-Brunswick, ME	MDB357	471,614	$3,141.15	$2,355.86
B030	Bangor, ME	MDB030	316,838	$23,674.00	$17,755.50
B251	Lewiston-Auburn, ME	MDB251	221,697	$7,000.16	$5,250.12
B201	Hyannis, MA	MDB201	204,256	$6,449.24	$4,836.93
B249	Lebanon-Claremont, NH	MDB249	167,576	$2,500.00	$1,875.00
B465	Waterville-Augusta, ME	MDB465	165,671	$11,452.85	$8,589.63
B351	Pittsfield, MA	MDB351	139,352	$5,478.21	$4,108.65
B227	Keene, NH	MDB227	111,709	$3,698.13	$2,772.10
B363	Presque Isle, ME	MDB363	86,936	$7,005.27	$5,253.95
	M009 - Philadelphia				
B346	Philadelphia, PA-Wilmington, DE-Trenton, NJ	MDB346	5,899,345	$18,710.26	$14,032.70
B181	Harrisburg, PA	MDB181	654,808	$6,858.62	$5,143.96
B240	Lancaster, PA	MDB240	422,822	$2,766.96	$2,075.22
B483	York-Hanover, PA	MDB483	417,848	$2,500.00	$1,875.00
B370	Reading, PA	MDB370	336,523	$11,918.36	$8,938.77
B025	Atlantic City, NJ	MDB025	319,416	$2,500.00	$1,875.00
B116	Dover, DE	MDB116	251,257	$10,587.21	$7,940.41
B437	Sunbury-Shamokin, PA	MDB437	187,362	$17,102.18	$12,826.63
B475	Williamsport, PA	MDB475	161,996	$14,260.38	$10,695.28
B360	Pottsville, PA	MDB360	152,585	$5,266.11	$3,949.58
B429	State College, PA	MDB429	123,786	$3,823.50	$2,867.63

	M010 - Washington-Baltimore				
B461	Washington, DC	MDB461	4,118,628	$18,720.05	$14,040.04
B029	Baltimore, MD	MDB029	2,430,563	$2,948.08	$2,211.06
B179	Hagerstown, MD-Chambersburg, PA-Martinsburg, WV	MDB179	327,693	$6,939.37	$5,204.53
B075	Charlottesville, VA	MDB075	190,128	$2,500.00	$1,875.00
B398	Salisbury, MD	MDB398	163,043	$3,110.25	$2,332.69
B100	Cumberland, MD	MDB100	156,707	$15,970.42	$11,977.82
B479	Winchester, VA	MDB479	137,549	$2,500.00	$1,875.00
B183	Harrisonburg, VA	MDB183	128,910	$2,500.00	$1,875.00
B156	Fredericksburg, VA	MDB156	124,654	$10,680.28	$8,010.21
	M011 - Atlanta				
B024	Atlanta, GA	MDB024	3,197,171	$30,664.84	$22,998.63
B410	Savannah, GA	MDB410	630,180	$25,190.27	$18,892.70
B271	Macon-Warner Robins, GA	MDB271	589,208	$21,114.57	$15,835.93
B026	Augusta, GA	MDB026	521,822	$28,078.74	$21,059.05
B076	Chattanooga, TN	MDB076	510,860	$2,993.71	$2,245.28
B092	Columbus, GA	MDB092	342,333	$6,296.06	$4,722.05
B006	Albany-Tifton, GA	MDB006	324,899	$12,371.75	$9,278.81
B160	Gainesville, GA	MDB160	170,365	$2,500.00	$1,875.00
B022	Athens, GA	MDB022	166,030	$2,664.69	$1,998.52
B334	Opelika-Auburn, AL	MDB334	124,022	$2,500.00	$1,875.00
B384	Rome, GA	MDB384	115,066	$8,161.39	$6,121.04
B102	Dalton, GA	MDB102	98,609	$3,080.25	$2,310.19
B085	Cleveland, TN	MDB085	87,355	$2,500.00	$1,875.00
B237	La Grange, GA	MDB237	64,164	$2,500.00	$1,875.00
	M012 - Minneapolis-St. Paul				
B298	Minneapolis-St. Paul, MN	MDB298	2,840,561	$28,619.51	$21,464.63
B119	Duluth, MN	MDB119	400,771	$31,952.14	$23,964.11
B138	Fargo, ND	MDB138	298,015	$6,216.52	$4,662.39
B277	Mankato-Fairmont, MN	MDB277	245,144	$5,766.43	$4,324.82
B391	St. Cloud, MN	MDB391	243,888	$2,500.00	$1,875.00
B378	Rochester-Austin-Albert Lea, MN	MDB378	233,167	$9,311.45	$6,983.59

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M012 - Minneapolis-St. Paul (cont.)				
B166	Grand Forks, ND	MDB166	213,932	$10,600.99	$7,950.74
B422	Sioux Falls, SD	MDB422	207,716	$2,916.33	$2,187.25
B123	Eau Claire, WI	MDB123	180,559	$9,173.12	$6,879.84
B477	Willmar-Marshall, MN	MDB477	123,749	$7,168.14	$5,376.11
B045	Bismarck, ND	MDB045	123,682	$3,983.67	$2,987.75
B299	Minot, ND	MDB299	122,687	$5,761.29	$4,320.96
B142	Fergus Falls, MN	MDB142	120,167	$3,814.54	$2,860.91
B481	Worthington, MN	MDB481	96,602	$2,500.00	$1,875.00
B001	Aberdeen, SD	MDB001	88,891	$4,742.79	$3,557.10
B301	Mitchell, SD	MDB301	84,095	$4,903.66	$3,677.74
B054	Brainerd, MN	MDB054	78,465	$3,973.32	$2,979.99
B464	Watertown, SD	MDB464	74,555	$3,084.82	$2,313.62
B037	Bemidji, MN	MDB037	57,632	$5,768.13	$4,326.09
B199	Huron, SD	MDB199	53,189	$3,471.41	$2,603.56
B113	Dickinson, ND	MDB113	38,001	$2,500.00	$1,875.00
B207	Ironwood, MI	MDB207	33,059	$2,500.00	$1,875.00
B476	Williston, ND	MDB476	27,512	$2,500.00	$1,875.00
	M013 - Tampa-St. Petersburg-Orlando				
B440	Tampa-St. Petersburg-Clearwater, FL	MDB440	2,249,405	$13,956.27	$10,467.21
B336	Orlando, FL	MDB336	1,256,429	$2,500.00	$1,875.00
B408	Sarasota-Bradenton, FL	MDB408	513,348	$4,973.46	$3,730.09
B239	Lakeland-Winter Haven, FL	MDB239	405,382	$2,795.58	$2,096.69
B107	Daytona Beach, FL	MDB107	399,413	$2,500.00	$1,875.00
B289	Melbourne-Titusville, FL	MDB289	398,978	$5,353.83	$4,015.37
B326	Ocala, FL	MDB326	194,833	$2,735.46	$2,051.59
	M014 - Houston				
B196	Houston, TX	MDB196	4,054,253	$44,454.95	$33,341.21
B034	Beaumont-Port Arthur, TX	MDB034	432,129	$5,961.18	$4,470.89
B238	Lake Charles, LA	MDB238	259,425	$5,093.03	$3,819.77
B059	Bryan-College Station, TX	MDB059	150,998	$2,500.00	$1,875.00
B456	Victoria, TX	MDB456	149,963	$7,823.93	$5,867.95
B265	Lufkin-Nacogdoches, TX	MDB265	144,081	$6,287.13	$4,715.35

	M015 - Miami- Ft. Lauderdale				
B293	Miami-Ft. Lauderdale, FL	MDB293	3,270,606	$8,976.81	$6,732.61
B469	West Palm Beach-Boca Raton, FL	MDB469	893,145	$2,819.38	$2,114.53
B151	Ft. Myers, FL	MDB151	479,452	$3,887.56	$2,915.67
B152	Ft. Pierce-Vero Beach-Stuart, FL	MDB152	341,279	$2,500.00	$1,875.00
B313	Naples, FL	MDB313	152,099	$5,511.49	$4,133.61
	M016 - Cleveland				
B084	Cleveland-Akron, OH	MDB084	2,894,133	$7,286.93	$5,465.20
B065	Canton-New Philadelphia, OH	MDB065	513,623	$36,790.81	$27,593.11
B484	Youngstown-Warren, OH	MDB484	492,619	$2,500.00	$1,875.00
B131	Erie, PA	MDB131	275,572	$3,869.03	$2,901.77
B278	Mansfield, OH	MDB278	221,514	$3,491.96	$2,618.97
B403	Sandusky, OH	MDB403	133,019	$7,977.81	$5,983.36
B416	Sharon, PA	MDB416	121,003	$2,500.00	$1,875.00
B122	East Liverpool-Salem, OH	MDB122	108,276	$2,500.00	$1,875.00
B021	Ashtabula, OH	MDB021	99,821	$5,280.13	$3,960.10
B287	Meadville, PA	MDB287	86,169	$2,500.00	$1,875.00
	M017 - New Orleans-Baton Rouge				
B320	New Orleans, LA	MDB320	1,367,169	$11,215.38	$8,411.53
B032	Baton Rouge, LA	MDB032	623,657	$2,500.00	$1,875.00
B302	Mobile, AL	MDB302	594,397	$14,930.66	$11,197.99
B236	Lafayette-New Iberia, LA	MDB236	496,579	$8,306.13	$6,229.60
B343	Pensacola, FL	MDB343	344,406	$2,500.00	$1,875.00
B042	Biloxi-Gulfport-Pascagoula, MS	MDB042	339,791	$2,500.00	$1,875.00
B009	Alexandria, LA	MDB009	280,133	$8,339.96	$6,254.97
B195	Houma-Thibodaux, LA	MDB195	263,681	$4,234.05	$3,175.54
B154	Ft. Walton Beach, FL	MDB154	171,536	$9,645.90	$7,234.42
B186	Hattiesburg, MS	MDB186	161,894	$9,133.09	$6,849.82
B269	McComb-Brookhaven, MS	MDB269	107,298	$6,888.48	$5,166.36

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M017 - New Orleans-Baton Rouge (cont.)				
B180	Hammond, LA	MDB180	95,583	$6,239.89	$4,679.92
B246	Laurel, MS	MDB246	79,145	$4,061.94	$3,046.46
	M018 - Cincinnati-Dayton				
B081	Cincinnati, OH	MDB081	1,990,451	$11,831.66	$8,873.75
B106	Dayton-Springfield, OH	MDB106	1,207,689	$16,614.24	$12,460.68
B073	Charleston, WV	MDB073	481,387	$31,634.41	$23,725.81
B197	Huntington, WV-Ashland, KY	MDB197	363,936	$22,086.46	$16,564.85
B474	Williamson, WV-Pikeville, KY	MDB474	185,682	$15,274.86	$11,456.15
B048	Bluefield, WV	MDB048	184,020	$15,543.15	$11,657.36
B035	Beckley, WV	MDB035	167,112	$16,433.59	$12,325.19
B359	Portsmouth, OH	MDB359	93,356	$6,117.23	$4,587.92
B259	Logan, WV	MDB259	43,032	$4,174.65	$3,130.99
	M019 - St. Louis				
B394	St. Louis, MO	MDB394	2,742,114	$25,768.11	$19,326.09
B428	Springfield, MO	MDB428	532,880	$35,724.69	$26,793.52
B067	Carbondale-Marion, IL	MDB067	209,497	$9,057.30	$6,792.97
B090	Columbia, MO	MDB090	190,536	$4,230.19	$3,172.64
B066	Cape Girardeau-Sikeston, MO	MDB066	181,795	$7,967.51	$5,975.63
B367	Quincy, IL-Hannibal, MO	MDB367	177,213	$2,500.00	$1,875.00
B355	Poplar Bluff, MO	MDB355	148,240	$2,837.97	$2,128.48
B217	Jefferson City, MO	MDB217	141,404	$3,173.63	$2,380.22
B308	Mt. Vernon-Centralia, IL	MDB308	119,286	$2,500.00	$1,875.00
B383	Rolla, MO	MDB383	98,233	$8,867.93	$6,650.95
B470	West Plains, MO	MDB470	67,165	$3,144.08	$2,358.06
B230	Kirksville, MO	MDB230	55,563	$2,500.00	$1,875.00

	M020 - Milwaukee				
B297	Milwaukee, WI	MDB297	1,751,525	$2,500.00	$1,875.00
B272	Madison, WI	MDB272	593,145	$10,700.71	$8,025.53
B018	Appleton-Oshkosh, WI	MDB018	399,261	$11,440.10	$8,580.08
B173	Green Bay, WI	MDB173	310,435	$10,527.59	$7,895.69
B234	La Crosse, WI-Winona, MN	MDB234	295,769	$7,082.14	$5,311.60
B466	Wausau-Rhinelander, WI	MDB466	220,060	$16,795.51	$12,596.63
B216	Janesville-Beloit, WI	MDB216	214,510	$2,500.00	$1,875.00
B432	Stevens Point-Marshfield-Wisconsin Rapids, WI	MDB432	201,240	$17,637.42	$13,228.07
B417	Sheboygan, WI	MDB417	103,877	$2,500.00	$1,875.00
B148	Fond du Lac, WI	MDB148	90,083	$2,500.00	$1,875.00
B276	Manitowoc, WI	MDB276	80,421	$2,500.00	$1,875.00
B282	Marquette, MI	MDB282	79,859	$4,126.25	$3,094.68
B279	Marinette, WI-Menominee, MI	MDB279	65,468	$6,627.16	$4,970.37
B132	Escanaba, MI	MDB132	46,082	$4,917.13	$3,687.85
B194	Houghton, MI	MDB194	45,101	$3,744.65	$2,808.49
B206	Iron Mountain, MI	MDB206	44,596	$4,074.58	$3,055.94
	M021 - Pittsburgh				
B350	Pittsburgh, PA	MDB350	2,507,839	$22,017.23	$16,512.92
B218	Johnstown, PA	MDB218	241,247	$14,030.92	$10,523.19
B012	Altoona, PA	MDB012	222,625	$9,937.01	$7,452.75
B471	Wheeling, WV	MDB471	219,937	$8,891.88	$6,668.91
B082	Clarksburg-Elkins, WV	MDB082	190,498	$9,787.73	$7,340.80
B431	Steubenville, OH-Weirton, WV	MDB431	142,523	$2,500.00	$1,875.00
B117	Du Bois-Clearfield, PA	MDB117	124,180	$9,165.15	$6,873.86
B328	Oil City-Franklin, PA	MDB328	105,882	$10,939.30	$8,204.47
B306	Morgantown, WV	MDB306	104,546	$5,323.71	$3,992.78
B317	New Castle, PA	MDB317	96,246	$2,500.00	$1,875.00
B203	Indiana, PA	MDB203	89,994	$7,156.29	$5,367.21
B137	Fairmont, WV	MDB137	57,249	$2,500.00	$1,875.00
	M022 - Denver				
B110	Denver, CO	MDB110	2,073,952	$19,833.93	$14,875.45
B089	Colorado Springs, CO	MDB089	409,482	$2,500.00	$1,875.00
B366	Pueblo, CO	MDB366	266,001	$11,595.92	$8,696.94
B168	Grand Junction, CO	MDB168	187,062	$19,960.26	$14,970.20
B149	Ft. Collins-Loveland, CO	MDB149	186,136	$2,500.00	$1,875.00

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M022 - Denver (cont.)				
B369	Rapid City, SD	MDB369	181,278	$8,180.12	$6,135.09
B069	Casper-Gillette, WY	MDB069	135,172	$12,190.56	$9,142.92
B172	Greeley, CO	MDB172	131,821	$2,500.00	$1,875.00
B077	Cheyenne, WY	MDB077	103,939	$10,063.79	$7,547.85
B411	Scottsbluff, NE	MDB411	101,954	$8,286.27	$6,214.70
B381	Rock Springs, WY	MDB381	56,981	$5,141.78	$3,856.33
B375	Riverton, WY	MDB375	46,859	$3,884.79	$2,913.59
	M023 - Richmond-Norfolk				
B324	Norfolk-Virginia Beach-Newport News-Hampton, VA	MDB324	1,635,296	$36,654.18	$27,490.64
B374	Richmond-Petersburg, VA	MDB374	1,090,869	$23,996.05	$17,997.04
B376	Roanoke, VA	MDB376	609,215	$11,497.65	$8,623.39
B104	Danville, VA	MDB104	165,434	$6,426.54	$4,819.91
B266	Lynchburg, VA	MDB266	154,497	$2,500.00	$1,875.00
B430	Staunton-Waynesboro, VA	MDB430	100,322	$2,500.00	$1,875.00
B284	Martinsville, VA	MDB284	90,577	$2,867.51	$2,150.63
	M024 - Seattle (Excluding Alaska)				
B413	Seattle-Tacoma, WA	MDB413	2,708,949	$16,154.78	$12,116.08
B331	Olympia-Centralia, WA	MDB331	258,937	$11,040.85	$8,280.64
B482	Yakima, WA	MDB482	215,548	$2,500.00	$1,875.00
B055	Bremerton, WA	MDB055	189,731	$2,500.00	$1,875.00
B468	Wenatchee, WA	MDB468	166,563	$11,708.23	$8,781.17
B036	Bellingham, WA	MDB036	127,780	$3,574.61	$2,680.96
B002	Aberdeen, WA	MDB002	83,057	$5,126.20	$3,844.65
B356	Port Angeles, WA	MDB356	76,610	$5,629.00	$4,221.75
	M025 - Puerto Rico-U.S. Virgin Islands				
B488	San Juan, PR	MDB488	2,170,246	$36,023.37	$27,017.52
B489	Mayaguez-Aguadilla-Ponce, PR	MDB489	1,351,600	$28,230.60	$21,172.95
B491	US Virgin Islands	MDB491	102,000	$7,590.02	$5,692.52

	M026 - Louisville-Lexington-Evansville				
B263	Louisville, KY	MDB263	1,352,955	$16,206.33	$12,154.75
B252	Lexington, KY	MDB252	816,101	$27,721.74	$20,791.30
B135	Evansville, IN	MDB135	504,859	$10,354.26	$7,765.70
B052	Bowling Green-Glasgow, KY	MDB052	222,748	$17,271.07	$12,953.30
B339	Paducah-Murray-Mayfield, KY	MDB339	217,082	$4,209.55	$3,157.17
B338	Owensboro, KY	MDB338	157,104	$5,320.74	$3,990.55
B098	Corbin, KY	MDB098	128,186	$3,677.14	$2,757.86
B423	Somerset, KY	MDB423	111,487	$2,500.00	$1,875.00
B273	Madisonville, KY	MDB273	46,126	$2,500.00	$1,875.00
	M027 - Phoenix				
B347	Phoenix, AZ	MDB347	2,404,760	$19,932.38	$14,949.29
B447	Tucson, AZ	MDB447	666,880	$2,500.00	$1,875.00
B362	Prescott, AZ	MDB362	107,714	$2,500.00	$1,875.00
B486	Yuma, AZ	MDB486	106,895	$2,500.00	$1,875.00
B420	Sierra Vista-Douglas, AZ	MDB420	97,624	$7,035.86	$5,276.89
B144	Flagstaff, AZ	MDB144	96,591	$4,659.05	$3,494.29
B322	Nogales, AZ	MDB322	29,676	$2,916.56	$2,187.42
	M028 - Memphis-Jackson				
B290	Memphis, TN	MDB290	1,396,390	$25,191.06	$18,893.29
B210	Jackson, MS	MDB210	615,521	$17,944.56	$13,458.42
B449	Tupelo-Corinth, MS	MDB449	291,701	$16,681.56	$12,511.17
B211	Jackson, TN	MDB211	255,379	$16,930.96	$12,698.22
B175	Greenville-Greenwood, MS	MDB175	213,943	$14,917.84	$11,188.38
B292	Meridian, MS	MDB292	200,024	$14,813.55	$11,110.16
B094	Columbus-Starkville, MS	MDB094	166,415	$8,840.58	$6,630.44
B120	Dyersburg-Union City, TN	MDB120	113,943	$2,500.00	$1,875.00
B049	Blytheville, AR	MDB049	79,446	$4,063.72	$3,047.79
B315	Natchez, MS	MDB315	73,214	$5,824.98	$4,368.73
B455	Vicksburg, MS	MDB455	59,250	$2,500.00	$1,875.00

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M029 - Birmingham				
B044	Birmingham, AL	MDB044	1,200,336	$28,316.29	$21,237.22
B305	Montgomery, LA	MDB305	440,745	$12,202.47	$9,151.85
B198	Huntsville, AL	MDB198	439,832	$5,131.57	$3,848.68
B450	Tuscaloosa, AL	MDB450	237,918	$4,780.67	$3,585.50
B115	Dothan-Enterprise, AL	MDB115	210,225	$2,500.00	$1,875.00
B158	Gadsden, AL	MDB158	174,034	$6,797.84	$5,098.38
B146	Florence, AL	MDB146	173,076	$2,500.00	$1,875.00
B017	Anniston, AL	MDB017	161,897	$5,283.88	$3,962.91
B108	Decatur, AL	MDB108	131,556	$2,500.00	$1,875.00
B415	Selma, AL	MDB415	74,457	$5,228.04	$3,921.03
	M030 - Portland				
B358	Portland, OR	MDB358	1,690,930	$19,136.02	$14,352.02
B395	Salem-Albany-Corvallis, OR	MDB395	440,062	$10,695.42	$8,021.56
B133	Eugene-Springfield, OR	MDB133	282,912	$15,629.43	$11,722.07
B288	Medford-Grants Pass, OR	MDB288	209,038	$2,500.00	$1,875.00
B038	Bend, OR	MDB038	102,745	$2,500.00	$1,875.00
B385	Roseburg, OR	MDB385	94,649	$8,509.98	$6,382.49
B261	Longview, WA	MDB261	85,446	$8,668.06	$6,501.05
B097	Coos Bay-North Bend, OR	MDB097	79,600	$8,076.06	$6,057.05
B231	Klamath Falls, OR	MDB231	74,566	$7,232.95	$5,424.71
	M031 - Indianapolis				
B204	Indianapolis, IN	MDB204	1,321,911	$2,500.00	$1,875.00
B235	Lafayette, IN	MDB235	247,523	$3,426.62	$2,569.96
B442	Terre Haute, IN	MDB442	236,968	$3,162.23	$2,371.67
B047	Bloomington-Bedford, IN	MDB047	217,914	$3,231.41	$2,423.56
B233	Kokomo-Logansport, IN	MDB233	184,899	$3,341.51	$2,506.14
B309	Muncie, IN	MDB309	182,386	$3,735.89	$2,801.92
B015	Anderson, IN	MDB015	178,808	$2,500.00	$1,875.00
B093	Columbus, IN	MDB093	139,128	$4,756.50	$3,567.37
B280	Marion, IN	MDB280	109,238	$2,500.00	$1,875.00
B373	Richmond, IN	MDB373	104,942	$2,500.00	$1,875.00
B457	Vincennes-Washington, IN	MDB457	93,758	$4,172.05	$3,129.04

	M032 - Des Moines- Quad Cities				
B111	Des Moines, IA	MDB111	728,830	$42,574.62	$31,930.96
B105	Davenport, IA-Moline, IL	MDB105	419,650	$2,500.00	$1,875.00
B421	Sioux City, IA	MDB421	328,919	$11,207.83	$8,405.87
B462	Waterloo-Cedar Falls, IA	MDB462	261,009	$14,397.10	$10,797.83
B070	Cedar Rapids, IA	MDB070	260,686	$4,673.35	$3,505.01
B118	Dubuque, IA	MDB118	176,542	$8,202.53	$6,151.90
B086	Clinton, IA-Sterling, IL	MDB086	147,981	$2,500.00	$1,875.00
B061	Burlington, IA	MDB061	137,543	$6,288.97	$4,716.73
B150	Ft. Dodge, IA	MDB150	131,731	$4,713.69	$3,535.26
B337	Ottumwa, IA	MDB337	122,988	$3,428.78	$2,571.58
B285	Mason City, IA	MDB285	118,834	$7,661.68	$5,746.26
B205	Iowa City, IA	MDB205	115,731	$2,500.00	$1,875.00
B283	Marshalltown, IA	MDB283	55,695	$3,503.86	$2,627.90
	M033 - San Antonio				
B401	San Antonio, TX	MDB401	1,530,954	$11,580.77	$8,685.58
B099	Corpus Christi, TX	MDB099	499,988	$2,500.00	$1,875.00
B268	McAllen, TX	MDB268	424,063	$7,590.39	$5,692.79
B056	Brownsville-Harlingen, TX	MDB056	277,825	$3,900.66	$2,925.50
B242	Laredo, TX	MDB242	152,881	$10,584.98	$7,938.73
B121	Eagle Pass-Del Rio, TX	MDB121	100,813	$10,446.30	$7,834.73
	M034 - Kansas City				
B226	Kansas City, MO	MDB226	1,839,569	$16,138.12	$12,103.59
B445	Topeka, KS	MDB445	245,679	$4,781.51	$3,586.13
B220	Joplin, MO-Miami, OK	MDB220	215,095	$2,500.00	$1,875.00
B393	St. Joseph, MO	MDB393	191,489	$4,091.26	$3,068.45
B275	Manhattan-Junction City, KS	MDB275	122,878	$6,236.42	$4,677.32
B349	Pittsburg-Parsons, KS	MDB349	90,934	$4,157.99	$3,118.49
B247	Lawrence, KS	MDB247	81,798	$2,500.00	$1,875.00

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M034 - Kansas City (cont.)				
B414	Sedalia, MO	MDB414	79,705	$4,357.52	$3,268.14
B129	Emporia, KS	MDB129	46,157	$2,721.79	$2,041.34
	M035 - Buffalo- Rochester				
B060	Buffalo-Niagara Falls, NY	MDB060	1,231,795	$19,364.61	$14,523.46
B379	Rochester, NY	MDB379	1,118,963	$21,624.15	$16,218.11
B330	Olean, NY-Bradford, PA	MDB330	239,343	$20,083.78	$15,062.84
B215	Jamestown-Dunkirk, NY-Warren, PA	MDB215	186,945	$6,344.85	$4,758.64
	M036 - Salt Lake City				
B399	Salt Lake City-Ogden, UT	MDB399	1,308,035	$36,525.34	$27,394.00
B050	Boise-Nampa, ID	MDB050	416,503	$11,921.93	$8,941.45
B365	Provo-Orem, UT	MDB365	269,407	$2,500.00	$1,875.00
B202	Idaho Falls, ID	MDB202	190,267	$7,119.05	$5,339.29
B451	Twin Falls, ID	MDB451	136,831	$6,466.09	$4,849.57
B353	Pocatello, ID	MDB353	89,651	$4,355.78	$3,266.83
B392	St. George, UT	MDB392	83,263	$3,397.10	$2,547.83
B258	Logan, UT	MDB258	79,415	$8,337.09	$6,252.82
	M037 - Jacksonville				
B212	Jacksonville, FL	MDB212	1,114,847	$9,255.15	$6,941.36
B439	Tallahassee, FL	MDB439	418,963	$26,524.14	$19,893.11
B159	Gainesville, FL	MDB159	260,538	$4,501.75	$3,376.31
B340	Panama City, FL	MDB340	171,195	$10,638.75	$7,979.07
B454	Valdosta, GA	MDB454	139,226	$2,500.00	$1,875.00
B467	Waycross, GA	MDB467	99,034	$7,449.28	$5,586.96
B058	Brunswick, GA	MDB058	71,130	$2,500.00	$1,875.00

	M038 - Columbus				
B095	Columbus, OH	MDB095	1,477,891	$8,723.97	$6,542.98
B342	Parkersburg, WV-Marietta, OH	MDB342	180,025	$2,500.00	$1,875.00
B487	Zanesville-Cambridge, OH	MDB487	178,179	$16,417.25	$12,312.94
B023	Athens, OH	MDB023	123,864	$4,640.05	$3,480.03
B080	Chillicothe, OH	MDB080	93,579	$8,386.22	$6,289.67
B281	Marion, OH	MDB281	92,023	$2,915.37	$2,186.53
	M039 - El Paso-Albuquerque				
B008	Albuquerque, NM	MDB008	688,612	$9,253.27	$6,939.95
B128	El Paso, TX	MDB128	649,860	$5,486.44	$4,114.83
B244	Las Cruces, NM	MDB244	197,166	$5,358.47	$4,018.85
B407	Santa Fe, NM	MDB407	174,526	$4,725.50	$3,544.13
B139	Farmington, NM-Durango, CO	MDB139	162,776	$12,035.45	$9,026.59
B162	Gallup, NM	MDB162	122,277	$8,751.27	$6,563.45
B386	Roswell, NM	MDB386	70,068	$5,211.18	$3,908.38
B068	Carlsbad, NM	MDB068	48,605	$3,139.11	$2,354.33
	M040 - Little Rock				
B257	Little Rock, AR	MDB257	852,026	$39,296.81	$29,472.61
B153	Ft. Smith, AR	MDB153	282,187	$8,573.30	$6,429.97
B140	Fayetteville-Springdale-Rogers, AR	MDB140	222,526	$8,437.58	$6,328.18
B219	Jonesboro-Paragould, AR	MDB219	159,439	$11,318.13	$8,488.60
B348	Pine Bluff, AR	MDB348	152,918	$15,434.31	$11,575.73
B193	Hot Springs, AR	MDB193	117,439	$10,032.34	$7,524.26
B125	El Dorado-Magnolia-Camden, AR	MDB125	108,810	$9,001.51	$6,751.13
B387	Russellville, AR	MDB387	81,863	$8,045.50	$6,034.12
B182	Harrison, AR	MDB182	74,459	$7,578.19	$5,683.64
	M041 - Oklahoma City				
B329	Oklahoma City, OK	MDB329	1,305,472	$10,916.16	$8,187.12
B248	Lawton-Duncan, OK	MDB248	177,830	$2,500.00	$1,875.00
B130	Enid, OK	MDB130	85,998	$2,500.00	$1,875.00
B019	Ardmore, OK	MDB019	83,979	$2,500.00	$1,875.00
B433	Stillwater, OK	MDB433	72,552	$4,577.69	$3,433.27
B004	Ada, OK	MDB004	52,677	$2,500.00	$1,875.00
B267	McAlester, OK	MDB267	50,914	$2,500.00	$1,875.00
B354	Ponca City, OK	MDB354	48,056	$4,453.06	$3,339.80

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M042 - Spokane-Billings				
B425	Spokane, WA	MDB425	612,862	$21,542.51	$16,156.88
B041	Billings, MT	MDB041	290,242	$14,984.59	$11,238.45
B171	Great Falls, MT	MDB171	161,038	$15,905.25	$11,928.94
B460	Walla Walla, WA-Pendelton, OR	MDB460	151,563	$10,074.54	$7,555.90
B228	Kennewick-Pasco-Richland, WA	MDB228	150,033	$2,549.52	$1,912.14
B300	Missoula, MT	MDB300	139,270	$14,177.24	$10,632.93
B250	Lewiston-Moscow, ID	MDB250	110,028	$10,343.64	$7,757.73
B064	Butte, MT	MDB064	65,252	$6,815.20	$5,111.40
B053	Bozeman, MT	MDB053	65,077	$2,500.00	$1,875.00
B224	Kalispell, MT	MDB224	59,218	$2,500.00	$1,875.00
B188	Helena, MT	MDB188	58,752	$6,269.07	$4,701.81
	M043 - Nashville				
B314	Nashville, TN	MDB314	1,429,309	$40,159.13	$30,119.35
B083	Clarksville, TN-Hopkinsville, KY	MDB083	220,469	$3,573.34	$2,680.01
B096	Cookeville, TN	MDB096	117,613	$12,499.94	$9,374.95
	M044 - Knoxville				
B232	Knoxville, TN	MDB232	948,055	$34,558.48	$25,918.86
B229	Kingsport-Johnston City, TN-Bristol, VA/TN	MDB229	652,639	$31,998.36	$23,998.77
B295	Middlesboro-Harlan, KY	MDB295	121,217	$6,516.20	$4,887.15
	M045 - Omaha				
B332	Omaha, NE	MDB332	905,991	$22,665.95	$16,999.47
B256	Lincoln, NE	MDB256	309,515	$4,454.88	$3,341.16
B167	Grand Island-Kearney, NE	MDB167	141,541	$6,438.66	$4,828.99
B323	Norfolk, NE	MDB323	112,526	$11,490.92	$8,618.19
B325	North Platte, NE	MDB325	80,249	$3,854.31	$2,890.73
B185	Hastings, NE	MDB185	72,833	$2,500.00	$1,875.00
B270	McCook, NE	MDB270	36,618	$2,500.00	$1,875.00

	M046 - Wichita				
B472	Wichita, KS	MDB472	597,494	$14,832.06	$11,124.04
B396	Salina, KS	MDB396	143,408	$4,639.97	$3,479.98
B200	Hutchinson, KS	MDB200	125,094	$7,343.50	$5,507.62
B163	Garden City, KS	MDB163	65,059	$6,126.87	$4,595.16
B187	Hays, KS	MDB187	60,926	$3,452.49	$2,589.37
B253	Liberal, KS	MDB253	53,960	$5,619.43	$4,214.58
B170	Great Bend, KS	MDB170	40,779	$3,584.96	$2,688.72
B114	Dodge City, KS	MDB114	37,454	$2,500.00	$1,875.00
	M047 - Honolulu				
B192	Honolulu, HI	MDB192	836,231	$11,740.68	$8,805.51
B190	Hilo, HI	MDB190	120,317	$9,004.16	$6,753.12
B222	Kahului-Wailuku-Lahaina, HI	MDB222	100,504	$2,500.00	$1,875.00
B254	Lihue, HI	MDB254	51,177	$5,460.79	$4,095.59
	M048 - Tulsa				
B448	Tulsa, OK	MDB448	836,559	$37,962.85	$28,472.13
B311	Muskogee, OK	MDB311	148,267	$7,079.89	$5,309.92
B088	Coffeyville, KS	MDB088	63,504	$4,456.93	$3,342.70
B031	Bartlesville, OK	MDB031	48,066	$3,410.59	$2,557.94
	M049 - Alaska				
B014	Anchorage, AK	MDB014	388,943	$30,107.13	$22,580.35
B136	Fairbanks, AK	MDB136	92,111	$2,500.00	$1,875.00
B221	Juneau-Ketchikan, AK	MDB221	68,989	$5,090.70	$3,818.03
	M050 - Guam-Northern Mariana Islands				
B490	Guam	MDB490	133,000	$3,361.18	$2,520.88
B493	Northern Mariana Islands	MDB493	43,000	$4,588.27	$3,441.20

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M051 - American Samoa				
B492	American Samoa	MDB492	47,000	$2,500.00	$1,875.00
	Totals		**252,556,719**	**$4,647,394.76**	**$3,485,546.07**

Notes:

* This authorization number must be used on the FCC Form 159 in FCC Code 2 block when making down payments, final payments, or installment payments.

Do not specify individual authorizations on the FCC Form 159 accompanying an upfront payment.

** All population figures are 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census.

The population that a BTA authorization holder could serve may be significantly lower than this due to the presence of incumbent licensees.

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[FR Doc. 95–23162 Filed 9–15–95; 8:45 am]

BILLING CODE 6712–01–C

[Correction to Report No. AUC-95–06]

Auction Notice and Filing Requirements for 493 BTA Authorizations for Multipoint Distribution Service in the 2 GHz Band, Scheduled for November 13, 1995

AGENCY: Federal Communications Commission.

ACTION: Public Notice.

SUMMARY: This Public Notice, released September 12, 1995, revised the Appendix attached to Report No. AUC–95–06 dated September 5, 1995. Both the September 5, 1995 and the September 12, 1995 Public Notices should be read together. These Public Notices are directed toward the Commission's goal of efficiently distributing the unused MDS spectrum through competitive bidding, and are designed to assist prospective bidders in preparing for the upcoming MDS auction.

FOR FURTHER INFORMATION CONTACT: The FCC auction contractor, Tradewinds International, Inc., at (202) 637–FCC1 (637–3221).

The complete text of the Public Notice dated September 12, 1995 follows. Copies of this item are available for public inspection in Room 207, 2033 M Street, N.W., Washington, D.C. and may also be obtained from the FCC copy contractor, ITS, Inc. at (202) 418–0620, and the FCC auction contractor, Tradewinds International, Inc. at (202) 637–FCC1 (637–3221).

This Public Notice corrects the Appendix attached to Report No. AUC–95–06, dated September 5, 1995. The upfront payment amounts listed in the following table differ slightly from those in the September 5, 1995 Appendix and supersede those previously published. The revised upfront payments have been rounded up to the next dollar. The revised small business payments are 75 percent of the total upfront payments due, rounded up to the next dollar. This rounding procedure is being implemented to ensure that the maximum initial eligibility for each bidder will be a whole number (a condition required by the Commissions' auction implementation software) and to ensure that, when the upfront payment of a small business bidder is adjusted (by multiplying it by 4/3) to calculate the maximum initial eligibility, the small business bidder will have an appropriate number of ''activity'' or ''bidding'' units.

The upfront payment schedule guarantees that if a small business bidder and a bidder that is not a small business each submit upfront payments for the same combination of markets, the maximum initial eligibility for the bidder that is not a small business will equal the sum of the upfront payments for those markets, whole the maximum initial eligibility for the small business bidder will be equal to or possibly slightly larger than the sum of the upfront payments for those markets. For example, a small business bidder submitting an upfront payment for all markets would have a maximum initial eligibility equal to 4,647,790 bidding units, while a bidder that is not a small business would have a maximum initial eligibility of 4,647,596 bidding units. Differences of this nature are a result of the rounding process employed.

Small business bidders should monitor their eligibility carefully during the course of the auction, especially during stage transitions. When a bidder's activity level in a particular round is below its required bidding activity level for that round, even by one bidding unit, the bidding software will automatically charge a waiver to that bidder. Thus, small business bidders may be charged a waiver that they did not intend to exercise. To avoid this, small business bidders would need to use the automatic waiver override procedures. A discussion of the activity rule is contained in Report No. AUC–95–06, dated September 5, 1995. For further information, contact Karen Wrege, Auctions Division, at (202) 418–0660.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

BILLING CODE 6712–01–M

Revised Appendix

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED					
MDS AUCTION					
REVISED SEPTEMBER 12, 1995					
Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M001 - New York				
B321	New York, NY	MDB321	18,050,615	$113,905	$85,429
B184	Hartford, CT	MDB184	1,123,678	$16,209	$12,157
B007	Albany-Schenectady, NY	MDB007	1,028,615	$7,516	$5,637
B318	New Haven-Waterbury-Meriden, CT	MDB318	978,311	$14,500	$10,875
B438	Syracuse, NY	MDB438	791,140	$6,018	$4,514
B010	Allentown-Bethlehem-Easton, PA	MDB010	686,688	$23,280	$17,460
B412	Scranton-Wilkes Barre-Hazleton, PA	MDB412	678,410	$10,260	$7,695
B361	Poughkeepsie-Kingston, NY	MDB361	424,766	$6,003	$4,503
B063	Burlington, VT	MDB063	369,128	$4,833	$3,625
B319	New London-Norwich, CT	MDB319	357,482	$16,855	$12,642
B043	Binghamton, NY	MDB043	356,645	$10,343	$7,758
B453	Utica-Rome, NY	MDB453	316,633	$3,833	$2,875
B127	Elmira-Corning-Hornell, NY	MDB127	315,038	$8,960	$6,720
B463	Watertown, NY	MDB463	296,253	$23,225	$17,419
B352	Plattsburgh, NY	MDB352	123,121	$2,586	$1,940
B164	Glens Falls, NY	MDB164	118,539	$7,713	$5,785
B333	Oneonta, NY	MDB333	107,742	$8,044	$6,033
B388	Rutland-Bennington, VT	MDB388	97,987	$2,500	$1,875
B435	Stroudsburg, PA	MDB435	95,709	$2,682	$2,012
B208	Ithaca, NY	MDB208	94,097	$2,500	$1,875
	M002 - Los Angeles-San Diego				
B262	Los Angeles, CA	MDB262	14,549,810	$51,738	$38,804
B402	San Diego, CA	MDB402	2,498,016	$7,230	$5,423
B245	Las Vegas, NV	MDB245	857,856	$8,329	$6,247
B028	Bakersfield, CA	MDB028	543,477	$8,521	$6,391
B406	Santa Barbara-Santa Maria, CA	MDB406	369,608	$15,784	$11,838
B405	San Luis Obispo, CA	MDB405	217,162	$8,538	$6,404
B124	El Centro-Calexico, CA	MDB124	109,303	$2,500	$1,875

	M003 - Chicago				
B078	Chicago, IL	MDB078	8,182,076	$48,791	$36,594
B155	Ft. Wayne, IN	MDB155	646,736	$6,995	$5,247
B344	Peoria, IL	MDB344	455,643	$2,500	$1,875
B380	Rockford, IL	MDB380	412,120	$6,740	$5,055
B424	South Bend-Mishawaka, IN	MDB424	330,821	$7,034	$5,276
B426	Springfield, IL	MDB426	254,696	$9,421	$7,066
B109	Decatur-Effingham, IL	MDB109	247,608	$2,500	$1,875
B126	Elkhart, IN	MDB126	235,152	$5,135	$3,852
B071	Champaign-Urbana, IL	MDB071	222,312	$2,500	$1,875
B046	Bloomington, IL	MDB046	215,795	$3,786	$2,840
B039	Benton Harbor, MI	MDB039	161,378	$5,170	$3,878
B243	La Salle-Peru-Ottawa-Streator, IL	MDB243	148,331	$14,415	$10,812
B225	Kankakee, IL	MDB225	127,042	$11,825	$8,869
B103	Danville, IL	MDB103	114,241	$4,256	$3,192
B294	Michigan City-La Porte, IN	MDB294	107,066	$2,500	$1,875
B161	Galesburg, IL	MDB161	75,574	$2,500	$1,875
B213	Jacksonville, IL	MDB213	70,795	$2,500	$1,875
B286	Mattoon, IL	MDB286	62,314	$2,500	$1,875
	M004 - San Francisco-Oakland-San Jose				
B404	San Francisco-Oakland-San Jose, CA	MDB404	6,420,984	$53,205	$39,904
B389	Sacramento, CA	MDB389	1,656,581	$17,791	$13,344
B157	Fresno, CA	MDB157	755,580	$5,668	$4,251
B434	Stockton, CA	MDB434	512,626	$2,500	$1,875
B372	Reno, NV	MDB372	439,279	$8,550	$6,413
B303	Modesto, CA	MDB303	418,978	$5,090	$3,818
B458	Visalia-Porterville-Hanford, CA	MDB458	413,390	$10,005	$7,504
B397	Salinas-Monterey, CA	MDB397	355,660	$2,500	$1,875
B371	Redding, CA	MDB371	253,255	$9,219	$6,915
B079	Chico-Oroville, CA	MDB079	206,918	$2,500	$1,875
B291	Merced, CA	MDB291	192,705	$9,557	$7,168
B134	Eureka, CA	MDB134	142,578	$13,238	$9,929
B485	Yuba City-Marysville, CA	MDB485	122,643	$2,500	$1,875

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M005 - Detroit				
B112	Detroit, MI	MDB112	4,705,164	$54,189	$40,642
B169	Grand Rapids, MI	MDB169	916,060	$22,112	$16,584
B444	Toledo, OH	MDB444	782,184	$7,778	$5,834
B390	Saginaw-Bay City, MI	MDB390	615,364	$12,907	$9,681
B145	Flint, MI	MDB145	500,229	$6,398	$4,799
B241	Lansing, MI	MDB241	489,698	$9,197	$6,898
B223	Kalamazoo, MI	MDB223	352,384	$10,981	$8,236
B255	Lima, OH	MDB255	249,734	$2,500	$1,875
B033	Battle Creek, MI	MDB033	227,541	$6,256	$4,692
B310	Muskegon, MI	MDB310	206,974	$8,484	$6,363
B446	Traverse City, MI	MDB446	204,600	$11,080	$8,310
B209	Jackson, MI	MDB209	193,187	$2,713	$2,035
B143	Findlay-Tiffin, OH	MDB143	147,523	$6,267	$4,701
B307	Mt. Pleasant, MI	MDB307	118,558	$8,256	$6,192
B005	Adrian, MI	MDB005	91,476	$2,500	$1,875
B345	Petoskey, MI	MDB345	85,863	$9,162	$6,872
B011	Alpena, MI	MDB011	63,429	$6,392	$4,794
B409	Sault Ste. Marie, MI	MDB409	51,041	$4,927	$3,696
	M006 - Charlotte-Greensboro-Greenville-Raleigh				
B074	Charlotte-Gastonia, NC	MDB074	1,671,037	$28,237	$21,178
B174	Greensboro-Winston-Salem-High Point, NC	MDB174	1,241,349	$35,029	$26,272
B368	Raleigh-Durham, NC	MDB368	1,089,423	$27,992	$20,994
B177	Greenville-Spartanburg, SC	MDB177	788,212	$10,759	$8,070
B072	Charleston, SC	MDB072	624,369	$7,364	$5,523
B141	Fayetteville-Lumberton, NC	MDB141	571,328	$39,668	$29,751
B091	Columbia, SC	MDB091	568,754	$7,961	$5,971
B020	Asheville-Hendersonville, NC	MDB020	510,055	$39,928	$29,946
B016	Anderson, SC	MDB016	305,120	$2,724	$2,043
B189	Hickory-Lenoir-Morganton, NC	MDB189	292,409	$27,557	$20,668

B478	Wilmington, NC	MDB478	249,711	$9,169	$6,877
B147	Florence, SC	MDB147	239,208	$3,194	$2,396
B176	Greenville-Washington, NC	MDB176	218,937	$12,332	$9,249
B165	Goldsboro-Kinston, NC	MDB165	217,319	$11,840	$8,880
B382	Rocky Mount-Wilson, NC	MDB382	199,296	$7,681	$5,761
B316	New Bern, NC	MDB316	154,955	$9,955	$7,467
B214	Jacksonville, NC	MDB214	149,838	$5,891	$4,419
B436	Sumter, SC	MDB436	149,524	$2,500	$1,875
B312	Myrtle Beach, SC	MDB312	144,053	$2,500	$1,875
B335	Orangeburg, SC	MDB335	114,458	$3,746	$2,810
B062	Burlington, NC	MDB062	108,213	$2,735	$2,052
B377	Roanoke Rapids, NC	MDB377	76,314	$2,500	$1,875
B178	Greenwood, SC	MDB178	68,435	$2,747	$2,061
	M007 - Dallas-Ft. Worth				
B101	Dallas-Ft. Worth, TX	MDB101	4,329,924	$25,729	$19,297
B027	Austin, TX	MDB027	899,361	$4,671	$3,504
B419	Shreveport, LA	MDB419	583,266	$23,758	$17,819
B264	Lubbock, TX	MDB264	392,901	$7,915	$5,937
B013	Amarillo, TX	MDB013	380,341	$17,095	$12,822
B304	Monroe, LA	MDB304	324,397	$9,216	$6,912
B260	Longview-Marshall, TX	MDB260	292,659	$7,416	$5,562
B441	Temple-Killeen, TX	MDB441	291,768	$2,500	$1,875
B459	Waco, TX	MDB459	270,052	$5,561	$4,171
B452	Tyler, TX	MDB452	269,762	$20,546	$15,410
B443	Texarkana, TX/AR	MDB443	255,983	$5,367	$4,026
B003	Abilene, TX	MDB003	253,174	$15,703	$11,778
B327	Odessa, TX	MDB327	213,420	$17,632	$13,224
B473	Wichita Falls, TX	MDB473	209,339	$6,296	$4,722
B400	San Angelo, TX	MDB400	155,845	$4,499	$3,375
B418	Sherman-Denison, TX	MDB418	151,914	$2,500	$1,875
B296	Midland, TX	MDB296	111,567	$7,206	$5,405
B341	Paris, TX	MDB341	89,422	$5,157	$3,868
B087	Clovis, NM	MDB087	71,024	$3,995	$2,997
B057	Brownwood, TX	MDB057	57,684	$3,002	$2,252

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M007 - Dallas-Ft. Worth (cont.)				
B191	Hobbs, NM	MDB191	55,765	$3,741	$2,806
B040	Big Spring, TX	MDB040	34,589	$2,681	$2,011
	M008 - Boston-Providence				
B051	Boston, MA	MDB051	4,133,895	$6,286	$4,715
B364	Providence-Pawtucket, RI-New Bedford-Fall River, MA	MDB364	1,509,789	$8,821	$6,616
B480	Worcester-Fitchburg-Leominster, MA	MDB480	709,705	$6,241	$4,681
B427	Springfield-Holyoke, MA	MDB427	672,970	$17,274	$12,956
B274	Manchester-Nashua-Concord, NH	MDB274	540,704	$11,829	$8,872
B357	Portland-Brunswick, ME	MDB357	471,614	$3,142	$2,357
B030	Bangor, ME	MDB030	316,838	$23,674	$17,756
B251	Lewiston-Auburn, ME	MDB251	221,697	$7,001	$5,251
B201	Hyannis, MA	MDB201	204,256	$6,450	$4,838
B249	Lebanon-Claremont, NH	MDB249	167,576	$2,500	$1,875
B465	Waterville-Augusta, ME	MDB465	165,671	$11,453	$8,590
B351	Pittsfield, MA	MDB351	139,352	$5,479	$4,110
B227	Keene, NH	MDB227	111,709	$3,697	$2,773
B363	Presque Isle, ME	MDB363	86,936	$7,006	$5,255
	M009 - Philadelphia				
B346	Philadelphia, PA-Wilmington, DE-Trenton, NJ	MDB346	5,899,345	$18,711	$14,034
B181	Harrisburg, PA	MDB181	654,808	$6,859	$5,145
B240	Lancaster, PA	MDB240	422,822	$2,767	$2,076
B483	York-Hanover, PA	MDB483	417,848	$2,500	$1,875
B370	Reading, PA	MDB370	336,523	$11,919	$8,940
B025	Atlantic City, NJ	MDB025	319,416	$2,500	$1,875
B116	Dover, DE	MDB116	251,257	$10,588	$7,941
B437	Sunbury-Shamokin, PA	MDB437	187,362	$17,103	$12,828
B475	Williamsport, PA	MDB475	161,996	$14,261	$10,696
B360	Pottsville, PA	MDB360	152,585	$5,267	$3,951
B429	State College, PA	MDB429	123,786	$3,824	$2,868

	M010 - Washington-Baltimore				
B461	Washington, DC	MDB461	4,118,628	$18,721	$14,041
B029	Baltimore, MD	MDB029	2,430,563	$2,949	$2,212
B179	Hagerstown, MD-Chambersburg, PA-Martinsburg, WV	MDB179	327,693	$6,940	$5,205
B075	Charlottesville, VA	MDB075	190,128	$2,500	$1,875
B398	Salisbury, MD	MDB398	163,043	$3,111	$2,334
B100	Cumberland, MD	MDB100	156,707	$15,971	$11,979
B479	Winchester, VA	MDB479	137,549	$2,500	$1,875
B183	Harrisonburg, VA	MDB183	128,910	$2,500	$1,875
B156	Fredericksburg, VA	MDB156	124,654	$10,681	$8,011
	M011 - Atlanta				
B024	Atlanta, GA	MDB024	3,197,171	$30,665	$22,999
B410	Savannah, GA	MDB410	630,180	$25,191	$18,894
B271	Macon-Warner Robins, GA	MDB271	589,208	$21,115	$15,837
B026	Augusta, GA	MDB026	521,822	$28,079	$21,060
B076	Chattanooga, TN	MDB076	510,860	$2,994	$2,246
B092	Columbus, GA	MDB092	342,333	$6,297	$4,723
B006	Albany-Tifton, GA	MDB006	324,899	$12,372	$9,279
B160	Gainesville, GA	MDB160	170,365	$2,500	$1,875
B022	Athens, GA	MDB022	166,030	$2,665	$1,999
B334	Opelika-Auburn, AL	MDB334	124,022	$2,500	$1,875
B384	Rome, GA	MDB384	115,066	$8,162	$6,122
B102	Dalton, GA	MDB102	98,609	$3,081	$2,311
B085	Cleveland, TN	MDB085	87,355	$2,500	$1,875
B237	La Grange, GA	MDB237	64,164	$2,500	$1,875
	M012 - Minneapolis-St. Paul				
B298	Minneapolis-St. Paul, MN	MDB298	2,840,561	$28,620	$21,465
B119	Duluth, MN	MDB119	400,771	$31,953	$23,965
B138	Fargo, ND	MDB138	298,015	$6,217	$4,663
B277	Mankato-Fairmont, MN	MDB277	245,144	$5,767	$4,326
B391	St. Cloud, MN	MDB391	243,888	$2,500	$1,875
B378	Rochester-Austin-Albert Lea, MN	MDB378	233,167	$9,312	$6,984

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M012 - Minneapolis-St. Paul (cont.)				
B166	Grand Forks, ND	MDB166	213,932	$10,601	$7,951
B422	Sioux Falls, SD	MDB422	207,716	$2,917	$2,188
B123	Eau Claire, WI	MDB123	180,559	$9,174	$6,881
B477	Willmar-Marshall, MN	MDB477	123,749	$7,169	$5,377
B045	Bismarck, ND	MDB045	123,682	$3,984	$2,988
B299	Minot, ND	MDB299	122,687	$5,762	$4,322
B142	Fergus Falls, MN	MDB142	120,167	$3,815	$2,862
B481	Worthington, MN	MDB481	96,602	$2,500	$1,875
B001	Aberdeen, SD	MDB001	88,891	$4,743	$3,558
B301	Mitchell, SD	MDB301	84,095	$4,904	$3,678
B054	Brainerd, MN	MDB054	78,465	$3,974	$2,981
B464	Watertown, SD	MDB464	74,555	$3,085	$2,314
B037	Bemidji, MN	MDB037	57,632	$5,769	$4,327
B199	Huron, SD	MDB199	53,189	$3,472	$2,604
B113	Dickinson, ND	MDB113	38,001	$2,500	$1,875
B207	Ironwood, MI	MDB207	33,059	$2,500	$1,875
B476	Williston, ND	MDB476	27,512	$2,500	$1,875
	M013 - Tampa-St. Petersburg-Orlando				
B440	Tampa-St. Petersburg-Clearwater, FL	MDB440	2,249,405	$13,957	$10,468
B336	Orlando, FL	MDB336	1,256,429	$2,500	$1,875
B408	Sarasota-Bradenton, FL	MDB408	513,348	$4,974	$3,731
B239	Lakeland-Winter Haven, FL	MDB239	405,382	$2,796	$2,097
B107	Daytona Beach, FL	MDB107	399,413	$2,500	$1,875
B289	Melbourne-Titusville, FL	MDB289	398,978	$5,354	$4,016
B326	Ocala, FL	MDB326	194,833	$2,736	$2,052
	M014 - Houston				
B196	Houston, TX	MDB196	4,054,253	$44,455	$33,342
B034	Beaumont-Port Arthur, TX	MDB034	432,129	$5,962	$4,472
B238	Lake Charles, LA	MDB238	259,425	$5,094	$3,821
B059	Bryan-College Station, TX	MDB059	150,998	$2,500	$1,875
B456	Victoria, TX	MDB456	149,963	$7,824	$5,868
B265	Lufkin-Nacogdoches, TX	MDB265	144,081	$6,288	$4,716

	M015 - Miami- Ft. Lauderdale				
B293	Miami-Ft. Lauderdale, FL	MDB293	3,270,606	$8,977	$6,733
B469	West Palm Beach-Boca Raton, FL	MDB469	893,145	$2,820	$2,115
B151	Ft. Myers, FL	MDB151	479,452	$3,888	$2,916
B152	Ft. Pierce-Vero Beach-Stuart, FL	MDB152	341,279	$2,500	$1,875
B313	Naples, FL	MDB313	152,099	$5,512	$4,134
	M016 - Cleveland				
B084	Cleveland-Akron, OH	MDB084	2,894,133	$7,287	$5,466
B065	Canton-New Philadelphia, OH	MDB065	513,623	$36,791	$27,594
B484	Youngstown-Warren, OH	MDB484	492,619	$2,500	$1,875
B131	Erie, PA	MDB131	275,572	$3,870	$2,903
B278	Mansfield, OH	MDB278	221,514	$3,492	$2,619
B403	Sandusky, OH	MDB403	133,019	$7,978	$5,984
B416	Sharon, PA	MDB416	121,003	$2,500	$1,875
B122	East Liverpool-Salem, OH	MDB122	108,276	$2,500	$1,875
B021	Ashtabula, OH	MDB021	99,821	$5,281	$3,961
B287	Meadville, PA	MDB287	86,169	$2,500	$1,875
	M017 - New Orleans-Baton Rouge				
B320	New Orleans, LA	MDB320	1,367,169	$11,216	$8,412
B032	Baton Rouge, LA	MDB032	623,657	$2,500	$1,875
B302	Mobile, AL	MDB302	594,397	$14,931	$11,199
B236	Lafayette-New Iberia, LA	MDB236	496,579	$8,307	$6,231
B343	Pensacola, FL	MDB343	344,406	$2,500	$1,875
B042	Biloxi-Gulfport-Pascagoula, MS	MDB042	339,791	$2,500	$1,875
B009	Alexandria, LA	MDB009	280,133	$8,340	$6,255
B195	Houma-Thibodaux, LA	MDB195	263,681	$4,235	$3,177
B154	Ft. Walton Beach, FL	MDB154	171,536	$9,646	$7,235
B186	Hattiesburg, MS	MDB186	161,894	$9,134	$6,851
B269	McComb-Brookhaven, MS	MDB269	107,298	$6,889	$5,167

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

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Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M017 - New Orleans-Baton Rouge (cont.)				
B180	Hammond, LA	MDB180	95,583	$6,240	$4,680
B246	Laurel, MS	MDB246	79,145	$4,062	$3,047
	M018 - Cincinnati-Dayton				
B081	Cincinnati, OH	MDB081	1,990,451	$11,832	$8,874
B106	Dayton-Springfield, OH	MDB106	1,207,689	$16,615	$12,462
B073	Charleston, WV	MDB073	481,387	$31,635	$23,727
B197	Huntington, WV-Ashland, KY	MDB197	363,936	$22,087	$16,566
B474	Williamson, WV-Pikeville, KY	MDB474	185,882	$15,275	$11,457
B048	Bluefield, WV	MDB048	184,020	$15,544	$11,658
B035	Beckley, WV	MDB035	167,112	$16,434	$12,326
B359	Portsmouth, OH	MDB359	93,356	$6,118	$4,589
B259	Logan, WV	MDB259	43,032	$4,175	$3,132
	M019 - St. Louis				
B394	St. Louis, MO	MDB394	2,742,114	$25,769	$19,327
B428	Springfield, MO	MDB428	532,880	$35,725	$26,794
B067	Carbondale-Marion, IL	MDB067	209,497	$9,058	$6,794
B090	Columbia, MO	MDB090	190,536	$4,231	$3,174
B066	Cape Girardeau-Sikeston, MO	MDB066	181,795	$7,968	$5,976
B367	Quincy, IL-Hannibal, MO	MDB367	177,213	$2,500	$1,875
B355	Poplar Bluff, MO	MDB355	148,240	$2,838	$2,129
B217	Jefferson City, MO	MDB217	141,404	$3,174	$2,381
B308	Mt. Vernon-Centralia, IL	MDB308	119,286	$2,500	$1,875
B383	Rolla, MO	MDB383	98,233	$8,868	$6,651
B470	West Plains, MO	MDB470	67,165	$3,145	$2,359
B230	Kirksville, MO	MDB230	55,563	$2,500	$1,875

	M020 - Milwaukee				
B297	Milwaukee, WI	MDB297	1,751,525	$2,500	$1,875
B272	Madison, WI	MDB272	593,145	$10,701	$8,026
B018	Appleton-Oshkosh, WI	MDB018	399,261	$11,441	$8,581
B173	Green Bay, WI	MDB173	310,435	$10,528	$7,896
B234	La Crosse, WI-Winona, MN	MDB234	295,769	$7,083	$5,313
B466	Wausau-Rhinelander, WI	MDB466	220,060	$16,796	$12,597
B216	Janesville-Beloit, WI	MDB216	214,510	$2,500	$1,875
B432	Stevens Point-Marshfield-Wisconsin Rapids, WI	MDB432	201,240	$17,638	$13,229
B417	Sheboygan, WI	MDB417	103,877	$2,500	$1,875
B148	Fond du Lac, WI	MDB148	90,083	$2,500	$1,875
B276	Manitowoc, WI	MDB276	80,421	$2,500	$1,875
B282	Marquette, MI	MDB282	79,859	$4,127	$3,096
B279	Marinette, WI-Menominee, MI	MDB279	65,468	$6,628	$4,971
B132	Escanaba, MI	MDB132	46,082	$4,918	$3,689
B194	Houghton, MI	MDB194	45,101	$3,745	$2,809
B206	Iron Mountain, MI	MDB206	44,596	$4,075	$3,057
	M021 - Pittsburgh				
B350	Pittsburgh, PA	MDB350	2,507,839	$22,018	$16,514
B218	Johnstown, PA	MDB218	241,247	$14,031	$10,524
B012	Altoona, PA	MDB012	222,625	$9,938	$7,454
B471	Wheeling, WV	MDB471	219,937	$8,892	$6,669
B082	Clarksburg-Elkins, WV	MDB082	190,498	$9,788	$7,341
B431	Steubenville, OH-Weirton, WV	MDB431	142,523	$2,500	$1,875
B117	Du Bois-Clearfield, PA	MDB117	124,180	$9,166	$6,875
B328	Oil City-Franklin, PA	MDB328	105,882	$10,940	$8,205
B306	Morgantown, WV	MDB306	104,546	$5,324	$3,993
B317	New Castle, PA	MDB317	96,246	$2,500	$1,875
B203	Indiana, PA	MDB203	89,994	$7,157	$5,368
B137	Fairmont, WV	MDB137	57,249	$2,500	$1,875
	M022 - Denver				
B110	Denver, CO	MDB110	2,073,952	$19,834	$14,876
B089	Colorado Springs, CO	MDB089	409,482	$2,500	$1,875
B366	Pueblo, CO	MDB366	266,001	$11,596	$8,697
B168	Grand Junction, CO	MDB168	187,062	$19,961	$14,971
B149	Ft. Collins-Loveland, CO	MDB149	186,136	$2,500	$1,875

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Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M022 - Denver (cont.)				
B369	Rapid City, SD	MDB369	181,278	$8,181	$6,136
B069	Casper-Gillette, WY	MDB069	135,172	$12,191	$9,144
B172	Greeley, CO	MDB172	131,821	$2,500	$1,875
B077	Cheyenne, WY	MDB077	103,939	$10,064	$7,548
B411	Scottsbluff, NE	MDB411	101,954	$8,287	$6,216
B381	Rock Springs, WY	MDB381	56,981	$5,142	$3,857
B375	Riverton, WY	MDB375	46,859	$3,885	$2,914
	M023 - Richmond-Norfolk				
B324	Norfolk-Virginia Beach-Newport News-Hampton, VA	MDB324	1,635,296	$36,655	$27,492
B374	Richmond-Petersburg, VA	MDB374	1,090,869	$23,997	$17,998
B376	Roanoke, VA	MDB376	609,215	$11,498	$8,624
B104	Danville, VA	MDB104	165,434	$6,427	$4,821
B266	Lynchburg, VA	MDB266	154,497	$2,500	$1,875
B430	Staunton-Waynesboro, VA	MDB430	100,322	$2,500	$1,875
B284	Martinsville, VA	MDB284	90,577	$2,868	$2,151
	M024 - Seattle (Excluding Alaska)				
B413	Seattle-Tacoma, WA	MDB413	2,708,949	$16,155	$12,117
B331	Olympia-Centralia, WA	MDB331	258,937	$11,041	$8,281
B482	Yakima, WA	MDB482	215,548	$2,500	$1,875
B055	Bremerton, WA	MDB055	189,731	$2,500	$1,875
B468	Wenatchee, WA	MDB468	166,563	$11,709	$8,782
B036	Bellingham, WA	MDB036	127,780	$3,575	$2,682
B002	Aberdeen, WA	MDB002	83,057	$5,127	$3,846
B356	Port Angeles, WA	MDB356	76,610	$5,630	$4,223
	M025 - Puerto Rico-U.S. Virgin Islands				
B488	San Juan, PR	MDB488	2,170,246	$36,024	$27,018
B489	Mayaguez-Aguadilla-Ponce, PR	MDB489	1,351,600	$28,231	$21,174
B491	US Virgin Islands	MDB491	102,000	$7,591	$5,694

	M026 - Louisville-Lexington-Evansville				
B263	Louisville, KY	MDB263	1,352,955	$16,207	$12,156
B252	Lexington, KY	MDB252	816,101	$27,722	$20,792
B135	Evansville, IN	MDB135	504,859	$10,355	$7,767
B052	Bowling Green-Glasgow, KY	MDB052	222,748	$17,272	$12,954
B339	Paducah-Murray-Mayfield, KY	MDB339	217,082	$4,210	$3,158
B338	Owensboro, KY	MDB338	157,104	$5,321	$3,991
B098	Corbin, KY	MDB098	128,186	$3,678	$2,759
B423	Somerset, KY	MDB423	111,487	$2,500	$1,875
B273	Madisonville, KY	MDB273	46,126	$2,500	$1,875
	M027 - Phoenix				
B347	Phoenix, AZ	MDB347	2,404,760	$19,933	$14,950
B447	Tucson, AZ	MDB447	666,880	$2,500	$1,875
B362	Prescott, AZ	MDB362	107,714	$2,500	$1,875
B486	Yuma, AZ	MDB486	106,895	$2,500	$1,875
B420	Sierra Vista-Douglas, AZ	MDB420	97,624	$7,036	$5,277
B144	Flagstaff, AZ	MDB144	96,591	$4,660	$3,495
B322	Nogales, AZ	MDB322	29,676	$2,917	$2,188
	M028 - Memphis-Jackson				
B290	Memphis, TN	MDB290	1,396,390	$25,192	$18,894
B210	Jackson, MS	MDB210	615,521	$17,945	$13,459
B449	Tupelo-Corinth, MS	MDB449	291,701	$16,682	$12,512
B211	Jackson, TN	MDB211	255,379	$16,931	$12,699
B175	Greenville-Greenwood, MS	MDB175	213,943	$14,918	$11,189
B292	Meridian, MS	MDB292	200,024	$14,814	$11,111
B094	Columbus-Starkville, MS	MDB094	166,415	$8,841	$6,631
B120	Dyersburg-Union City, TN	MDB120	113,943	$2,500	$1,875
B049	Blytheville, AR	MDB049	79,446	$4,064	$3,048
B315	Natchez, MS	MDB315	73,214	$5,825	$4,369
B455	Vicksburg, MS	MDB455	59,250	$2,500	$1,875

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MDS AUCTION

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	M029 - Birmingham				
B044	Birmingham, AL	MDB044	1,200,336	$28,317	$21,238
B305	Montgomery, LA	MDB305	440,745	$12,203	$9,153
B198	Huntsville, AL	MDB198	439,832	$5,132	$3,849
B450	Tuscaloosa, AL	MDB450	237,918	$4,781	$3,586
B115	Dothan-Enterprise, AL	MDB115	210,225	$2,500	$1,875
B158	Gadsden, AL	MDB158	174,034	$6,798	$5,099
B146	Florence, AL	MDB146	173,076	$2,500	$1,875
B017	Anniston, AL	MDB017	161,897	$5,284	$3,963
B108	Decatur, AL	MDB108	131,556	$2,500	$1,875
B415	Selma, AL	MDB415	74,457	$5,229	$3,922
	M030 - Portland				
B358	Portland, OR	MDB358	1,690,930	$19,137	$14,353
B395	Salem-Albany-Corvallis, OR	MDB395	440,062	$10,696	$8,022
B133	Eugene-Springfield, OR	MDB133	282,912	$15,630	$11,723
B288	Medford-Grants Pass, OR	MDB288	209,038	$2,500	$1,875
B038	Bend, OR	MDB038	102,745	$2,500	$1,875
B385	Roseburg, OR	MDB385	94,649	$8,510	$6,383
B261	Longview, WA	MDB261	85,446	$8,669	$6,502
B097	Coos Bay-North Bend, OR	MDB097	79,600	$8,077	$6,058
B231	Klamath Falls, OR	MDB231	74,566	$7,233	$5,425
	M031 - Indianapolis				
B204	Indianapolis, IN	MDB204	1,321,911	$2,500	$1,875
B235	Lafayette, IN	MDB235	247,523	$3,427	$2,571
B442	Terre Haute, IN	MDB442	236,968	$3,163	$2,373
B047	Bloomington-Bedford, IN	MDB047	217,914	$3,232	$2,424
B233	Kokomo-Logansport, IN	MDB233	184,899	$3,342	$2,507
B309	Muncie, IN	MDB309	182,386	$3,736	$2,802
B015	Anderson, IN	MDB015	178,808	$2,500	$1,875
B093	Columbus, IN	MDB093	139,128	$4,757	$3,568
B280	Marion, IN	MDB280	109,238	$2,500	$1,875
B373	Richmond, IN	MDB373	104,942	$2,500	$1,875
B457	Vincennes-Washington, IN	MDB457	93,758	$4,173	$3,130

	M032 - Des Moines- Quad Cities				
B111	Des Moines, IA	MDB111	728,830	$42,575	$31,932
B105	Davenport, IA-Moline, IL	MDB105	419,650	$2,500	$1,875
B421	Sioux City, IA	MDB421	328,919	$11,208	$8,406
B462	Waterloo-Cedar Falls, IA	MDB462	261,009	$14,398	$10,799
B070	Cedar Rapids, IA	MDB070	260,686	$4,674	$3,506
B118	Dubuque, IA	MDB118	176,542	$8,203	$6,153
B086	Clinton, IA-Sterling, IL	MDB086	147,981	$2,500	$1,875
B061	Burlington, IA	MDB061	137,543	$6,289	$4,717
B150	Ft. Dodge, IA	MDB150	131,731	$4,714	$3,536
B337	Ottumwa, IA	MDB337	122,988	$3,429	$2,572
B285	Mason City, IA	MDB285	118,834	$7,662	$5,747
B205	Iowa City, IA	MDB205	115,731	$2,500	$1,875
B283	Marshalltown, IA	MDB283	55,695	$3,504	$2,628
	M033 - San Antonio				
B401	San Antonio, TX	MDB401	1,530,954	$11,581	$8,686
B099	Corpus Christi, TX	MDB099	499,988	$2,500	$1,875
B268	McAllen, TX	MDB268	424,063	$7,591	$5,694
B056	Brownsville-Harlingen, TX	MDB056	277,825	$3,901	$2,926
B242	Laredo, TX	MDB242	152,881	$10,585	$7,939
B121	Eagle Pass-Del Rio, TX	MDB121	100,813	$10,447	$7,836
	M034 - Kansas City				
B226	Kansas City, MO	MDB226	1,839,569	$16,139	$12,105
B445	Topeka, KS	MDB445	245,679	$4,782	$3,587
B220	Joplin, MO-Miami, OK	MDB220	215,095	$2,500	$1,875
B393	St. Joseph, MO	MDB393	191,489	$4,092	$3,069
B275	Manhattan-Junction City, KS	MDB275	122,878	$6,237	$4,678
B349	Pittsburg-Parsons, KS	MDB349	90,934	$4,158	$3,119
B247	Lawrence, KS	MDB247	81,798	$2,500	$1,875

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	M034 - Kansas City (cont.)				
B414	Sedalia, MO	MDB414	79,705	$4,358	$3,269
B129	Emporia, KS	MDB129	46,157	$2,722	$2,042
	M035 - Buffalo- Rochester				
B060	Buffalo-Niagara Falls, NY	MDB060	1,231,795	$19,365	$14,524
B379	Rochester, NY	MDB379	1,118,963	$21,625	$16,219
B330	Olean, NY-Bradford, PA	MDB330	239,343	$20,084	$15,063
B215	Jamestown-Dunkirk, NY-Warren, PA	MDB215	186,945	$6,345	$4,759
	M036 - Salt Lake City				
B399	Salt Lake City-Ogden, UT	MDB399	1,308,035	$36,526	$27,395
B050	Boise-Nampa, ID	MDB050	416,503	$11,922	$8,942
B365	Provo-Orem, UT	MDB365	269,407	$2,500	$1,875
B202	Idaho Falls, ID	MDB202	190,267	$7,120	$5,340
B451	Twin Falls, ID	MDB451	136,831	$6,467	$4,851
B353	Pocatello, ID	MDB353	89,651	$4,356	$3,267
B392	St. George, UT	MDB392	83,263	$3,398	$2,549
B258	Logan, UT	MDB258	79,415	$8,338	$6,254
	M037 - Jacksonville				
B212	Jacksonville, FL	MDB212	1,114,847	$9,256	$6,942
B439	Tallahassee, FL	MDB439	418,963	$26,525	$19,894
B159	Gainesville, FL	MDB159	260,538	$4,502	$3,377
B340	Panama City, FL	MDB340	171,195	$10,639	$7,980
B454	Valdosta, GA	MDB454	139,226	$2,500	$1,875
B467	Waycross, GA	MDB467	99,034	$7,450	$5,588
B058	Brunswick, GA	MDB058	71,130	$2,500	$1,875

	M038 - Columbus				
B095	Columbus, OH	MDB095	1,477,891	$8,724	$6,543
B342	Parkersburg, WV-Marietta, OH	MDB342	180,025	$2,500	$1,875
B487	Zanesville-Cambridge, OH	MDB487	178,179	$16,418	$12,314
B023	Athens, OH	MDB023	123,864	$4,641	$3,481
B080	Chillicothe, OH	MDB080	93,579	$8,387	$6,291
B281	Marion, OH	MDB281	92,023	$2,916	$2,187
	M039 - El Paso-Albuquerque				
B008	Albuquerque, NM	MDB008	688,612	$9,254	$6,941
B128	El Paso, TX	MDB128	649,860	$5,487	$4,116
B244	Las Cruces, NM	MDB244	197,166	$5,359	$4,020
B407	Santa Fe, NM	MDB407	174,526	$4,726	$3,545
B139	Farmington, NM-Durango, CO	MDB139	162,776	$12,036	$9,027
B162	Gallup, NM	MDB162	122,277	$8,752	$6,564
B386	Roswell, NM	MDB386	70,068	$5,212	$3,909
B068	Carlsbad, NM	MDB068	48,605	$3,140	$2,355
	M040 - Little Rock				
B257	Little Rock, AR	MDB257	852,026	$39,297	$29,473
B153	Ft. Smith, AR	MDB153	282,187	$8,574	$6,431
B140	Fayetteville-Springdale-Rogers, AR	MDB140	222,526	$8,438	$6,329
B219	Jonesboro-Paragould, AR	MDB219	159,439	$11,319	$8,490
B348	Pine Bluff, AR	MDB348	152,918	$15,435	$11,577
B193	Hot Springs, AR	MDB193	117,439	$10,033	$7,525
B125	El Dorado-Magnolia-Camden, AR	MDB125	108,810	$9,002	$6,752
B387	Russellville, AR	MDB387	81,863	$8,046	$6,035
B182	Harrison, AR	MDB182	74,459	$7,579	$5,685
	M041 - Oklahoma City				
B329	Oklahoma City, OK	MDB329	1,305,472	$10,917	$8,188
B248	Lawton-Duncan, OK	MDB248	177,830	$2,500	$1,875
B130	Enid, OK	MDB130	85,998	$2,500	$1,875
B019	Ardmore, OK	MDB019	83,979	$2,500	$1,875
B433	Stillwater, OK	MDB433	72,552	$4,578	$3,434
B004	Ada, OK	MDB004	52,677	$2,500	$1,875
B267	McAlester, OK	MDB267	50,914	$2,500	$1,875
B354	Ponca City, OK	MDB354	48,056	$4,454	$3,341

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M042 - Spokane-Billings				
B425	Spokane, WA	MDB425	612,862	$21,543	$16,158
B041	Billings, MT	MDB041	290,242	$14,985	$11,239
B171	Great Falls, MT	MDB171	161,038	$15,906	$11,930
B460	Walla Walla, WA-Pendelton, OR	MDB460	151,563	$10,075	$7,557
B228	Kennewick-Pasco-Richland, WA	MDB228	150,033	$2,550	$1,913
B300	Missoula, MT	MDB300	139,270	$14,178	$10,634
B250	Lewiston-Moscow, ID	MDB250	110,028	$10,344	$7,758
B064	Butte, MT	MDB064	65,252	$6,816	$5,112
B053	Bozeman, MT	MDB053	65,077	$2,500	$1,875
B224	Kalispell, MT	MDB224	59,218	$2,500	$1,875
B188	Helena, MT	MDB188	58,752	$6,270	$4,703
	M043 - Nashville				
B314	Nashville, TN	MDB314	1,429,309	$40,160	$30,120
B083	Clarksville, TN-Hopkinsville, KY	MDB083	220,469	$3,574	$2,681
B096	Cookeville, TN	MDB096	117,613	$12,500	$9,375
	M044 - Knoxville				
B232	Knoxville, TN	MDB232	948,055	$34,559	$25,920
B229	Kingsport-Johnston City, TN-Bristol, VA/TN	MDB229	652,639	$31,999	$24,000
B295	Middlesboro-Harlan, KY	MDB295	121,217	$6,517	$4,888
	M045 - Omaha				
B332	Omaha, NE	MDB332	905,991	$22,666	$17,000
B256	Lincoln, NE	MDB256	309,515	$4,455	$3,342
B167	Grand Island-Kearney, NE	MDB167	141,541	$6,439	$4,830
B323	Norfolk, NE	MDB323	112,526	$11,491	$8,619
B325	North Platte, NE	MDB325	80,249	$3,855	$2,892
B185	Hastings, NE	MDB185	72,833	$2,500	$1,875
B270	McCook, NE	MDB270	36,618	$2,500	$1,875

	M046 - Wichita				
B472	Wichita, KS	MDB472	597,494	$14,833	$11,125
B396	Salina, KS	MDB396	143,408	$4,640	$3,480
B200	Hutchinson, KS	MDB200	125,094	$7,344	$5,508
B163	Garden City, KS	MDB163	65,059	$6,127	$4,596
B187	Hays, KS	MDB187	60,926	$3,453	$2,590
B253	Liberal, KS	MDB253	53,960	$5,620	$4,215
B170	Great Bend, KS	MDB170	40,779	$3,585	$2,689
B114	Dodge City, KS	MDB114	37,454	$2,500	$1,875
	M047 - Honolulu				
B192	Honolulu, HI	MDB192	836,231	$11,741	$8,806
B190	Hilo, HI	MDB190	120,317	$9,005	$6,754
B222	Kahului-Wailuku-Lahaina, HI	MDB222	100,504	$2,500	$1,875
B254	Lihue, HI	MDB254	51,177	$5,461	$4,096
	M048 - Tulsa				
B448	Tulsa, OK	MDB448	836,559	$37,963	$28,473
B311	Muskogee, OK	MDB311	148,267	$7,080	$5,310
B088	Coffeyville, KS	MDB088	63,504	$4,457	$3,343
B031	Bartlesville, OK	MDB031	48,066	$3,411	$2,559
	M049 - Alaska				
B014	Anchorage, AK	MDB014	388,943	$30,108	$22,581
B136	Fairbanks, AK	MDB136	92,111	$2,500	$1,875
B221	Juneau-Ketchikan, AK	MDB221	68,989	$5,091	$3,819
	M050 - Guam-Northern Mariana Islands				
B490	Guam	MDB490	133,000	$3,362	$2,522
B493	Northern Mariana Islands	MDB493	43,000	$4,589	$3,442

SUMMARY OF AUTHORIZATIONS TO BE AUCTIONED

MDS AUCTION

REVISED SEPTEMBER 12, 1995

Market No.	Basic Trading Area	Authorizations*	Population**	Upfront Payments	Upfront Payments for Small Businesses
	M051 - American Samoa				
B492	American Samoa	MDB492	47,000	$2,500	$1,875
	Totals		**252,556,719**	**$4,647,596**	**$3,485,842**

Notes:

* This authorization number must be used on the FCC Form 159 in FCC Code 2 block when making down payments, final payments, or installment payments.

Do not specify individual authorizations on the FCC Form 159 accompanying an upfront payment.

** All population figures are 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census.

The population that a BTA authorization holder could serve may be significantly lower than this due to the presence of incumbent licensees.

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[FR Doc. 95–23163 Filed 9–15–95; 8:45 am]
BILLING CODE 6712–01–C

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1066–DR]

Oklahoma; 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 Oklahoma, (FEMA–1066–DR), dated September 1, 1995, and related determinations.

EFFECTIVE DATE: September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma dated September 1, 1995, 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 September 1, 1995:

The Counties of Canadian, Greer, and Harmon for Public Assistance, and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Craig S. Wingo,

Division Director, Infrastructure Support Division.

[FR Doc. 95–23088 Filed 9–15–95; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Inquiry Into Port Restrictions and Requirements in the United States/ Japan Trade

September 12, 1995.

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission is collecting information regarding certain restrictions and requirements for the use of port and terminal facilities in Japan, to determine whether they create conditions unfavorable to shipping in the United States/Japan trade, or constitute adverse conditions affecting U.S. carriers that do not exist for Japanese carriers in the United States. The Commission is collecting information regarding (1) The ''prior consultation'' system, a process of mandatory discussions and operational approvals for port usage; (2) mandatory weighing and measuring requirements; (3) restrictions on Sunday work; and (4) the disposition of the Japanese Harbor Management Fund.

DATES: Comments may be submitted on or before November 17, 1995.

ADDRESSES: Send submissions to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (''Commission'') is collecting information about certain restrictions and requirements for the use of port and terminal facilities in Japan, to assess whether they create conditions unfavorable to shipping in the United States/Japan trade, or constitute adverse conditions affecting U.S. carriers that do not exist for Japanese carriers in the United States. The Commission is specifically concerned with: (1) The effects of the ''prior consultation'' system, a process of mandatory discussions and operational approvals involving Japanese port and terminal management, shoreside labor unions, and containership operators; (2) the requirement that all containerized cargo exported from Japan be weighed and measured, apparently without regard for commercial necessity; (3) restrictions on the operation of Japanese ports on Sunday; and (4) the disposition of the Japan Harbor Management Fund.

Prior Consultation

The prior consultation system in Japan is administered and controlled by the Japan Harbor Transportation Association (''JHTA''), an association of companies providing harbor transportation services, including terminal operators, stevedores, and sworn measures. Under this system, carriers serving Japan must consult with JHTA about any operational matters involving Japanese ports or harbor labor. Such matters appear to include, inter alia, inauguration of new services, rationalization agreements between carriers which involve vessel sharing or berthing changes, changes in stevedoring contractors, technological or equipment changes, weighing and measuring, and Sunday work. Prior consultation also appears to be required for minor matters, such as change of vessel name or route, or substitution of vessels. After it consults with a shipowner, JHTA may conduct consultations with labor interests, then approve or deny the shipowner's request.

This system of consultations—between JHTA and carriers on the one hand, and JHTA and unions on the other—originated in the 1960's, as a means for resolving labor disputes arising out of the introduction of containerization. Over time, however, prior consultation requirements have been extended to even minor matters, such as vessel substitution, which do not appear to involve potential labor relations issues. While its scope has increased, the prior consultation system itself has remained characterized by a lack of transparency. The process is said to lack written records, clear written bases for decisions, and appeal rights, and to include a system of closed ''pre-prior consultation'' meetings to determine which user requests will be accepted for prior consultation.

Because of its broad discretion to review and disapprove virtually all aspects of shipowners' harbor operations, JHTA appears to have amassed an exceptional level of control over the market for terminal operations and services in Japan. In particular, it appears that shipowners have no free choice of terminal operators and stevedores; instead, JHTA assigns operators to carriers, virtually eliminating competition in this area. Circumvention of JHTA in dealings with individual operators is generally viewed to be impossible, as it could lead to disapproval of shipowner plans and disruption of cargo handling labor.

It appears that the prior consultation requirement and the attendant lack of competition in the harbor services market has had a number of adverse effects on carriers serving Japan. These include increased port charges and costs, inefficiency, and inflexibility. Among other things, the prior consultation requirement may impede the ability of shipowners, both individually and in vessel sharing consortia, to reduce costs by rationalizing port operations and dealing with operators of their choice.

Mandatory Weighing and Measuring

Currently, it appears that all containerized cargo exported from Japan is required to be weighed and measured by one of two sworn measuring associations, Nippon Kaiji Kentei Kyokai and Shin Nihon Kentei Kyokai, both of which appear to be members of JHTA. This policy is set forth in a 1980

memorandum between JHTA and the Japan Council of Port and Harbor Transport Workers' Unions. Rates for weighing and measuring services are filed with, and approved by, the Japanese Ministry of Transport (''MOT'').

There is no clear justification for the policy of mandatory weighing and measuring of cargo. Internationally applied liability conventions do not require carriers to weigh and measure cargo, as carriers may accept shipper-provided weights and measurements. Furthermore, in many instances physical weighing and measuring of cargo may not even take place; instead, measurers' figures may be derived from samples or statistical information.

It appears that mandatory weighing and measuring was implemented to provide constant work for sworn measures, as the industry shifted toward the use of containers and box-rated cargo. However, the justification for continuing this practice indefinitely is unclear, given that many harbor workers have retired or left the ports since the introduction of containerization in Japan's trades over two decades ago. Also, it appears that the measuring companies have recently increased weighing and measuring charges—with MOT approval—based in part on a need to attract *new* labor to perform these services.

Sunday Work

In recent years, the performance of harbor work on Sundays in Japanese ports has been either severely restricted or prevented altogether, causing inefficiency and disruption for both carriers and shippers. Recent press reports have indicated a provisional easing of restrictions on Sunday work; however, the extent of that progress is not clear.

Prior to 1988, work was not performed on Sundays at Japanese ports. In 1988, a policy of limited Sunday work was put in place; carriers wishing services on Sunday were allowed to seek prior consultation and approval from JHTA. However, Sunday work was discontinued entirely in 1991. It appears that Sunday work was halted as a result of an ongoing dispute involving JHTA and the two large harbor labor organizations, the National Council of Dockworkers' Unions of Japan and the Japanese Confederation of Port and Transport Workers' Unions, regarding compliance with a 1991 labor agreement.

The restriction of Sunday work has been a matter of longstanding concern for the United States Government, and has been raised in bilateral maritime discussions with Japanese officials. In September 1992 Maritime Administrator Warren G. Leback indicated that the Sunday work practices caused serious problems for U.S. carriers, and affected ship scheduling throughout the Pacific Basin.

It has recently been reported that an ''Agreement on Exceptional Measures for the No-Cargo-Handling-on-Sundays System'' was concluded by JHTA, representing harbor management, and the labor groups, the Japan Council of Port and Harbor Transport Workers' Unions and the Japanese Confederation of Port and Transport Workers' Unions. This agreement, effective June 11, 1995, calls for the implementation of Sunday cargo handling at Japan's six major ports: Tokyo, Yokohama, Nagoya, Osaka, Kobe, and Kitakyushu. The agreement is said to be ''provisional'' in nature, and is effective for one year only.

The agreement is reported to contain several conditions for the provision of Sunday work. Sunday work is limited to terminals which conform to the ''5–9 Accord'' labor agreement (signed May 9, 1991) which guarantees, among other things, a 5-day work week, 8-hour days, limits on overtime, and certain numbers of Saturdays, Sundays, and holidays off. Only carriers who have paid all MOT-approved port charges will be eligible. Cargo will be moved only between vessels and containeryards; no cargo will be accepted at the yard or delivered on Sunday.

It appears that Sunday work will be from 8:30 a.m. to 4:30 p.m. only. Extra wages will be determined regionally, and carriers and harbor transportation firms will be required to apply for Sunday work through the district harbor transportation associations by noon on Fridays. The trade press has reported that fees for Sunday cargo handling will be 60 percent higher than ordinary fees.

Despite these positive steps, a number of concerns regarding Sunday work remain. We are uncertain of the extent to which the agreement has been implemented, as well as the effects of remaining restrictions and increased fees applicable to Sunday work. Also, the outlook for a long-term solution to the Sunday work issue is unclear, given the one-year ''provisional'' nature of the recent agreement.

Harbor Management Fund

In Docket No. 91–19, *Actions to Address Conditions Affecting U.S. Carriers Which do not Exist for Foreign Carriers in the U.S./Japan Trade,* the Commission launched an investigation into a fund, known as the ''Harbor Management Fund,'' collected by JHTA from ocean carriers. In particular, the Commission examined whether JHTA, with the support of MOT, coerced payments from carriers into the fund by threatening labor instability and unavailability. It was alleged that the fund was to be used for import distribution centers or other projects from which U.S. carriers would receive no economic benefits.

Docket No. 91–19 was discontinued on June 13, 1991, based on an agreement between JHTA and participating carriers. It was agreed that collections from carriers for the fund would be discontinued after March 31, 1992, and similar assurances were provided by the Government of Japan Minister of Transport to American President Lines. Also, JHTA committed to use the fund proceeds only for harbor labor-related purposes, to ensure that benefits would accrue to all carriers contributing to the fund.

While collections for the fund were stopped in 1992 as agreed, it appears that the commitment to use remaining proceeds for labor-related purposes has not been satisfied. When Docket No. 91–19 was discontinued, the Commission directed Japanese carrier parties to file quarterly reports on the status of the fund. The last of these reports, filed May 31, 1994, showed that only nominal amounts had been expended from the fund since 1992. Fund activity for the past year, as well as JHTA's plans for disposition of the fund monies, remain unclear.

Government Supervision of Port Transportation Services

While port services in Japan are generally provided by private companies, the Government of Japan may exercise substantial regulatory control and oversight over these operators. For example, under the Japanese Port Transportation Business Law, persons wishing to provide port transportation services must apply for a certificate from MOT. In deciding whether to grant such a certificate, MOT evaluates, inter alia, whether the business in question ''has an appropriate plan to perform the business,'' and whether it would ''cause port transportation supply to be excessively over transportation demand.'' Art. 5 & 6. It appears that restrictive use of this licensing authority by MOT may effectively prevent new operators from entering terminals to compete with existing JHTA members, and to prevent non-Japanese flag lines from establishing their own terminal operations in Japan.

MOT also has broad statutory authority to correct restrictive or unfair

harbor practices. Rates charged by port transportation businesses must be approved by MOT, which determines whether the rates are reasonable and non-discriminatory. Art. 9. MOT must approve operators' ''terms and conditions on port transportation,'' to determine that ''there is no fear that the terms and conditions may impede the benefits of users,'' and also approve any changes in operators' business plans. Art. 11 & 17. If MOT determines that the port transportation businesses ''impeded benefits of users'' it may order changes in business plans, terms and conditions, or rates. Art. 21.

JHTA itself operates with the permission of, and under the supervision of, MOT. JHTA was incorporated in 1965 as a ''juristic person'' under Article 34 of the Civil Code of Japan, which provides that public interest, not-for-profit organizations may be incorporated subject to the permission of ''competent authorities.'' As the competent authority, MOT may, inter alia, annul its incorporation if JHTA violates MOT orders or acts in contravention of the public interest.[1]

In addition, it appears that the Japanese Fair Trade Commission (''FTC''), which administers the Antimonopoly Law, exercises some authority over JHTA. It was reported in the press that, in the 1970's and 1980's, the FTC warned JHTA that the prior consultation system might be in violation of the Antimonopoly Law of Japan. Because of these concerns, the JHTA announced in 1985 the abolishment of the prior consultation system. However, it appears that the prior consultation system was reestablished in 1986, with the conclusion of an agreement between JHTA and an organization of Japanese carriers. The terms of that agreement expressly state that it was concluded ''under the guidance of the Ministry of Transport,'' and the agreement was signed, as a witness, by an MOT official.

Antimonopoly concerns resurfaced in 1990, when four stevedoring companies in Tokyo and Yokohama filed a complaint with the FTC, claiming that JHTA and prior consultation had incapacitated their businesses. While the resolution of these complaints is not clear, it has been reported in the press that in 1993 MOT advised JHTA to take remedial action to ensure that the prior consultation system is administered in a fair manner. Also, in 1994, the FTC released a report calling for a review of the existing licensing system and for substantial deregulation of the harbor transportation system.

Discussion

The Commission is statutorily charged with addressing restrictive or unfair foreign practices in the maritime services area. Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876, authorizes the Commission, *inter alia:*

> To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade * * * including intermodal movements, terminal operations, * * * and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; * * *.

Also, the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a (''FSPA''), authorizes the Commission to

> Investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—
>
> (1) Adversely affect the operations of United States carriers in the United States oceanborne trade; and
>
> (2) Do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

Under the FSPA, if the Commission determines that such adverse conditions exist, it may ''take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions.'' Such action may include limitations on sailings, suspension of tariffs, suspension of agreements, or fees not to exceed $1,000,000 per voyage.

The Commission has serious concerns that prior consultation, mandatory weighing and measuring, and restrictions on Sunday work may create conditions unfavorable to shipping in the U.S. trade with Japan, or conditions which adversely affect the operations of U.S. carriers in Japan that do not exist for foreign carriers in the United States. In addition to subjecting carriers to potentially high costs and charges, such restrictions may prevent carriers from pursuing efficiency through the rationalization of harbor operations, thereby disadvantaging importers, exporters, and carriers in the U.S.-Japan trades. The Commission is further concerned that commitments regarding disposition of the Harbor Management Fund, made upon the discontinuation of Docket No. 91–19, may not be fully satisfied.

While these matters are largely administered by JHTA and private terminal operators, they appear to be implemented with the approval and cooperation of the Government of Japan. Such support may include the protection of JHTA operators from competition by MOT's restrictive use of licensing authority, the approval of charges for unnecessary mandatory weighing and measuring, and the failure of the Government of Japan to use its substantial regulatory and oversight authority to prevent JHTA from abusing its effective control over harbor operations and the prior consultation system.

Therefore, by this Notice, the Commission is inviting all interested parties to file information, views, and comments with respect to prior consultation, mandatory weighting and measuring, Sunday work, and the Harbor Management Fund, and their effects on the oceanborne carriage of goods between the United States and Japan. Confidential or sensitive information and documents submitted pursuant to this Order shall, upon request of the responding parties, be treated confidentially to the full extent permitted by law; provided, however, that such confidential treatment shall not foreclose use by the Commission of such information in any subsequent formal proceeding.

Also, by separate Orders issued pursuant to Section 19(6) of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876(6), and section 10002(d) of the Foreign Shipping Practices Act, 46 U.S.C. app. § 1710a(d), the Commission is requiring ocean common carriers in the U.S./Japan trades to provide information on these matters. It is expected that the information received in response to this Notice and the corresponding Orders will allow for a full consideration of these matters, and will enable the Commission to determine whether further action in this area is warranted.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–23052 Filed 9–15–95; 8:45 am]

BILLING CODE 6730–01–M

[1] *See* Regulations Regarding the Incorporation and Supervision of Juristic Persons Belonging to the Jurisdiction of the Minister of Transport, Ministry of Transport Regulations No. 22 (1969), Art. 11.

FEDERAL RESERVE SYSTEM

Timothy Ken Driskell, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 2, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Timothy Ken Driskell, Alpharetta, Georgia, and Daniel Crawford Chasteen, Roswell, Georgia; to collectively acquire as trustees of First Colony Bank 401(k) Stock Bonus Plan, Alpharetta, Georgia, an additional 4.29 percent, for a total of 14.26 percent, of the voting shares of First Colony Bancshares, Inc., Alpharetta, Georgia, and thereby indirectly acquire First Colony Bank, Alpharetta, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Cyrus A. Ansary, Bethesda, Maryland; to acquire a total of 21 percent of the voting shares of Pinnacle Financial Services, Inc., St. Joseph, Michigan, and thereby indirectly acquire Peoples State Bank of St. Joseph, St. Joseph, Michigan.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23072 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

First Midwest Bancorp, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-22208) published on page 46597 of the issue for Thursday, September 7, 1995.

Under the Federal Reserve Bank of Chicago heading, the entry for First Midwest Bancorporation, Inc., is revised to read as follows:

1. First Midwest Bancorp, Inc., Itasca, Illinois; to acquire 100 percent of the voting shares of CF Bancorp, Inc., Davenport, Iowa (savings and loan holding company), and thereby indirectly acquire Citizens Federal Savings Bank, F.S.B., Davenport, Iowa.

In connection with this application, Applicant also has applied for approval to exercise an option to acquire up to 19.9 percent CF Bancorp, Inc., Davenport, Iowa.

Comments on this application must be received by September 20, 1995.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23073 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

Investors Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 12, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Investors Financial Services Corp., Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Investors Bank & Trust Company, Boston, Massachusetts.

2. Walden Bancorp, Inc., Acton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Co-operative Bank of Concord, Acton, Massachusetts, and Braintree Savings Bank, Braintree, Massachusetts.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. 1st United Bancorp, Boca Raton, Florida; to acquire 100 percent of the voting shares of The American Bancorporation of the South, Merritt Island, Florida, and thereby indirectly acquire The American Bank of the South, Merritt Island, Florida.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Citizens National Bancshares, Inc., Hope, Arkansas; to acquire 100 percent of the voting shares of Peoples Bancshares, Inc., Lewisville, Arkansas, and thereby indirectly acquire Peoples Bank and Loan Company, Lewisville, Arkansas.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Pinnacle Bancorp, Inc., Central City, Nebraska; to acquire 100 percent of the voting shares of State Bank, Palmer, Nebraska, and to acquire an additional 5.3 percent, for a total of 11.5 percent of the voting shares of The Farmers National Bank of Central City, Central City, Nebraska.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23074 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

Pinnacle Financial Services, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a

company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Pinnacle Financial Services, Inc., St. Joseph, Michigan; to acquire Maco Bancorp, Inc., Merrillville, Indiana, and its subsidiary, First Federal Savings Bank of Indiana, Merrillville, Indiana, and thereby engage in the operation of a savings association, pursuant § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95-23075 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

PSB Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. PSB Corporation, Wellsburg, Iowa; to engage *de novo* through its subsidiary, PSB Finance, Inc., Wellsburg, Iowa, in making, acquiring and servicing loans or other extensions of credit directly or for the account of others (primarily in the area of indirect dealer paper), such as would be made by a finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. WCN Bancorp, Inc, Wisconsin Rapids, Wisconsin; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 12, 1995.

William W. Wiles

Secretary of the Board.

[FR Doc. 95-23076 Filed 9-15-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

''Made in USA'' Consumer Perception Study Information Collection Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of information collections to gather information on consumer perception and attitudes regarding ''Made in USA'' and other country of origin advertising and labeling claims.

SUMMARY: OMB clearance is being sought for two questionnaires to be used in connection with a survey to gather information regarding ''Made in USA'' and other country of origin claims in advertising and labeling of products. Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, directs the Commission to prevent ''deceptive acts and practices.'' Under this general authority, the Commission has prohibited deceptive ''Made in USA'' claims in product advertising and labeling. The Commission's longstanding standard in this area is that a manufacturer can make an unqualified ''Made in USA'' claim only if the product is ''wholly of domestic origin.'' *See, e.g., Windsor Pen Corp.*, 64 F.T.C. 454 (1964).

Recently, the Commission sought public comments on a proposed consent agreement prohibiting unqualified ''Made in USA'' claims for both imported products and products assembled in the United States from domestic and foreign components. In response, the Commission received 150 comments, many of which urged reconsideration of the standard, stating that it is too stringent, does not reflect current consumer perceptions in today's globalized economy, and is inconsistent with other government standards. At the same time, Congress has shown interest in this issue, most notably by passing the 1994 Crime Bill, which provides that certain ''Made in USA'' labels must comply with the Commission's standards under Section 5 of the FTC Act. On July 11, 1995, the Commission announced that it would re-examine the standard by (1) conducting a comprehensive review of consumers' perceptions of ''Made in USA'' and

similar claims and (2) holding a public workshop to examine issues relevant to the standard.

The proposed survey is necessary to assist the Commission in evaluating its existing standard, determining whether it should be changed, and formulating a new standard if appropriate. The Commission's existing ''Made in USA'' policy is supported by a 1991 study showing that approximately 77% of consumers who were asked about an unqualified ''Made in USA'' claim interpreted the claim to mean that ''all or nearly all'' parts and labor are domestic. The test involved two different products and asked questions of 400 participants.

While the test results appear to support the Commission's existing policy, evidence also suggests that consumer perceptions are influenced by the nature of the claims and the product being tested. Therefore, the Commission believes that testing different claims and different products would provide a more complete understanding of consumer perceptions of country of origin claims. In addition, including a larger number of consumers in the survey will provide a broader basis from which to evaluate consumer perceptions. Finally, consumer perceptions may have changed—even since 1991—due to the rapid globalization of our economy. These changes may have occurred to differing extents for different products.

Accordingly, the survey is designed to expand the Commission's knowledge by eliciting, for several different products, current consumer perceptions of country of origin claims, including ''Made in USA claims.'' Although consumer perceptions and attitudes are not the only factors to consider in determining the appropriate standard for law enforcement in this area, they are extremely important because they help to identify which claims deceive consumers. The survey data will also be used to assist the Commission in preparing for the upcoming public workshop and ensuring that the workshop is as useful, productive, and focused as possible.

The FTC is seeking clearance for two questionnaires to be used in connection with the survey. Both questionnaires will be used to interview adult consumers in shopping malls around the country. Using the first questionnaire, approximately 1,200 consumers will be shown advertisements and/or product labels and then asked questions concerning product claims. This questionnaire consists of approximately 30 questions and will take an estimated ten minutes to complete, for a total burden estimate of 200 hours.

The second questionnaire will be used to ask an additional 400 consumers different questions about product claims. It consists of approximately 15 questions and will take an estimated ten minutes to complete, for a total burden estimate of 67 hours.

DATES: Comments on this clearance application must be submitted on or before October 18, 1995.

ADDRESSES: Send comments both to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, Attn: Desk Officer for the Federal Trade Commission and to the Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. Copies of the application may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Easton, Special Assistant, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580 (202) 326–3029.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23078 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 08/14/95 AND 08/25/95

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
NEC Corporation, Packard Bell Electronics, Inc., Packard Bell Electronics, Inc	95–2259	08/15/95
The Chase Manhattan Corporation, Wireless One, Inc., Wireless One, Inc	95–2292	08/16/95
English China Clays plc, Redland PLC, Genstar Stone Products Company	95–2294	08/16/95
Thomas & Betts Corporation, Catamount Manufacturing, Inc., Catamount Manufacturing, Inc	95–2298	08/16/95
DQE, Inc., Exide Electronics Group, Inc., Exide Electronics Group, Inc	95–2300	08/16/95
Iowa Health System, Allen Health Systems, Inc., Allen Health Systems, Inc	95–2314	08/16/95
Heartland Wireless Communications, Inc., Wireless One, Inc., Wireless One, Inc	95–2315	08/16/95
Sequa Corporation, Vestar/Hampshire Investment Limited Partnership, Hampshire Chemical Corp	95–2319	08/16/95
The Morgan Stanley Leveraged Equity Fund II, L.P., Coho Energy, Inc., Coho Energy, Inc	95–2334	08/16/95
Sierra Health Services, Inc., CII Financial, Inc., CII Financial, Inc	95–2335	08/16/95
Thermo Electron Corporation, Bird Medical Technologies, Inc., Bird Medical Technologies, Inc	95–2338	08/16/95
Jupiter Partners L.P., American Marketing Industries Holdings Inc., American Marketing Industries Holdings, Inc	95–2350	08/16/95
Mail-Well Holdings, Inc., Graphic Arts Center, Inc., Graphic Arts Center, Inc	95–2355	08/16/95
First USA, Inc., James L. Waters, DMGT Corp	95–2362	08/16/95
WMX Technologies, Inc., Wellman, Inc., New England CR Inc	95–1663	08/17/95
Sentrachem Limited, Vestar/Hampshire Investment Limited Partnership, Vestar/Hampshire Holdings Corp	95–2224	08/18/95
Occidental Petroleum Corporation, General Electric Company, General Electric Capital Corporation	95–2285	08/18/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 08/14/95 AND 08/25/95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
FMC Corporation, Francois Carrette, FR Mfg. Corporation and Ramacher Manufacturing, Inc	95–2308	08/18/95
Methodist Health Systems, Inc., LeBonheur Health Systems, Inc., LeBonheur Ambulatory Services, Inc	95–2331	08/18/95
Carolina Medicorp, Inc., Carolina Physicians Associates, P.A., Carolina Physicians Associates, P.A	95–2347	08/18/95
Knight-Ridder, Inc., Blackwell Limited, Uncover Company	95–2354	08/18/95
Hannaford Bros. Co., FF Holdings Corporation, Farm Fresh, Inc	95–2358	08/18/95
Benson Eyecare Corporation, Bolle America, Inc., Bolle America, Inc	95–2359	08/18/95
Tiger (a limited partnership), Kjell Inge Rokke, Norway Seafoods AS	95–2360	08/18/95
First USA, Inc., Thomas J. Litle IV, Litle & Company, Inc	95–2361	08/18/95
Tenneco Inc., Royal Dutch Petroleum Company, Shell Offshore Inc	95–2364	08/18/95
Kaydon Corporation, Mr. and Mrs. Donald Yadon, Seabee Corporation	95–2365	08/18/95
ALPHA Airports Group Plc, DynCorp, DynAv Services, Inc	95–2369	08/18/95
HPB Associates, L.P., Addington Resources, Inc., Addington Resources, Inc	95–2374	08/18/95
MLGA Fund II, L.P., ICM Industries, Inc., ICM Industries, Inc	95–2376	08/18/95
Acxiom Corporation, Donald L. Cohn, DataQuick Information Systems	95–2394	08/18/95
Code, Hennessy & Simmons II, L.P., Avi Ruimi, Auto-Shade, Inc	95–2380	08/21/95
Isolyser Company, Inc., White Knight Healthcare, Inc., White Knight Healthcare, Inc	95–2389	08/21/95
Host Marriott Corporation, Plaza Inter Corp., Plaza LRP San Antonio Ltd	95–2391	08/21/95
Agrium Inc., Nu-West Industries, Inc., Nu-West Industries, Inc	95–2422	08/21/95
Charter Communications Group, Gaylord Entertainment Co., Gaylord Entertainment Co	95–2349	08/22/95
Kelso Investment Associates V, L.P., CCT Holdings Corp. (Joint Venture), CCT Holdings Corp. (Joint Venture)	95–2351	08/22/95
PriCellular Corporation, Telephone and Data Systems, Inc. Voting Trust, USCOC of Ohio RSA #7, Inc	95–2373	08/22/95
Kelso Partners IV, L.P., Sumner M. Redstone, KSLA–TV, Shreveport, Louisiana	95–2245	08/23/95
Kelso Investment Associates V, L.P., Gaylord Entertainment Company, Gaylord Entertainment Company	95–2348	08/23/95
Health Systems International, Inc., Graduate Health System, Inc., G.H. Holding Corporation	95–2379	08/23/95
Henry Ford Health System, Horizon Health Systems, Horizon Health Systems	95–2384	08/23/95
Classic Communications, Inc., The Toronto-Dominion Bank, Mission Cable Company, L.P	95–2402	08/23/95
Monsanto Company, Dr. h.c. Paul Sacher, Syntex (U.S.A.), Inc	95–2256	08/24/95
Hanson PLC, Nielsons, Inc., West States Constructors, Inc	95–2281	08/25/95
Zurich Insurance Company, Kemper Corporation, Kemper Corporation	95–2301	08/25/95
Schering-Plough Corporation, ICN Pharmaceuticals, Inc., ICN Pharmaceuticals, Inc., Assets	95–2332	08/25/95
State Street Boston Corporation, Bank of Boston Corporation, First National Bank of Boston	95–2366	08/25/95
Alper Holdings USA, Inc., ARTRA Group Incorporated, Arcar Graphics, Inc	95–2398	08/25/95
Fenway Partners Capital Fund, L.P., U.S. Industries, Inc., Bear Archery	95–2399	08/25/95
Kelso Investment Associates V, L.P., Lawrence Flinn, Jr., United Video Cablevision, Inc	95–2400	08/25/95
Aramark Corporation, Todd Uniform, Inc., Todd Uniform, Inc	95–2404	08/25/95
FS Equity Partners II, L.P., Aramark Corporation, WearGuard Corporation	95–2408	08/25/95
Bessemer Securities Corporation, Graphic Holdings, Inc., Graphic Holdings, Inc	95–2410	08/25/95
Belk Brothers Company, Ivey Properties, Inc., Ivey Properties, Inc	95–2411	08/25/95
Hollinger Inc., Kenneth R. Thomson, Thomson Holdings Inc	95–2412	08/25/95
PriCellular Corporation, AT&T Corporation, Parkersburg Cellular Telephone Company, Inc	95–2415	08/25/95
Applied Power Inc., Christian Sorensen, Vision Plastics Manufacturing Company	95–2416	08/25/95
Applied Power Inc., Ole Sorensen, Vision Plastics Manufacturing Company	95–2417	08/25/95
Westcor Realty Limited Partnership, John J. Fedigan, Business Realty of Arizona, Inc	95–2418	08/25/95
Kenneth R. Thomson, Peter W. Hegener, Peterson's Guides, Inc	95–2424	08/25/95
Atlantic Richfield Company, Dow Chemical Company, Destec Fuel Resources, Inc	95–2425–	08/25/95
Insurance Partners, L.P., ZIP Acquisition Corp., ZIP Acquisition Corp	95–2431	08/25/95
General Electric Company, Equitable Resources, Inc., Equitable Resources Energy Company	95–2432	08/25/95
Pfizer Inc., The Procter & Gamble Company, The Procter & Gamble Company	95–2433	08/25/95
Zurich Insurance Company, ZIP Acquisition Corp., ZIP Acquisition Corp	95–2434	08/25/95
FirstCity Financial Corporation, Randall R. Geist, Diversified Financial Systems, Inc	95–2440	08/25/95
CUC International Inc., North American Outdoor Group, Inc., North American Outdoor Group, Inc	95–2444	08/25/95
Fenway Partners Capital Fund, L.P., Grand Metropolitan Public Limited Company, The Pillsbury Company	95–2445	08/25/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–23065 Filed 9–15–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Regional Offices and Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Chapters HB, HD, and HG are amended as follows:

(1) Chapter HB, Health Resources and Services Administration (47 FR 38409–24, August 31, 1982, as amended most recently at 60 FR 29859–62, June 6, 1995);

(2) Chapter HD, PHS Regional Offices (44 FR 21711, April 11, 1979, as amended most recently at 58 FR 30066, May 25, 1993); and

(3) Chapter HG, Indian Health Service (52 FR 47053–67, December 11, 1987, as

amended most recently at 58 FR 36693, July 8, 1993).

These changes will provide the Health Resources and Services Administration (HRSA) with direct responsibility for their field programs and associated resources by formalizing and redirecting field responsibilities. Responsibility and resources in the Regional Offices for facilities and construction engineering activities related to the Indian Health Service will be redirected to the Indian Health Service. Additionally, the responsibility and resources in the Regional Offices for facilities and construction engineering activities currently supported by HRSA will be redirected to HRSA. Although, the changes will not affect Chapter HC, Centers for Disease Control and Prevention (CDC), by way of this Federal Register notice the Division of Preventive Health Services in the PHS Regional Offices is deleted.

Health Resources and Services Administration

Under Chapter HB, Health Resources and Services Administration, Section HB–10, Organization and Functions, amend the functional statements as indicated below:

Under the Office of the Administrator (HBA1), delete the ''and'' preceding item (3), add an ''and'', and add a new item (4) as follows:

(4) serves as the HRSA focal point for activities pertaining to field coordination.

Public Health Service Regional Offices

Under Chapter HD, Public Health Service (PHS) Regional Offices, delete the title Public Health Service (PHS) Regional Offices and substitute the following:

Office of the Regional Health Administrator (HD)

Under Section HD–00 Mission, delete the statement in its entirety and substitute the following:

Section HD–00 Mission. The Office of the Regional Health Administrator supports the PHS mission of improving the health of the Nation's population by assuring a coordinated regional effort in support of national health policies and State and local needs within each region.

Under Section HD–10, Organization and Functions, delete the statement in its entirety and *substitute the following*:

Section HD–10 Organization. The Office of the Regional Health Administrator (HD1–HDX).

Under Section HD–20, Functions. Public Health Service (PHS Regional Offices (HD1–HDX)

(a) *Delete the statement Public Health Service (PHS) Regional Offices (HD1–HDX) in its entirety and substitute the following:*

Office of the Regional Health Administrator (HD1–HDX). The Office of the Regional Health Administrator is headed by the Regional Health Administrator (RHA) who serves as the regional field representative of the Assistant Secretary for Health (ASH) who: (1) Conducts support activities as the senior public health official in the region, providing liaison with State, Territorial, and local health officials and private and professional organizations; (2) directs the staff of the Office of Women's Health, the Office of Minority Health and directs and coordinates regional implementation of family planning programs and related activities; (3) provides input from regional, State, and local perspectives to assist ASH and PHS agencies in the formulation, development, analysis, and evaluation of PHS field programs and initiatives; (4) assists with the implementation of PHS programs in the regions by supporting the coordination of activities, alerting program officials of potential issues, and assessing the effectiveness of programs for purposes of identifying opportunities for improving policies and service delivery systems; (5) serves as the focal point for PHS regional emergency preparedness activities; (6) acts as liaison to provide regional administrative support services to PHS field components, as appropriate, and provides advice and assistance upon request to ASH and PHS agencies regarding personnel and other administrative matters affecting field staff; (7) works with the Regional Directors and regional representatives of other Federal agencies; and (8) at the direction of ASH, or at the request of a PHS Agency Head, operates special programs in one or more regions.

(b) *Delete the following functional statements in their entirety:*

Office of Engineering Services (HD2E, HD6E and HDXE)

Division of Federal Employee Occupational Health (HD1H–X)

Division of Community Health Services (HD4C)

Division of Family Health and Resources Development (HD3R–4R)

Division of Health Services Delivery (HD1V–HD3V and HD5V–XV)

Division of Preventive Health Services (HD1U–HDXU)

Division of Health Resources Development (HD1W–2W and HD5W–XW)

Delegations of Authority

Under Chapter HD, Regional Offices, Section HD–30, Delegations of Authority.

All authorities delegated to officials in the PHS Regional Offices will continue in effect in them or their successors pending further redelegations, provided they are consistent with this reorganization.

Indian Health Service

Under Chapter HG, Indian Health Service, Section HG–20 Functions, following the title for the Office of Environmental Health and Engineering (HGA6) at the end of item (3) add a comma after Engineering and the following:

''including providing total architectural/engineering/contracting services;''

This reorganization is effective upon date of signature.

Dated: September 7, 1995.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 95–23066 Filed 9–15–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3917–N–21]

Notice of Proposed Information Collection for Public Comment

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for

review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 17, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Telephone number (202) 708–1694 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1955 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Housing Assistance Payment (HAP) Contract, Part II.

OMB Control Number: 2502–0409.

Description of the need for the information and proposed use: The Secretary of HUD, according to Multifamily Housing Property Disposition (MFPD) Reform Act of 1994 (section 203(e)(1), is authorized under certain circumstances to enter into contracts under Section 8 of the Untied States Housing Act of 1937, with owners of multifamily housing projects. 24 CFR 886, Subpart C authorizes the use of the Housing Assistance Payment (HAP) contract, Part II as the administrative mechanism to provide Section 8 housing assistance to purchasers of HUD-owned and foreclosure sale multifamily projects. The HAP Contract, Part II (HUD–52522-D) is a legal document, which as the administrative mechanism to provide Section 8 housing assistance from the Federal Government to the owner, commits the owner to HUD regulations and procedures governing the purpose and use of Section 8 assistance funds.

Agency form numbers: HUD–52522–D.

Members of affected public: Property Owners and Property Management Agents.

An estimation of the total numbers of hours needed to prepare the information collection is 22,824, the number of respondents is 729, frequency of response is 1, and the hours of response is 2,597.

Status of the proposed information collection: Extension with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 8, 1995.

Nicolas P. Retsinas,

A/S Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–22940 Filed 9–15–95; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Madison Cave Isopod for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Madison Cave Isopod (Antrolana lira). The Madison Cave Isopod is a subterranean freshwater crustacean endemic to the Shenandoah Valley in Virginia. The species was listed as threatened in November 1982 due to its extremely limited distribution and threats to the quality of its deep karst habitat. The objective of the proposed Recovery Plan is to protect Madison Cave isopod populations by conserving its groundwater habitat, thereby enabling its removal from the Federal list of endangered and threatened wildlife and plants. To accomplish this, the draft Plan recommends recovery activities that should continue or be initiated. If the Recovery Plan is successfully implemented, full recovery may be achieved by 2005. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received December 18, 1995 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401, telephone 410/573–4537 and fax 410/269–0832. Comments should be sent to the same address, to the attention of G. Andrew Moser.

FOR FURTHER INFORMATION CONTACT: G. Andrew Moser at 410/573–4537 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Madison Cave Isopod (Antrolana lira) Recovery Plan. The Madison Cave isopod is a subterranean crustacean endemic to the Shenandoah Valley of Virginia. This monotypic genus is the only freshwater member of the family Cirolanidae found north of Texas. Until 1990, A. lira was known only from two sites, Madison Saltpetre

Cave and a fissure near the cave; since June 1990, the isopod has been collected from five additional sites. Although specimens from all seven sites are morphologically identical, they probably represent more than one but less than seven genetic populations. Population size appears to be extremely small at five of the species' seven occurrence sites.

The Madison Cave isopod was listed as a threatened species in November 1982. Urban and agricultural development threaten the quality of its groundwater habitat, and the small population size at most of its sites indicates that this species is highly sensitive to disturbance. The Madison Cave isopod, which is difficult to study and collect, is known only from areas where fissures descend to the groundwater table, thus allowing access to the surface of underground lakes, or deep karst aquifers. Little is known of the physical and chemical conditions of A. lira habitat. The temperature of the water ranges from 11–14 °C, as is typical of groundwater for the latitude, and the water is saturated with calcium carbonate, a condition also typical of groundwater in areas of limestone. The level of the karst aquifers can fluctuate for tens of meters at some sites. The extent of the recharge zone of the aquifer at any site is unknown.

The objective of the draft Recovery Plan is to protect populations of Antrolana lira from potential threats to the quality of its deep karst aquifer habitat, thereby enabling the removal of this threatened species from the Federal list of endangered and threatened wildlife and plants. Delisting may be considered when: (1) Populations of Antrolana lira and groundwater quality at Front Royal Caverns, Linville Quarry Cave No. 3, and Madison Saltpetre Cave/Steger's Fissure are shown to be stable over a ten-year monitoring period; (2) the recharge zone of the deep karst aquifer at each of these population sites is protected from all significant contamination sources; and (3) sufficient population sites are protected to maintain the genetic diversity of the species.

Recovery activities designed to achieve these objectives include: (1) Determining the number of genetic populations, (2) searching for additional populations, (3) identifying potential sources and entry points of contamination of the deep karst aquifer habitat, (4) protecting known populations and habitats from a watershed perspective, (5) collecting baseline ecological data for management and recovery, and (6) implementing a program to monitor recovery progress and future needs. Contingent on vigorous implementation of all recovery tasks, full recovery is anticipated by the year 2005.

The draft Recovery Plan is being submitted for technical and agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 8, 1995.

Ralph C. Pisapia,

Acting Regional Director.

[FR Doc. 95–23083 Filed 9–15–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–963–1410–00–P; F–14893–A2]

Alaska; Modified Notice for Publication; Alaska Native Claims Selection

On August 7, 1995, a notice was published stating that a decision to issue conveyance of certain lands to Mary's Igloo Native Corporation would be forthcoming. The first paragraph stated that the lands to be conveyed aggregated approximately 11,529 acres and proceeded to give a land description of T. 2 S., R. 29 W., and Tps. 3, 4, and 5 S., R. 30 W., Kateel River Meridian. That paragraph is modified to read as follows:

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Mary's Igloo Native Corporation for certain lands within Tps. 3 and 4 S., R. 30 W., Kateel River Meridian, aggregating approximately 5,603 acres. The lands involved are in the vicinity of Mary's Igloo, Alaska.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until October 18, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified above, the Notice of August 7, 1995, remains as written.

Katherine L. Flippen,

Acting Chief, Branch of Southwest Adjudication.

[FR Doc. 95–23082 Filed 9–15–95; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–738 (Preliminary)]

Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–738 (Preliminary) under section 733(a) of the Tariff Act of 1930, as amended by section 212(b) of the Uruguay Round Agreements Act (URAA), Public Law 103–465, 108 Stat. 4809 (1994) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom of foam extruded PVC and polystyrene framing stock, provided for in subheadings 3924.90.20 and 3926.90.98 of the Harmonized Tariff Schedule of the United States, that is alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 23, 1995. The Commission's views are due at the Department of Commerce within 5 business days thereafter, or by October 30, 1995.

For further information concerning the conduct of this investigation and rules of general application, consult the

Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 8, 1995.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 8, 1995, by Marley Mouldings, Inc., Marion, VA.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on September 29, 1995, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than September 26, 1995, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 4, 1995, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 13, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–23091 Filed 9–15–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 171X)]

Norfolk Southern Railway Company—Abandonment Exemption—Between Jacksonville and Fort McClellan, AL

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost 48.0–N at Jacksonville and milepost 55.3–N at Fort McClellan, in Calhoun County, AL, a total distance of 7.3 miles.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 18, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

CFR 1152.29[3] must be filed by September 28, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 10, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 22, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 11, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–23105 Filed 9–15–95; 8:45 am]

BILLING CODE 7035–01–P

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

MERIT SYSTEMS PROTECTION BOARD

Opportunity to File Amicus Briefs in Cases Involving Possible Furlough of Administrative Law Judges

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board is providing an opportunity for interested parties to submit amicus briefs in a number of pending cases filed pursuant to 5 U.S.C. § 7521 and 5 CFR 1201.131.

SUMMARY: The Merit Systems Protection Board currently has seven pending complaints filed by separate agencies pursuant to 5 U.S.C. § 7521 and 5 CFR 1201.131. The basic premise of each complaint is that there is a possibility that Congress may not enact an appropriation or continuing resolution for fiscal year 1996 on or before October 1, 1995, and that the resulting lapse in funding would necessitate the furlough of all agency employees, including administrative law judges. Therefore, the agencies are requesting that the Board make a finding that there is good cause for the imposition of a furlough action against each agency's administrative law judges.

The Board also has a complaint filed by the National Labor Relations Board seeking permission to furlough its administrative law judges. The NLRB states in its filing that it anticipates its fiscal year 1996 budget will be insufficient to cover its present rate of spending, and that the furlough of its administrative law judges will thus be necessary to avoid deficit spending.

The Board has issued orders in each of the eight cases noting that there is a question whether the procedure provided for by 5 U.S.C. § 7521 is intended to cover the situations described in the agencies' complaints. Specifically, the Board has determined that there is a question whether a furlough which seven agencies allege would be necessitated by a lapse in funding caused by the failure of Congress to enact an appropriation or continuing resolution is the type of personnel action to which the protections of 5 U.S.C. § 7521 need by applied. In the case of the NLRB, the Board has determined that there is a question whether a furlough allegedly necessitated by a cut by Congress in the agency's appropriation is an action to which the protections of 5 U.S.C. § 7521 may be applied. In *Horner* v. *Andrzjewski*, 811 F.2d 571 (Fed. Cir. 1987), which involved furloughs under a similar statute, 5 U.S.C. § 7513, the court recognized that not all furloughs are within the Board's jurisdiction. The court stated that where a furlough action is taken ''because an agency has no choice * * * it can reasonably be said that an agency did not 'take an action' covered by Chapter 75.'' *Id*. at 576.

In considering these questions, the Board is concerned with the possibility that the provisions of the Antideficiency Act (31 U.S.C. §§ 1341, 1350) may be violated by any action the Board might take in declining to authorize an agency the right to furlough administrative law judges due to a lapse in funding caused by the failure to enact appropriation bills or a continuing resolution, or by Congress' failure to fund an agency at current budget levels. The Board is inviting any interested party to submit amicus briefs addressing these jurisdictional issues.

DATES: All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before September 22, 1995.

ADDRESSES: All briefs shall be captioned ''Administrative Law Judge Furlough Appeals'' and entitled ''Amicus Brief.'' Only one copy of the brief need be submitted. Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Dated: September 13, 1995.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 95–23067 Filed 9–15–95; 8:45 am]

BILLING CODE 7400–1–M

NATIONAL SCIENCE FOUNDATION

Notice of Conference

The National Science Foundation's (NSF) Directorate for Education and Human Resources (EHR) will host its Fourth National Conference, September 21–September 23, 1995 at the Washington Hilton and Towers Hotel, 1919 Connecticut Avenue, NW., Washington, DC 20009. The hours of the Conference are: September 21, from 6:00 p.m. until 7:30 p.m.; September 22 from 8:00 a.m. until 5:30 p.m. and September 23, from 8:30 a.m. until 6:00 p.m.

This event represents a continuation of last year's conference which focused on major issues related to minority education, along with an update on efforts implemented in the last year and results to date. Planned activities include workshops to exhibit EHR's accomplishments in broadening diversity in science and technology fields through its human resource development programs, as well as discussions by national leaders of strategies to disseminate successful efforts nationwide. There also will be presentations of research by NSF-supported students, and presentations by the NSF research directorates.

The conference will not operate as an advisory committee. It will be open to the public. Participants will include persons representing the heads of national associations, education, science, mathematics and engineering practitioners, and Federal and state government officials.

For additional information, contact Dr. Elmima C. Johnson, Staff Associate,

Office of the Assistant Director for Education & Human Resources, Room 805, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1605; 6841.

Dated: September 5, 1995.

Luther S. Williams,

Assistant Director, Education and Human Resources.

[FR Doc. 95–23079 Filed 9–15–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority

[Docket No. 50–328]

Sequoyah Nuclear Plant Unit 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its July 19, 1995, application for proposed amendment to Facility Operating License No. 79 for the Sequoyah Nuclear Plant Unit 2, located in Soddy Daisy, Tennessee.

The proposed amendment would have revised the technical specification surveillance requirements and bases to incorporate alternate steam generator tube plugging criteria at tube support plate intersections. The approach was similar to guidance given in Generic Letter 95–05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking.''

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on August 1, 1995 (60 FR 39189). However, by letter dated September 7, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 19, 1995, and the licensee's letter dated September 7, 1995, which withdrew the application for license amendment.

The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 11th day of September 1995.

For the Nuclear Regulatory Commission.

David E. LaBarge, Sr.

Project Manager, Project Directorate II–3, Division of Reactor Projects— I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–23057 Filed 9–15–95; 8:45 am]

BILLING CODE 7490–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Expedited Review of a Revised Information Collection; RI 30–2 and RI 30–44

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for expedited approval of an information collection. The form RI 30–2, Annuitant's Report of Income, is used by disability annuitants under age 60 to report their earnings annually to the Office of Personnel Management. Form RI 30–44, Report of Income is Not Usable, is used to follow-up with the annuitant when the information from the RI 30–2 is not usable.

It is estimated that there will be 21,000 respondents to the RI 30–2, and 260 respondents to the RI 30–44. It takes approximately 35 minutes to complete the RI 30–2, and approximately 5 minutes to complete the RI 30–44. The combined annual burden is 12,272 hours.

Copies of these two forms are appended to this notice.

DATES: Comments on this proposal should be received within 7 calendar days from the date of this publication. OMB has been requested to act within 10 calendar days.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Service, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

BILLING CODE 6325–01–M

Annuitant's Report of Earned Income for 1995

If the address shown below is not correct, please complete and return the enclosed address change card.

Form Approved:
OMB No. 3206-0034

United States Office of Personnel Management
Retirement Programs, P.O. Box 579, Washington, DC 20044-0579

A	0	0	0	0	0	0	0	0	0	0
F	1	1	1	1	1	1	1	1	1	1
	2	2	2	2	2	2	2	2	2	2
	3	3	3	3	3	3	3	3	3	3
	4	4	4	4	4	4	4	4	4	4
	5	5	5	5	5	5	5	5	5	5
	6	6	6	6	6	6	6	6	6	6
	7	7	7	7	7	7	7	7	7	7
	8	8	8	8	8	8	8	8	8	8
	9	9	9	9	9	9	9	9	9	9

For Agency Use Only

I II III IV

Please complete and return this form ONLY if:
1. *You had earned income for the calendar year 1995; or*
2. *You are a Federal Employees Retirement System retiree receiving an award of monthly Social Security disability benefits; or*
3. *You have been reemployed in the Federal service after you separated for disability retirement.*

Dear Annuitant:

This form, Annuitant's Report of Earned Income, is mailed each year to Civil Service Retirement System and Federal Employees' Retirement System annuitants who are receiving disability retirement benefits and who were under age 60 during the prior year. OPM is required by title 5, U.S. Code, sections 8337 (d) and 8455(a)(2), as stated in title 5, Code of Federal Regulations, sections 831.502(e)(1) and 844.402(d), to obtain information about your income from wages or self-employment. This is needed because your annuity must be terminated effective June 30 of the year following the one in which your income exceeds 80 percent of the current rate of pay of the position you occupied immediately before retirement. **If you are age 60 this current year, this will be the last time we will send you this income reporting form.**

If we determine that you are restored to earning capacity, we will send you information about your annuity terminating on June 30; we will also notify you whether you are eligible for an immediate, non-disability retirement or a deferred retirement beginning at age 62.

This year we will not be sending follow-up notices.

Privacy Act and Public Burden Statement

Information you furnish will be used to determine your eligibility to continue receiving annuity benefits. Information may be shared, and is subject to verification, via paper, electronic media, or through use of computer matching programs, with national, state, local, or other agencies in order to determine and issue benefits under their programs, to obtain information necessary for continuation of benefits under this program, or to report income for tax purposes. It may also be shared and verified, as noted above, with law enforcement agencies when they are investigating a violation or potential violation of the civil or criminal law.

Solicitation of this information is authorized by 5 U.S.C. 8347(a) and 5 U.S.C. 8461(g). Provision of this information is voluntary; however, failure to supply all of the information requested IF YOU HAD EARNED INCOME may result in suspension of your annuity benefit.

We think this form takes an average 35 minutes per response to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the OPM Reports and Forms Management Officer, OMB Clearance Number 3206-0034, Office of Personnel Management, Washington, DC 20415.

Enclosure: RI 30-2A

Previous editions not usable

RI 30-2
Revised January 1996

Annuitant's Report of Earned Income for 1995

If it is necessary to reply, please complete all the questions and use a pencil to darken the circles. Please be sure to read the enclosed information and instruction sheet, RI 30-2A.

1. If you had EARNED INCOME FOR 1995, please fill in the boxes below and return this form.

The enclosed instructions (RI 30-2A) specifically state what to include as income and what not to include as income.

Enter the highest amount shown on your W-2's. Also include self-employment and deferred income, if applicable.

Fill in all 6 boxes using as many beginning zeros as you need. Do NOT show the cents.

Use a number 2 PENCIL to darken the corresponding circle below each number.

Dollars						Cents	
						0	0

0	0	0	0	0	0	0
1	1	1	1	1	1	1
2	2	2	2	2	2	2
3	3	3	3	3	3	3
4	4	4	4	4	4	4
5	5	5	5	5	5	5
6	6	6	6	6	6	6
7	7	7	7	7	7	7
8	8	8	8	8	8	8
9	9	9	9	9	9	9

2. If you have been reemployed in the Federal service after you separated for disability retirement, please fill in the boxes below and return this form.

Dates of reemployment

From	To

Appointment type	Grade and step

Agency name and address

3. FEDERAL EMPLOYEES RETIREMENT SYSTEM RETIREES ONLY (Your claim number begins with CSA 8)

If you are receiving an award of monthly Social Security disability benefits, answer the 2 questions below and return this form.

3A. Show the total dollar amount below. Fill in all 6 boxes, using as many beginning zeros as you need. Do NOT show the cents.

Dollars						Cents	
						0	0

0	0	0	0	0	0	0
1	1	1	1	1	1	1
2	2	2	2	2	2	2
3	3	3	3	3	3	3
4	4	4	4	4	4	4
5	5	5	5	5	5	5
6	6	6	6	6	6	6
7	7	7	7	7	7	7
8	8	8	8	8	8	8
9	9	9	9	9	9	9

3B. Enter the effective date of your SSA disability benefit.

Month	Year	

JAN	0	0
FEB	1	1
MAR	2	2
APR	3	3
MAY	4	4
JUN	5	5
JUL	6	6
AUG	7	7
SEP	8	8
OCT	9	9
NOV		
DEC		

Warning Your earnings for 1995 will be verified through a computer match with the Social Security Administration's Earnings Files. Any intentionally false statement, willful concealment of material fact, or use of a writing or document knowing the same to contain a false, fictitious, or fraudulent statement or entry, is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years or both.

4. You must sign here in all cases.

If signature is by mark "X", a witness must also sign, date, and enter his or her address below.

Witness' signature	Date

5. Date

6. Please provide your daytime telephone number, including the area code.

Witness' address

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
RETIREMENT PROGRAMS
P.O. BOX 579
WASHINGTON, DC 20044-0579

Information and Instructions for Completing the Annuitant's Report of Earned Income

Please complete and return this form **only** if:

1. You had earned income for the calendar year 1995; or
2. You are a Federal Employees Retirement System retiree receiving an award of monthly Social Security disability benefits; or
3. You have been reemployed in the Federal service after you separated for disability retirement.

What To Report As Earned Income - All income from wages and self-employment plus deferred income you actually earned between January 1 and December 31 of the past year, as explained below.

- Income from wages is any gross pay, salary, bonus, or award you received for working for someone else (including overtime, vacation pay, etc.) before ***any*** withholdings or deductions.
- If your W-2 shows different amounts for "Wages, tips, other compensation" and "Social Security wages," enter the ***higher amount*** on the Report of Earned Income. If you have more than one W-2, add the amounts shown and report the total.
- **Deferred income** for "restored to earning capacity" determination is any income, cash or property, where you have the option of receiving or deferring receipt until sometime in the future. In short, if you voluntarily defer a portion of your earnings, that income is still considered for earning capacity purposes. Even if deferred income is not subject to income tax until a future year, it is still counted as earning capacity in the year in which it is earned.
- Income from self-employment is any net profit you made from working or managing your own business, whether at home or elsewhere. Net profit is the amount remaining after deduction for business expenses and before deduction of any personal expenses or exemptions as allowed by the Internal Revenue Service. A net loss from self-employment in one business may not offset 1) income from wages and 2) income from another self-employment endeavor, unless the two businesses are interrelated components of a single enterprise.
- Income resulting from personal services such as rents, royalties, etc.
- Interest or dividends resulting from your own trade or business.
- Do not deduct business expenses from wages or commission you receive for working for someone else.
- If you are reemployed in the Federal service, you must report the gross amount of your salary. Your agency should be deducting the gross amount of your annuity from your salary.

If all or a portion of your income was derived from a partnership, corporation, or sole proprietorship, please complete form RI 30-2 and enclose a detailed explanation, including the following items: income you received directly from wages, fringe benefits, and employee expenses; gross revenue and pre-tax profit of the enterprise; number of workers employed (if a partnership, give the number of partners); your role or position and hours worked; the principle product produced or service supplied; and your total cash investment and percentage of ownership in the enterprise (include your individual share plus shares held by immediate family members). Report separately income received from independent businesses and salary received from working for someone else. Please write your CSA claim number on your explanation.

What Not To Report As Earned Income - Any income from the following sources:

- ***Pensions or annuities***
- Gifts
- Social Security proceeds
- Insurance proceeds
- Unemployment compensation
- Money which you earned before retirement
- Inheritances
- Capital gains
- Non-employment prizes or awards
- Fellowships or scholarships
- Business losses
- Alimony/child support

PLEASE CAREFULLY REVIEW THE EXAMPLE ON THE REVERSE SIDE

RI 30-2A
Revised January 1996

Instructions for Completing the Enclosed Form

IT IS IMPORTANT THAT YOU FOLLOW ALL OF THE INSTRUCTIONS BELOW.

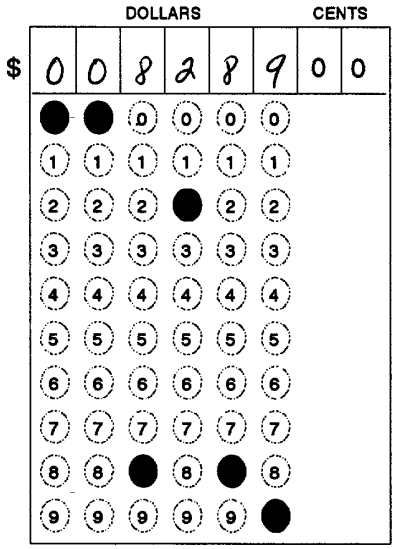
1. The enclosed form has been designed to allow your answers to be read using optical scanning equipment. Therefore, use **only a pencil** to darken the circles. If you make a mistake, erase it completely and darken the correct circles. Do not use a felt tip pen or other pen to complete this form.

2. Complete the Annuitant's Report of Earned Income for 1995 as illustrated in the example below:

EXAMPLE

Item 1 of the form is reproduced here to illustrate how you should make your entries on this form. The example illustrates how this question would be completed for an annuitant whose earned income in 1995 was $8,289.39.

(1) In the box begin with zeros and write the highest amount shown on your W-2's rounded to the nearest dollar (008289), and (2) darken the appropriate circles for that amount. For earnings of $8,289.39, you would complete block 1 as shown.



3. If the Annuitant's Report of Earned Income for 1995 is stapled or damaged, delays in processing may occur. **Please do not** send a photocopy or duplicate this form. If you send a photocopy or damage this form, it will delay processing your response. If you need another form, please write to the address shown in item 4 or call (202)606-0249 or (202) 606-0238.

4. Please be sure to sign the enclosed Annuitant's Report of Earned Income for 1995 and mail it in the enclosed envelope to:
   U.S. Office of Personnel Management
   P.O. Box 579
   Washington, DC 20044-0579

If you need assistance:

If, after carefully reading the instructions, you need assistance to complete the form, you may contact us weekdays from 8:00 a.m. to 5:00 p.m. Eastern Time on (202) 606-0249 or (202) 606-0238.

United States
Office of Personnel Management
Office of Retirement Programs
Post Office Box 579
Washington, DC 20044

Form Approved:
OMB No. 3206-0034

Annuitant's Report of Income - Followup

Claim number
Disability Earnings Survey document number

We have received the "Annuitant's Report of Income" form which you completed and returned to this office. However, due to the poor condition in which it reached us or because it contained conflicting or apparently erroneous information, we were unable to process the form. For this reason, we are asking you again to supply the amount of your earnings from wages and self-employment by completing the items below:

1. My income for calendar year was $ .00	**Do *NOT* include your annuity from OPM in the amount you report here.**

2. Please sign your name *(do not print)* and give the date of signature below.

Signature	Date

Return this letter in the envelope provided to:

Office of Personnel Management
P.O. Box 579
Washington, DC 20044

Your annuity payments may be suspended if this letter is not received at OPM by _____.

Thank you for your cooperation.

Retirement Surveys Branch

Public Burden Statement

We think this form takes an average 5 minutes per response to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Personnel Management, Reports and Forms Management Officer, (3206-0034), Washington, DC 20415.

Previous edition is usable.

RI 30-44
Revised January 1995

[FR Doc. 95–23086 Filed 9–15–95; 8:45 am]
BILLING CODE 6325–01–C

Notice of Request for Clearance of Commercial Garnishment Application Form

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of an information collection, voluntary commercial garnishment application form. The application is intended to be completed by creditors and will facilitate the processing by Federal agencies of commercial garnishment orders by providing information about the order in a uniform manner that would otherwise not be possible as a result of the wide variety of commercial garnishment orders issued by various State and local jurisdictions.

OPM anticipates that approximately 100 forms will be completed annually for OPM employees, each requiring an estimated ten minutes to complete, for a total public burden of approximately 17 hours. OPM anticipates, however, that many other Federal agencies will also be suggesting that creditors complete the form.

A copy of the proposed form is appended to this notice.

DATES: Comments on this proposed form should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Lorraine Lewis, General Counsel, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT:

Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

BILLING CODE 6325–01–M

APPLICATION FOR FEDERAL EMPLOYEE COMMERCIAL GARNISHMENT	Approved by OMB 3206-XXXX Approval Expires 00/00/00	Date Received In Office Of Designated Agent

INSTRUCTIONS:

1. Federal law, 5 U.S.C. §5520a, provides for the commercial garnishment of the pay of Federal employees.
2. Each garnishment order or similar legal process in the nature of garnishment must be delivered to the agency's Designated Agent. (See 5 CFR Part 582 Appendix A and 5 CFR Part 581 Appendix A for the lists of Designated Agents to receive legal process.)
3. Employing agencies will generally begin to disburse amounts withheld from employee-obligor's pay within 30 days of receipt by the Designated Agent.
4. Employing agencies will not modify compensation schedules or pay disbursement cycles in responding to legal process.
5. 31 CFR Part 210 governs funds remitted by Electronic Funds Transfer.
6. See reverse side for Public Burden Statement.

Title and Address of Employing Agency's Designated Agent	**Note:** Service of legal process may be accomplished by certified or registered mail, return receipt requested, or by personal service only upon the agent to receive process as explained in 5 CFR 582.201, or if no agent has been designated, then upon the head of the employee-obligor's employing agency.

A. EMPLOYEE IDENTIFICATION - 5 U.S.C. § 5520a requires sufficient information to enable the employing agency to identify the employee-obligor. Please provide as much of the information in items 1 through 5 as possible.

1. Full Name of Employee-Obligor	2. Date of Birth	3. Employee/Social Security Number
4. Employing Agency, Component, and Employee's Official Duty Station/Worksite Address and ZIP Code	5. Home Address or Current Mailing Address and ZIP Code	
6. For Agency Use		

B. CASE INFORMATION		
7. Case Number as Assigned by Court in Garnishment Order	8. Judgment Amount $	9. Legal process expiration date (if time limited)

10. Are the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1673, applicable? [ ] Yes [ ] No
If not, are lower limitations applicable? [ ] Yes [ ] No If Yes, give citation and attach copy:_____

11. Does the law of the jurisdiction where this legal process is issued have a "one order at a time" rule that precludes employers from garnishing more than one order at a time? [ ] Yes [ ] No	12. Does the law of the jurisdiction where this legal process is issued provide for the garnishment of interest amounts that are not reflected on the order or in item number 8? [ ] Yes [ ] No

C. APPLICANT IDENTIFICATION	
13. Full Name of Person Authorized to Receive Payment, as it appears on Court Order	14. Address of Authorized Payee, including ZIP Code
15. Daytime Telephone - Area Code and Number	16. Signature of Applicant and Date Signed

D. ELECTRONIC FUNDS TRANSFER	17. Name and Address of Payee's Financial Institution
If you wish to request that the funds be remitted by electronic funds transfer rather than by paper check, please complete items 17 through 21.	
18. Depositor (Payee) Account No. and Title Type of Account: [ ] Checking [ ] Savings	19. 9-Digit Routing Transit No. of Payee's Financial Institution (Verify with Financial Institution)
20. Name and Title of Payee's Representative	21. Signature of Payee's Representative and Date Signed

U. S. Office of Personnel Management — Optional Form xxx (September 1995)

BILLING CODE 6325–01–C

Paperwork Reduction Act Statement on Public Burden

This request for information is in accordance with the clearance requirements of 44 U.S.C. 3507. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, gathering the necessary data, and completing the form. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing the burden, to the U.S. Office of Personnel Management, Reports and Forms Management Officer, Washington, DC 20415.

[FR Doc. 95–23087 Filed 9–15–95; 8:45 am]

BILLING CODE 6325–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval Under the Paperwork Reduction Act of a Revision of a Currently Approved Collection of Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval of revision.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for a revision of the collection of information in the PBGC's premium forms (currently approved under OMB control number 1212–0009). The premium forms are being modified to require a certification by the plan administrator relating to the participant notice required under the PBGC's recently-published regulation on Disclosure to Participants.

DATES: The PBGC is requesting that OMB complete action on the PBGC's request for extension of approval by September 29, 1995. Comments must be received by that date.

ADDRESSES: All written comments should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503, with a copy to the Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, N.W., Washington, DC 20005–4026, between 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Section 4011 of the Employee Retirement Income Security Act of 1974 requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. The PBGC's regulation on Disclosure to Participants (60 FR 34412 (June 30, 1995), to be codified as 29 CFR Part 2627) implements section 4011. Under section 4011 and Part 2627, a plan that must pay a variable-rate premium under ERISA section 4006 and Part 2610 must furnish the participant notice unless the plan is otherwise exempt under Part 2627.

The participant notice requirement only applies (subject to certain exemptions) to plans that must pay a variable rate premium. In order to monitor compliance with Part 2627, the PBGC has added a participant notice certification to Schedule A to PBGC Form 1. Schedule A is promulgated by the PBGC under ERISA sections 4006 and 4007 and the PBGC's regulation on Payment of Premiums (29 CFR Part 2610), and is used to report information to the PBGC about the variable rate premium. Office of Management and Budget approval (1212–0009) of Schedule A expires February 28, 1998.

At the same time, the PBGC is removing from the 1996 Schedule A the special certification language in existing items 10(a), (b) and (c). The general certification in item 10, preceding item 10(a), is broad enough to include the three existing special certifications.

The PBGC has redrafted item 10 on the 1996 Schedule A, including the new participant notice certification, to read as follows:

10. Certification of Plan Administrator

All single-employer plan administrators *must* sign and complete this line. (See instructions, page 23.)

I certify, under penalties of prejury (18 U.S.C. 1001), that I have examined the completed PBGC Form 1 (including Schedule A and attachments) and, to the best of my knowledge and belief, the Form 1 (including Schedule A and attachments) and this certificate are in conformance with the premium regulation and instructions, complete, and accurate, and any information I made available to the enrolled actuary is true, correct, and complete.

I further certify, under penalties of perjury (18 U.S.C. 1001), that, for the plan year preceding the premium payment year, a Participant Notice as provided for in ERISA section 4011 (29 U.S.C. 1311) and the PBGC's regulation on Disclosure to Participants (29 CFR Part 2627):

(a) [ ] Was not required to be issued; or

(b) [ ] Was issued as required.

(c) [ ] Explanation attached.

Note. Check box (a), (b), or (c). If you check box (c), attach an explanation and check the box in item 19 on Form 1. Check box (a) if no variable rate premium was required for the plan year preceding the premium payment year or the plan was otherwise exempt (see instructions).

The draft instructions for the redrafted item 10 are as follows:

8. Certification of Plan Administrator

The plan administrator of a single-employer plan must sign and date the certification in item 10 of Schedule A. We may return any filing that does not have your original signature in item 10. The certification has two parts: a general certification about the correctness of your premium filing, and a new certification regarding compliance with the participant notice requirements in ERISA section 4011 (29 U.S.C. 1311) and the PBGC's regulation on Disclosure to Participants (29 CFR Part 2627).

For each plan year in which a variable rate premium is payable for a plan, the plan administrator must issue a notice to participants about the plan's funding status and the limits on the PBGC's guarantee, unless the plan is exempt from the notice requirement under the Disclosure to Participants regulation. The participant notice is due no later than two months after the Form 5500 due date (or extended due date) for the prior plan year.

The new certification relates to the participant notice requirement for the plan year preceding the premium payment year. You must check box (a), (b), or (c). If you check box (c) (*e.g.*, because a required participant notice was not issued or was issued late), you must attach an explanation and check the box in item 19 of Form 1.

Note: If your plan had no variable rate premium for the plan year preceding the

premium payment year, the participant notice requirement did not apply for that year and you can check box (a). Other exemptions are described in the Disclosure to Participants regulation. Note in particular that the regulation contains exemptions for certain new and newly-covered plans and, for the 1995 plan year, for certain small plans (generally under 100 participants).

The PBGC is requesting OMB to approve this revision of Schedule A and related instructions without any change in the expiration date of OMB's current approval. Other changes to the premium forms for 1996 (*e.g.*, allowing plans to claim overpayment credits on Form 1–ES) will be minor and non-substantive.

The participant notice certification will require simply that a box be checked to indicate whether, for the prior year, the plan was exempt from, or complied with, the participant notice requirement. The burden of redrafted item 10 as it will appear on the 1996 Schedule A, including the new certification, will therefore be no greater than the burden of existing item 10 as it appears on the 1995 Schedule A.

The PBGC estimates that it receives a total of about 66,300 premium filings annually from a total of 56,000 single-employer and 2,000 multiemployer plans (some of which make an estimated filing in addition to the final filing), an average of about 1.14 filings per plan. The PBGC also estimates that the total burden of the collection of information, including the new participant notice certification, is about 80,670 hours, or an average of about 1.22 hours per filing. (The estimated burden includes recordkeeping under 29 CFR § 2610.11.)

Issued at Washington, D.C., this 14th day of September 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–23195 Filed 9–15–95; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

[Docket No. A95–19; Order No. 1076]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued September 12, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Eckhart Mines, Maryland 21528: (Walter Rankin, Petitioner).

Docket Number: A95–19
Name of Affected Post Office: Eckhart Mines, Maryland 21528
Name(s) of Petitioner(s): Walter Rankin
Type of Determination: Closing
Date of Filing of Appeal Papers: September 5, 1995
Categories of Issues Apparently Raised:
1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by September 20, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

September 5, 1995
Filing of Appeal letter
September 12, 1995
Commission Notice and Order of Filing of Appeal
September 29, 1995
Last day of filing of petitions to intervene [*see* 39 C.F.R. 3001.111(b)]
October 10, 1995
Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. 3001.115 (a) and (b)]
October 30, 1995
Postal Service's Answering Brief [*see* 39 C.F.R. 3001.115(c)]
November 14, 1995
Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. 3001.115(d)]
November 21, 1995
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]
January 3, 1996
Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 95–23014 Filed 9–15–95; 8:45 am]

BILLING CODE 7710–FW–P

[Docket No. A95–20; Order No. 1077]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued September 12, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Taintor, Iowa 50253 (Cornelia Lambert, et al., Petitioners).

Docket Number: A95–20
Name of Affected Post Office: Taintor, Iowa 50253
Name(s) of Petitioner(s): Cornelia Lambert, et al.
Type of Determination: Closing
Date of Filing of Appeal Papers: September 5, 1995
Categories of issues apparently raised:
1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by September 20, 1995.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

September 5, 1995
Filing of Appeal letter
September 12, 1995
Commission Notice and Order of Filing of Appeal
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Last day of filing of petitions to intervene [*see* 39 C.F.R. 3001.111(b)]
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Petitioners' Participant Statement or Initial Brief [*see* 39 C.F.R. 3001.115(a) and (b)]
October 30, 1995
Postal Service's Answering Brief [*see* 39 C.F.R. 3001.115(c)]
November 14, 1995
Petitioners' Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. 3001.115(d)]
November 21, 1995
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116]
January 3, 1996
Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 95–23015 Filed 9–15–95; 8:45 am]

BILLING CODE 7710–FW–P–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36212; File No. SR–Amex–95–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Disclaimer Provisions of Amex Rule 902C

September 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 25, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 902C to include Inter@ctive Enterprises L.L.C., publisher and owner of Inter@ctive Week, a bi-weekly magazine in the disclaimer provisions of that Rule. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In conjunction with the Exchange's proposal to trade options on the Inter@ctive Week Internet Index (''Index''), the Exchange proposes to amend Rule 902C to provide a disclaimer for Inter@ctive Enterprises L.L.C., publisher and owner of Inter@ctive Week, a bi-weekly magazine. The Exchange's proposal to list and trade options on the Index was filed pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 on August 23, 1995.[3] The disclaimer, identical in content to disclaimers currently in place for Standard & Poors Corporation [4] and Morgan Stanley & Co. Incorporated,[5] states that Inter@ctive Enterprise L.L.C. does not guarantee the accuracy or completeness of the Index, makes no express or implied warranties with respect to the Index and shall have no liability for any damages, claims, losses or expenses caused by errors in the Index calculation.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW.,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36163 (August 29, 1995).

[4] *See* Amex Rule 902C(c).

[5] *See* Amex Rule 902C(d).

Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to SR–Amex–95–36 and should be submitted by October 10, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23018 Filed 9–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36219; File No. SR–DTC–95–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking to Establish a Legal Guidance System

September 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 27, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–95–09) as described in Items I, II, and III below, which items have been prepared primarily by DTC. On July 25, 1995, DTC filed an amendment to the proposed rule change.[2] On August 22, 1995, DTC filed a second amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to establish a service whereby DTC participants and nonparticipants (*e.g.*, transfer agents) can obtain information and documentation necessary to effect a legal transfer of a deposit.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish an inquiry-only Legal Guidance System (''LGS''), which is a menu-driven, user-friendly system designed to provide DTC participants and nonparticipants (*e.g.*, transfer agents)[5] with information regarding the documents necessary to effect a legal deposit.[6] Lgs will be accessible by DTC participants and nonparticipants through DTC's Participant Terminal System (''PTS''). LGS contains industry requirements, individual state and province requirements, and transfer agent requirements for processing legal deposits. DTC will post a disclaimer in the LGS user guide notifying users that DTC shall not be liable to the user for any liability for damages resulting from mistakes or omissions in LGS.[7]

The LGS menu approach will guide users through a step-by-step process to ascertain the relevant requirements for transferring legal deposits. LGS also will have a ''fast forward'' navigation option that will allow an experienced user to quickly access the requisite information. Users also will be able to request through LGS that certain transfer documents be sent to their offices via facsimile transmission. In the near future, DTC plans to interface LGS with its Pending Legal Deposit System to track and monitor document expiration. The fee charged to DTC participants and nonparticipants for the LGS service will be DTC's standard fee for PTS inquires.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] DTC amended its proposal to allow organizations that are not DTC participants, such as transfer agents, to subscribe to the Legal Guidance System. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Mark Steffensen, Esq., Division of Market Regulation (''Division''), Commission (July 21, 1995).

[3] As proposed in the original filing, once a user logged onto the Legal Guidance System a disclaimer of liability message appeared on the terminal screen. DTC has amended its proposal to eliminate this message from the Legal Guidance System terminal screen. Instead, the disclaimer will appear in a user guide. Letter from Piku K. Thakkar, Assistant Counsel, DTC, to Peter Geraghty, Division, Commission (August 17, 1995).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] Presently, DTC envisions that LGS will be utilized only by nonparticipant transfer agents. However, the availability of LGS will not be limited to nonparticipants who are transfer agents. Telephone conversation between Piku K. Thakkar, Assistant Counsel, DTC, and Mark Steffensen, Attorney, Division, Commission (September 11, 1995).

[6] A ''legal deposit'' consists of a registered security and any legal documentation required to effect the legal transfer and registration of the security from the registered holder's name into DTC's nominee name.

[7] Specifically, the disclaimer will state that ''DTC does not represent the accuracy, adequacy, or fitness for a particular purpose of the following information, which is provided as is. DTC shall not be liable for: 1) any loss resulting directly or indirectly from mistakes, omissions, interruptions, delays, errors, or defects arising from or related to this service; and 2) any special, consequential, exemplary, incidental, or punitive damages.''

[8] 15 U.S.C. 78q–1 (1988).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–09 and should be submitted by October 10, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 95–23089 Filed 9–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36211; File No. SR–NASD–95–16]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to a Customer Complaint Reporting Rule

September 8, 1995.

On July 6, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder.[3] The rule change amends the NASD Rules of Fair Practice to require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints.

Notice of the proposed rule change, together with its terms of substance, was provided by issuance of a Commission release [4] and by publication in the Federal Register.[5] No comments were received in response to the notice. This order approves the proposed rule change.

On May 19, 1994, the Commission's Large Firm Project Report was published, detailing the findings of a review it undertook, in conjunction with the New York Stock Exchange (''NYSE'') and the NASD, regarding the hiring, retention and supervisory practices of nine of the largest broker-dealers in the United States. This review was commenced because of increased concerns on the part of the Commission and others over the frequency and severity of sales practice abuses.

In the Report, Commission staff stressed the need for self-regulatory organizations (''SROs'') to develop better means of identifying sales practice problems at an earlier stage. Commission staff noted, in connection with its review, that the NYSE Rule 351 database was extremely useful and was a significant help to the staff in conducting its review. In general, NYSE Rule 351 is a broad reporting rule that requires members to report to the NYSE certain specified information that may reflect a violation of, among other things, the federal securities laws or the rules of the NYSE. In addition, NYSE Rule 351 requires members to report, on a periodic basis, statistical information regarding customer complaints. In the Report, Commission staff recommended that the NASD adopt a rule based on NYSE Rule 351 and require its members to report customer complaint information on a quarterly basis as an additional tool to aid in the identification of problem brokers.

In its rule filing, the NASD expressed concern that critical material information identified in the proposed rule, such as reports on statutory disqualifications, internal disciplinary actions, and quarterly statistical data regarding customer complaints received by a member is not currently required by Form U–4 or other forms to be reported to the NASD. The NASD believes, therefore, that the affirmative obligation of members to provide the NASD with notice of certain events concerning member firms or their associated persons will significantly enhance the NASD's ability to quickly identify and take appropriate action against problem representatives.

The proposed rule change is similar to NYSE Rule 351. The Rule will require a member to file a report with the NASD when any of 10 different specified events occur. These events range from situations where a court, government agency, or SRO has determined that there has been a violation of the securities laws, to circumstances where a firm has received a written customer complaint alleging theft or misappropriation of funds or securities, or forgery. The rule also will require a person associated with a member to promptly report the existence of any of the ten events to the member. Moreover, the rule will require a member to report to the NASD statistical and summary information regarding written customer complaints received by the member or relating to the firm or any of its associated persons. The reporting requirements of the proposed rule will not apply to members that are subject to similar reporting requirements of another SRO. For example, NASD members that are also members of the NYSE will not be subject to the NASD's rule.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Sections 15A(b) (6) and (7) of the Act.[6] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and to protect investors and the public interest. Section 15A(b)(7) requires that the rules of a national securities association provide that its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the Act, the rules or regulations thereunder, or the rules of the association. The Commission believes that the proposed rule will provide important regulatory information that will assist in the detection and investigation of sales practice violations. This, in turn, should assist the NASD in carrying out its disciplinary responsibilities as well as assist it in protecting investors and the public from fraudulent and manipulative acts and practices. As noted above, the Commission itself found such information extremely useful in its review of sales practice abuses.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change SR–NASD–95–16 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

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[9] 17 CFR 200.30–3(a)(12) (1994).

[1] The proposed rule change was initially submitted on May 1, 1995, but was amended twice prior to publication in the Federal Register; once on May 25, 1995, and again on July 6, 1995.

[2] 15 U.S.C. 78s(b)(1)

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 35956 (July 11, 1995).

[5] 60 FR 36838 (July 18, 1995).

[6] 15 U.S.C. 78*o*–3(b) (6) & (7).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–23017 Filed 9–15–95; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC–21347; 812–9560]

London Pacific Life & Annuity Company, et al.; Notice of Application

September 12, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: London Pacific Life & Annuity Company (the ''Company''), London Pacific Financial and Insurance Services (the ''Distributor''), and LPLA Separate Account One (the ''Separate Account''); on behalf of themselves and other separate accounts that the Company or the Distributor may establish to support individual variable deferred annuity contracts issued by the Company (''Future Accounts'' and, together with the Separate Account, the ''Accounts'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicants from sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to deduct a mortality and expense risk charge and a distribution charge from the assets of the Accounts, in connection with individual variable deferred annuity contracts.

FILING DATES: The application was filed on March 30, 1995, and amended on August 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants: 3109 Poplarwood Court, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company organized in North Carolina and is authorized to sell life insurance and annuities in forty states and the District of Columbia.

2. The Separate Account is a segregated asset account established by the Company to fund certain individual variable deferred annuity contracts to be issued by the Company (the ''Contracts''). In the future, the Company may issue other variable annuity contracts that are materially similar to the Contracts (''Future Contracts'').

3. The Separate Account is registered as a unit investment trust under the Act. The Separate Account is divided into subaccounts. Each subaccount will invest in the shares of a portfolio of LPT Variable Insurance Series Trust (the ''Trust''). The Trust is registered as an open-end management investment company under the Act. In the future, the Company may create additional subaccounts.

4. The Distributor will serve as the distributor of the Contracts. The Distributor is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Security Dealers, Inc.

5. The Contracts would be available for individuals in retirement plans that may or may not qualify for federal income tax advantages. The Contracts require a minimum initial contribution of $10,000, except for Individual Retirement Annuities, which require a $1,000 minimum initial contribution. The minimum subsequent contribution is $1,000, or $100 if the owner elects the periodic investment plan option. Contract owners may allocate contributions to one or more subaccounts of the Separate Account and to the fixed account.

6. The Contracts provide for different guaranteed death benefits, depending on the age of the Contract owner and the maturity date. If the Contract owner or the oldest joint owner dies before age 75 and during the accumulation period, the death benefit is equal to the greater of the following: (a) the ''Adjusted Contribution,'' which is the initial contribution increased for subsequent contributions and reduced for subsequent partial withdrawals in the same proportion that the Contract value was reduced on the date of the withdrawal; (b) the Contract value determined as of the end of the valuation period during which the Company receives both due proof of death and an election of the payment method; or (c) the Contract value on the most recent seven year Contract anniversary or the Adjusted Contributions as of the most recent seven year Contract anniversary, whichever is greater. This amount is increased for subsequent contributions and reduced for subsequent partial withdrawals in the same proportion that the Contract value was reduced on the date of the withdrawal. If the owner or oldest joint owner dies on or after age 75, but before age 85 and during the accumulation period, the death benefit will follow the same formula as above and will be subject to any applicable Contingent Deferred Sales Charge (''CDSC'') determined at the time the death benefit is paid. If the Contract owner or oldest joint owner dies on or after age 85 and during the accumulation period, the death benefit will be the Contract value determined as of the end of the valuation period during which the Company receives due proof of death and an election for the payment method, less any applicable CDSC determined at the time the death benefit is paid.

7. The Contract owner may transfer all or part of the owner's interest in a subaccount or the fixed account. If more than the number of free transfers have been made in a Contract year, the Company will deduct a Transfer Fee for each subsequent transfer.

8. If all or a portion of an owner's unliquidated (not previously surrendered or withdrawn) contribution is withdrawn within the first seven Contract years, applicants will assess a CDSC. The amount of the CDSC is as follows:

Contract year in which withdrawal occurs	Charge as percentage of amount withdrawn
1	7
2	7
3	6
4	5
5	4
6	3
7	2
8 and after	0

The Company may issue other Contracts in the future which will not impose a CDSC. Once each Contract year, Contract owners may withdraw up to 10% of their unliquidated contributions without incurring a CDSC.

9. The Company will deduct an annual contract maintenance charge of $36 each Contract year. No contract maintenance charge is payable if the Contract value in the Separate Account and the fixed account is greater than or equal to $50,000 on the Contract anniversary. The Company also will deduct an administration charge from the assets of the Separate Account at an annual rate of .15%

10. Applicants represent that the annual contract maintenance charge and the asset-based administration charge will not increase during the life of the Contracts. In addition, applicants represent that the charges represent reimbursement for the expenses expected to be incurred over the life of the Contracts, and applicants do not intend to profit from the charges. Applicants will rely on rule 26a–1 under the Act to deduct these charges.[1]

11. The Company proposes to deduct a distribution charge at an annual rate of .10% of the average daily net asset value of each subaccount. This charge and the CDSC would compensate the Company for the costs associated with the distribution of the Contracts. The Company does not intend to profit from this charge, and the Company would not increase this charge. The Company would monitor the performance of the Separate Account to ensure that with respect to any Contract owner the cumulative sum of the distribution charge and the CDSC would not exceed 9% of the total contributions paid.

12. The Company proposes to deduct a daily mortality and expense risk charge of 1.25%. Of that amount, approximately .25% is for mortality risk and 1.00% is for expense risk. The Company assumes the mortality risk that annuitants may live for a longer period than estimated when the guarantees in the Contract were established, thus requiring the Company to pay out more in annuity income than it had planned. The Company also assumes a mortality risk in that it may be obligated to pay a death benefit, in excess of the Contract value. The expense risk assumed by the Company is that the other fees may be insufficient to cover the actual cost of administering the Contracts.

13. If the mortality and expense risk charge is insufficient to cover the actual cost of the risks, the Company will bear the shortfall. Conversely, if the charge is more than sufficient, the excess will be profit to the Company and will be available for any proper corporate purpose, including payment of distribution expenses.

14. If the premium taxes are applicable to a Contract, they may be deducted when incurred. Currently, the Company pays premium taxes when incurred, and deducts the tax upon withdrawal, payment of a death benefit, or purchase of an annuity under the Contract.

Applicants' Legal Analysis

1. Applicants request an exemption pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the deduction from the Separate Account and Future Accounts of the distribution charge and the mortality and expense risk charge. Sections 26(a)(2)(C) and 27(c)(2), in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Section 6(c) authorizes the Commission to exempt any person from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants also request relief with respect to Future Contracts. Applicants present that the terms of the relief requested with respect to any Future Contracts are consistent with the standards of section 6(c). Applicants represent that additional requests for exemptive relief would present no issues under the Act not already addressed in this application, and that investors would not receive any benefit or additional protections thereby.

4. Applicants represent that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of resources. The delay and expense involved in repeatedly seeking exemptive relief would reduce applicants' ability effectively to take advantage of business opportunities as they arise.

5. Applicants represent that the distribution charge is an appropriate method to help defray the Company's costs associated with the sale of the Contracts. Applicants will describe the purpose of the distribution charge in the prospectus and applicants will state in the perspectus that the staff of the SEC deems the distributions charge to constitute a deferred sales charge.

6. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. This representation is based on an analysis of the mortality risks, the expense risks, estimated costs, and industry practice. The Company will maintain and make available to the SEC upon request a memorandum setting forth in detail the products analyzed and the methodology and results of applicants' analysis.

7. Prior to relying on any exemptive relief granted herein with respect to Future Contracts, applicants will determine that the mortality and expense risk charges will be within the range of industry practice for comparable contracts, and/or reasonable in relation to the risks assumed by the Company. The Company will maintain and make available to the SEC upon request a memorandum setting forth the basis of such conclusion.

8. The Company acknowledges that distribution expenses may in part be financed by profits derived from the mortality and expense risk charges. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the Contract owners. The Company will maintain and make available to the SEC upon request a memorandum setting forth the basis of such conclusion.

9. Prior to relying on any exemptive relief granted herein with respect to Future Contracts or Future Accounts, applicants will determine that there is a reasonable likelihood that the distribution financing arrangement will benefit the Accounts and their investors. The Company will maintain and make available to the SEC upon request a memorandum setting forth the basis of such conclusion.

10. The Separate Account and Future Accounts will invest in a management

[1] Rule 26a–1, allows for payment of a fee for bookkeeping and other administrative expenses provided that the fee is no greater than than the cost of the services provided, without profit.

investment company that has adopted a plan pursuant to rule 12b–1 under the Act only if that Company has undertaken to have such plan formulated and approved by its board of directors, a majority of whom are not ''interested persons'' of the company within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23090 Filed 9–15–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21344; File No. 812–9472]

The Northwestern Mutual Life Insurance Company, et. al.

September 11, 1995.

AGENCY: Securities and Exchange Commission (the ''Commission'' or the ''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: The Northwestern Mutual Life Insurance Company (''Northwestern''), Northwestern Mutual Variable Life Account (''Account'') and Northwestern Mutual Investment Services, Inc. (''NMIS'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from: the provisions of, and the rules under, the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b) thereunder; and the provisions of Sections 2(a)(32), 2(a)(35), 12(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act, subparagraphs (b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (c)(1) and (c)(4) of Rule 6e–2, and Rules 12b–1(a)(1) and 22c–1 under the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order permitting them to offer and sell certain scheduled premium variable life insurance policies (''Policies'') that provide for the following: a death benefit which may include a portion which is not guaranteed for the lifetime of the insured; premiums, the payment of which may be suspended in defined circumstances; optional unscheduled additional premiums; both a contingent deferred sales charge and a sales charge deducted from premiums, neither of which is subject to refunds; deduction of an administrative surrender charge on lapse or surrender; deduction from the Policy's account value of cost of insurance charges, charges for substandard risks and incidental insurance benefits, and minimum death benefit guarantee risk charges; values and charges based on the Commissioners 1980 Standard Ordinary Mortality Tables (the ''1980 CSO Tables''); the deduction from premium payments of an amount that is reasonably related to Northwestern's increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended; the holding of mutual fund shares funding the Account in an open account arrangement, without a trust indenture or use of a trustee; and the sale of mutual fund shares to the Account without the use of an underwriter for the mutual fund.

FILING DATE: The application was filed originally on February 8, 1995. An amended and restated application was filed on September 7, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the exemption will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 6, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o The Northwestern Mutual Life Insurance Company, 720 East Wisconsin Avenue, Milwaukee, WI 53202, Attn: John M. Bremer, Senior Vice President, General Counsel and Secretary.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Special Counsel, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Northwestern, a mutual life insurance company organized under the laws of Wisconsin, is licensed to do business in all of the states and the District of Columbia.

2. In 1983, Northwestern established the Account to fund the Policies. The Account is organized as a separate account under Wisconsin law, and is registered as a unit investment trust under the 1940 Act.

3. The Account has nine separate divisions (''Divisions''), each of which invests solely in a corresponding portfolio (''Portfolio'') of Northwestern Mutual Series Fund, Inc. (''Fund''), an open-end management company registered under the 1940 Act. Shares of each portfolio are purchased by Northwestern for the corresponding Account Division at net asset value.

4. NMIS, a wholly owned subsidiary of Northwestern, serves as investment adviser to the Fund and underwriter for the Policies. NMIS is registered as a broker-dealer under the Securities Exchange Act of 1934, and is registered as an investment advisor under the Investment Advisers Act of 1940.

5. The Policy incorporates certain fundamental features characteristic of scheduled premium variable life insurance policies contemplated by Rule 6e–2, including a guarantee against lapse if specified required premiums are paid by their due dates. In addition, Policy owners will have the options of: (i) Making premium payments in excess of the required premiums, either to increase the Policy value which supports the guaranteed face amount or to purchase variable paid-up additional insurance, or (ii) suspending premium payments when the Policy value already is sufficient to pay future premiums.

6. The death benefit under a Policy will vary based upon investment performance of the Fund's Portfolios, subject to the minimum guarantee as provided by the Policy. The minimum guaranteed death benefit available under every Policy corresponds to the guaranteed minimum face amount of a traditional scheduled premium variable life insurance policy, and will neither increase nor decrease as long as premiums are paid when due and no Policy debt is outstanding. In addition to the minimum guaranteed feature, the death benefit may include one or more other parts: ''Additional Protection'' which is guaranteed for only a specified period, depending on the age and risk classification of the insured; ''Variable paid-up additional insurance'' which may be purchased by either paying additional premium or by applying any dividends to purchase paid-up additions; and ''Excess Amount''—the amount by which Policy value exceeds what is required to support the minimum guaranteed death benefit and

Additional Protection—which reflects the payment of additional premiums or Policy dividends, or favorable investment performance. Each of these death benefit features may vary, to some degree, to reflect investment performance.

7. Partial surrenders of the Policies will be permitted so long as the Policy that remains meets the regular minimum size requirements. A partial surrender will cause the Policy to be split into two; one Policy will be surrendered, the other will continue in force on the same terms as the original Policy except that the premiums will be based on the reduced amount of insurance. The owner will receive a new Policy document. The cash value and death benefit will be proportionately reduced.

8. Premiums, dividends and most charges for the Policies follow an annualized structure, based on the Policy anniversary, with adjustment to reflect the dates on which events take place during a Policy year. The Policies permit payment of premiums as often as monthly, but Northwestern places the scheduled net annual premium in the Account on the anniversary date at the beginning of each Policy year regardless of the frequency on which premiums are being paid. Northwestern advances this amount on that date (unless the entire annual premium already has been paid), and Northwestern is reimbursed as premium payments are thereafter received from the Policy owner. Premiums paid on other than an annual basis are increased to: (i) reflect the time value of money, based on an 8% interest rate; and (ii) cover the administrative costs to process the additional premium payments.

A. Deductions and Charges From Premiums

1. Northwestern will deduct from premiums 8% of each premium paid. This deduction is for sales expenses (4.5%), state premium taxes (2.25%), and a federal deferred acquisition cost tax charge (1.25%).

2. An annual Policy fee of up to $84.00 is deducted; Northwestern expects to reduce the deduction to $60.00 after the first ten years.

3. For the minimum guaranteed death benefit there is an annual charge of $0.12 per $1,000 of insurance, for the guarantee that the amount of the death benefit will not be reduced if the net rate of return is less than the 4% rate assumed.

4. An annual administrative expense charge of $0.12 per $1,000 of minimum guaranteed death benefit and Additional Protection will be deducted for the first ten years. Northwestern expects to waive the charge thereafter. This charge is for issuance expenses (other than sales expenses) which tend to vary with Policy amount.

5. Any extra premium charged for insureds who do not qualify for one of the three best underwriting classifications, and any premium for additional benefits, also are deducted before determining the net premium to be placed in the Account.

B. Deductions and Charges From Policy Value

1. While payment of premiums is suspended,[1] a portion of the annual charges which ordinarily would be deducted from premiums will be deducted instead from Policy value. This deduction also will be made each year on the Policy anniversary.

2. Northwestern will deduct cost of insurance charges from the Policy value and from the value of any paid-up additional insurance. Generally, these charges are assessed on each Policy anniversary at rates that do not exceed those prescribed in the 1980 CSO Tables.

3. The Policy value also will be reduced by any surrender charges, administrative charges, or decrease in Policy debt that may result from a withdrawal, a decrease in the face amount of insurance, or a change to variable benefit paid-up insurance.

C. Deductions and Charges From Assets of the Account and the Fund

1. Northwestern will assess the daily mortality and expense risk charge at an effective rate of 0.6% per annum of the Account assets attributable to the Policy. This charge is for the (mortality) risk that insureds may live for shorter periods of time than estimated, and for the (expense) risk that costs of issuing and administering the Policies may be higher than estimated.

2. Total Fund expenses for investment advisory and other services provided to the Fund will be assessed on a daily basis. These expenses will vary by portfolio, and currently fall in the approximate range of 0.22% to 1.0% of assets, on an annual basis.

D. Transaction Charges

1. Twenty-five dollars ($25.00) may be deducted from the Policy value upon each withdrawal of excess value or each transfer of invested amounts among the Account Divisions. These charges are designed to defray only the estimated costs of effecting the transactions. Currently, Northwestern is waiving these charges.

2. Northwestern will assess a charge for the administrative costs incurred in processing a partial surrender. Current estimates place this charge at $250.

E. Surrender Charges

1. Surrender charges are deducted from the Policy value and will reduce the Policy proceeds if a Policy is surrendered before the premium due at the beginning of the fifteenth Policy year has been paid. These charges include the administrative surrender charge for issue expenses, and the premium surrender charge for sales expenses. Both of these surrender charges are based on the minimum annual premium for the minimum guaranteed death benefit and the Additional Protection, excluding any amount for extra mortality benefits or for additional Policy benefits.

2. An administrative surrender charge may be deducted if the Policy is surrendered or lapses in the first ten (10) Policy years. This charge provides partial compensation for estimated administrative expenses, such as the cost of collecting and processing premiums, processing applications, conducting medical examinations, establishing Policy records, determining insurability and assigning the insured to a risk classification, and issuing the Policy. These expenses exclude any costs properly attributable to sales or distribution activity. The maximum administrative surrender charge is $216, plus $1.08 per $1,000 of the face amount of insurance. This charge decreases to zero after the first ten (10) Policy years.

3. Northwestern will deduct a premium surrender charge, for sales expenses, upon surrender or lapse of a Policy during the first fifteen (15) Policy years. The premium surrender charge is a percentage of the annual premium for the Policy face amount (including a term insurance premium for the portion which is not guaranteed for the lifetime of the insured), reduced proportionately if total premiums actually paid are less than those annual premiums due during the first five (5) Policy years.

4. A deduction from the Policy proceeds for a proportionate part of the surrender charges will be made if a partial surrender takes place before the premium due at the beginning of the fifteenth Policy year has been paid.

F. Deduction of Charge for Section 848 Deferred Acquisition Costs

1. Northwestern will deduct a charge equal to 1.25% of each premium payment to cover the estimated cost of

[1] Payment of premiums may be suspended, at the Policyowner's option, when certain conditions are met.

its increased federal tax burden related to receipt of premiums in connection with the Policies. This increased federal tax burden results from Section 848 of the Internal Revenue Code of 1986 (as amended), which was enacted in 1990 to modify the federal income taxation of life insurance companies. Section 848 requires life insurance companies to capitalize and amortize, over a period of ten years, part of their general expenses for the current year. Under prior law, these expenses were deductible in full from the current year's gross income.

2. The amount of deductions that would have to be amortized over ten years rather than deducted in the year incurred is a percentage of the current year's net premiums received in connection with certain types of insurance contracts. The percentage varies, depending on the type of insurance contract involved, according to a schedule set forth in Section 848(c)(1).

3. In effect, Section 848 accelerates the realization of income from insurance contracts covered by that section and, accordingly, accelerates the payment of taxes on the income generated by those contracts. Consequently, taking into account the time value of money, the tax burden of the insurance company related to those contracts is increased. Because the amount of general deductions that must be capitalized and amortized is measured by premiums paid, an increased federal tax burden results from the receipt of those premiums. Applicants state that, in this respect, the impact of Section 848 can be compared to that of a state premium tax.

4. The Policies fall under the category of ''specified contracts'' under Section 848, so that 7.7% of the net premiums received under the Policies must be capitalized and amortized. The increased tax burden on Northwestern resulting from this requirement can be quantified as follows. For every $10,000 of new premiums received by Northwestern under the Policies in a given year, the general deductions of Northwestern are reduced by $731.50, or (a) $770 (7.7% of $10,000) minus (b) $38.50 (one-half year's portion of the ten-year amortization). Using a 35% corporate tax rate, this results in an increase in tax for the current year of $256.03. This increase in tax will be partially offset by increased deductions which will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth).

5. To the extent that capital must be used by Northwestern to satisfy its increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available for investment. Because the targeted rate of return for Northwestern (*i.e.*, the return Northwestern seeks on invested capital) exceeds 11%,[2] Northwestern submits that a discount rate of 11% is appropriate when calculating the present value of its future tax deductions resulting from the amortization described above. To the extent that the 11% discount rate is lower than Northwestern's actual targeted rate of return, a measure of comfort is provided that the calculation of Northwestern's increased tax burden attributable to receipt of premiums will continue to be reasonable over time, even if the corporate tax rate applicable to Northwestern is reduced, or its targeted rate of return is lowered.

6. Applying this 11% discount rate, and assuming a 35% corporate tax rate, the present value of the increased deductions amounts to a tax savings of $153.97. Thus, the present value of the increased tax burden resulting from the effect of Section 848 of each $10,000 of net premiums received under the policies is $102.06 ($256.03 minus $153.97).

7. Because state premium taxes are deductible when computing an insurance company's federal income taxes, Northwestern does not incur incremental income tax when it passes on state premium taxes to its policy owners. In contrast, federal income taxes are not deductible in computing a company's federal income taxes. Therefore, to compensate Northwestern fully for the impact of Section 848, it would be necessary to allow Northwestern to impose an additional charge which would make it whole not only for the $102.06 additional tax burden attributable to Section 848, but also for the tax on the additional $102.06 itself. This additional charge can be determined by dividing $102.06 by the complement of the 35% federal corporate income tax rate (*i.e.*, 65%) resulting in an additional charge of $157.01 for each $10,000 of net premiums, or 1.57%.

8. Tax deductions are of value to a company only to the extent that a company has sufficient gross income to take the deductions fully. Based on prior experience, Northwestern believes that it is reasonable to expect that future federal income tax deductions will be taken fully.

9. It is the judgment of Northwestern that a charge of 1.25% would reimburse it appropriately for the impact of Section 848 on its federal tax liabilities. Applicants represent that the proposed ''DAC tax'' charge is reasonably related to Northwestern's increased federal tax burden under Section 848, taking into account the benefit to Northwestern of the amortization permitted by Section 848 and the use of an 11% discount rate in computing the future deductions resulting from such amortization, such rate being no greater than Northwestern's targeted rate of return.

Applicants' Legal Analysis and Conclusions

Applicants request exemptions pursuant to Section 6(c) of the 1940 Act from: the provisions of, and those rules under, the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b) thereunder; Sections 2(a)(32), 2(a)(35), 12(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act; and subparagraphs (b)(1), (b)(12), (b)(13)(i), (b)(12)(ii), (b)(13)(iii), (b)(13(iv), (b)(13)(v), (c)(1) and (c)(4) of Rule 6e–2, and Rules 12b–1(a)(1) and 22c–1, under the 1940 Act. Applicants seek these exemptions to the extent necessary to permit them to offer and sell the Policies.

A. Request for Exemptions Relating to Definition of ''Variable Life Insurance Contract''

1. Rule 6c–3 under the 1940 Act grants exemptions from numerous provisions of the 1940 Act to separate accounts of life insurance companies that support variable life insurance policies. The exemptions provided by Rule 6c–3 are available only to registered separate accounts whose assets are derived solely from the sale of ''variable life insurance contracts'' which meet the definitions set forth in Rule 6e–2(c)(1) or ''flexible premium variable life insurance contracts'' which meet the definition set forth in Rule 6e–3(T)(c)(1) under the 1940 Act, and from certain advances made by the insurer.

2. A ''variable life insurance contract'' is defined in Rule 6e–2(c)(1) to include only life insurance policies which provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and which guarantee that the death benefit will not be less than an amount stated in the policy. The required guaranteed minimum death benefit need be provided only so long as

[2] In determining the targeted rate of return used in arriving at this discount rate, Northwestern first identified a reasonable risk-free rate of return that it could expect to earn over the long term. Northwestern then determined the premium it must earn over that risk-free rate of return given the inherently risky nature of the insurance products it sells. Applicants represent that such factors are appropriate to consider in determining the targeted rate of return.

premiums are duly paid in accordance with the terms of the policy.

3. The death benefit will vary with investment performance when the value is sufficiently large that, in order to qualify the Policy as life insurance for federal income tax purposes, the death benefit must be increased. This could happen, for example, because of very favorable investment performance, the payment of additional premiums, or both. In addition, to some degree, each of the possible additional components of the death benefit—*i.e.*, the Additional Protection, the Variable paid-up additional insurance, and Excess Amount—also will vary to reflect investment performance.

4. Applicants submit that the death benefit under the Policy varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the death benefit under the Policy is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Policy contains other provisions that are not specifically addressed in Rule 6e–2. Accordingly, Applicants request exemptions from the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1) and from all sections of and rules under the 1940 Act—other than Sections 7 and 8(a)—specified in Rule 6e–2(b), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Policy in reliance on Rule 6e–2, except as otherwise set forth in the application.

5. Applicants submit that the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1) was drafted at a time when less flexibility regarding premium payments and other policy features were offered than subsequently have been permitted. The Policy provides considerable latitude for the purchaser to select the desired combination of minimum guaranteed death benefit, Additional Protection, and Variable paid-up additional insurance. While such a choice may not have been contemplated when Rule 6e–2 was drafted, Applicants submit that purchasers are well served by the opportunity to choose a combination of features which they believe suits their own need with respect to the relationship of cash value, death benefit and investment performance.

6. Applicants further submit that the considerations that led the Commission to adopt Rules 6c–3 and 6e–2 apply equally to the Account and the Policy, and that the exemptions provided by those rules should be granted to Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested.

B. Request for Exemptions Relating to Sales Charges

1. Sections 26(a)(2) and 27(c)(2) may be construed to require that the proceeds of all payments under a Policy be deposited in the Account and that no payment be made from the Account to Northwestern or any affiliated person of Northwestern, except for bookkeeping and other administrative services. The premium surrender charge (for sales expenses) may be deemed inconsistent with the foregoing provisions, to the extent that the deduction from the Policy value would constitute payment for an expense not specifically permitted. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the premium surrender charge to be deducted upon surrender or lapse of a Policy, as described in the application.

2. Section 2(a)(35) and Rules 6e–2(b)(1) and 6e–2(c)(4) may be construed to contemplate that the sales charge for a variable life insurance policy will be deducted from premiums. The deduction of a premium surrender charge under the Policies may be deemed inconsistent with those provisions. Applicants request exemptions from Section 2(a)(35) and Rules 6e–2(b)(1) and 6e–2(c)(4), to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part as a surrender charge.

3. Applicants submit that Rule 6e–2(c)(4) may be construed to comprehend a sales charge imposed on other than premiums. This is because the definition is an intellectual construct rather than a reflection of the actual methodology of administering variable life insurance policies, referring in paragraphs (i) and (ii), for example, to other amounts that are *not* deducted from premiums.

4. Section 27(a)(1) and Rule 6e–2(b)(13)(i) may be construed to contemplate that the sales charge under a policy will be deducted from premiums. Northwestern's deduction of part of its sales charge on a contingent deferred basis may be deemed inconsistent with the foregoing provisions, to the extent that the sales charge is deducted from other than premiums. Applicants request an exemption from those provisions to the extent necessary to permit part of the Policy's sales charge to be deducted from premium payments, and part to be deducted as a surrender charge.

5. In pertinent part, Sections 2(a)(32), 27(c)(1), and 27(d) prohibit Applicants from selling the Policy unless it is a ''redeemable security.'' [3] Subparagraphs (b)(12), (b)(13)(iv), and (b)(13)(v) of Rule 6e–2 afford exemptions from Section 27(c)(1), and subparagraphs (b)(13)(iv) and (b)(13)(v) of Rule 6e–2 afford exemptions from Section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. However, the exemptions afforded by subparagraphs (b)(12), (b)(13)(iv), and (b)(13)(v) of Rule 6e–2 may not contemplate a contingent deferred sales charge. Moreover, Northwestern's deduction of the premium surrender charge may be viewed as reducing the proceeds that the Policy owner would receive on surrender below the Policy owner's proportionate share of the current net assets of the Account. Applicants request an exemption from the foregoing provisions to the extent necessary to permit part of the sales charge under a Policy to be deducted from premium payments, and part to be deducted as a surrender charge.

6. Applicants represent that Rule 6e–2 was adopted at a time when less flexibility regarding premium payments and other policy features were offered than subsequently have been permitted. Because of these features, particularly premium flexibility, it is possible that the premiums actually received by the insurance company by the date of surrender or lapse of a Policy may be less than the full amount of scheduled minimum premiums paid on or before the relevant due dates. It is unclear how the technical sales load computation provisions in Rule 6e–2 apply under such circumstances, particularly with respect to the premium surrender charge.

7. Applicants submit that, although the definition of ''redeemable security'' found in Section 2(a)(32) does not expressly provide for the imposition of a sales charge at the time of redemption, such a charge is not necessarily inconsistent with the definition of ''redeemable security.'' Applicants further submit that the premium surrender charge is similar to the ''redemption'' charge authorized in Section 10(d)(4) of the 1940 Act, and that Congress obviously intended that such a ''redemption charge''—which is expressly described as a ''discount from net asset value''—be deemed consistent

[3] A ''redeemable security,'' as defined in Section 2(a)(32), entitles a Policy owner to receive his or her approximate proportionate share of the current net assets of the Account upon surrender.

with the concept of ''proportionate share'' under Section 2(a)(32).

8. Applicants submit that there will be no restriction on, or impediment to, surrender that should cause the Policy to be considered other than a redeemable security within the meaning of the 1940 Act and the rules thereunder. The Policy provides for surrender and withdrawals of excess Policy value. The prospectus for the Policy will disclose the contingent deferred nature of part of the sales charge. Upon surrender or lapse, a Policy owner will receive his or her ''proportionate share'' of the Account—*i.e.*, the amount of net premiums paid, reduced by the amount of all charges and increased by the amount of all return credited to the Policy.

9. Rule 22c–1, adopted pursuant to Section 22(c), prohibits Applicants from redeeming a Policy except at a price based on the current net asset value of the Policy that is next computed after receipt of the request for full or partial surrender of the Policy. Rule 6e–2(b)(12) affords exemptions from Rule 22c–1. Rules 22c–1 and 6e–2(b)(12), read together, impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated. The proposed premium surrender charge may be deemed inconsistent with Section 22(c) and Rule 22c–1 to the extent that the sales charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy.

10. Applicants submit that the premium surrender charge will not have the dilutive effect which Rule 22c–1 is designed to prohibit because a surrendering Policy owner would receive no more than an amount equal to the cash surrender value determined pursuant to the formula set out in his or her Policy and after receipt of his or her request. Furthermore, variable life insurance policies, by nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against and, even if they could be so used, the surrender charge would discourage, rather than encourage, any such trading.

11. Applicants submit that deduction of part of the sales charge as a deferred charge on surrender or lapse will be more favorable to Policy owners than deduction of the same amount of charge from premiums. First, the amount of the Policy owner's premium payment that will be allocated to the Account and be available to earn a return for the Policy owner will be greater than it would be if the sales charge were deducted from premiums. Second, the total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e–2(b)(3)(13) for a conventional scheduled premium variable life insurance policy. For a Policy owner who does not lapse or surrender in the early Policy years, the dollar amount of sales load is lower than would be permitted if taken entirely as front-end deductions from premium payments made under a Policy. Third, the cost of insurance charge imposed will be less than it otherwise would be if the same amount of sales charge were deducted from premium payments, because the allocation of a greater amount of the Policy owner's premium to the Account reduces the amount at risk (*i.e.*, the amount of death benefit less the Policy value) upon which the cost of insurance charge is based. Moreover, Applicants represent that the proposed sales load structure provides equitable treatment to both surrendering and persisting Policy owners. That is, if the insurer is not permitted to charge a sales load in the form of a contingent deferred charge, it would have to deduct the sales load entirely from premium payments, thereby charging persisting Policy owners more than may otherwise be necessary to recover the distribution costs attributable to such Policy owners.

12. The premium surrender change, although imposed on other than the premium, will cover expenses associated with the offer and sale of the Policy, just as other forms of sales loads do. Applicants submit that the mere fact that the timing of the imposition of the surrender charge may not fall neatly within the literal pattern of all provisions discussed above, does not change its essential nature as a sales charge. Moreover, Applicants represent that proposed amendments to Rule 6e–2 would permit assessment of a sales charge on a contingent deferred basis.

13. Applicants represent that the percentages of sales load never will exceed the sum of 30% of the premium payments paid for the first Policy year plus 10% of premium payments paid for the second Policy year, and will not exceed 9% of premium payments expected to be paid over the lesser of 20 years or the expected lifetime of the insured. For this reason, Applicants submit that the Policy is consistent with the principles and policies underlying the sales load limitations in Section 27(a)(2) of the 1940 Act, and Rules 6e–2 (b)(13)(i) and (b)(13)(v).

14. Applicants submit that premium and other flexibility options under the Policy are a potential benefit to Policy owners.

C. Request for Exemptions Relating to Collection of Administrative Surrender Charge

1. Although the expenses that the administrative surrender charge is designed to recover are associated with the issuance of a Policy, Northwestern will deduct the administrative surrender charge from the Policy Value—not premiums—in the event of early surrender or lapse of a Policy, and such a deduction will reduce the proceeds otherwise payable. Such a deduction of the administrative surrender charge pursuant to the Policies may be deemed to violate Sections 2(a)(32), 22(c), 27(c)(1), 27(d), and Rule 22c–1 for essentially the same reasons as the premium surrender charge might be deemed to violate those 1940 Act sections and rules. Accordingly, Applicants request exemptions from the foregoing provisions of the 1940 Act to the extent necessary to permit the deduction of the administrative surrender charge upon early surrender or lapse of a Policy.

2. Applicants submit that imposition of the administrative surrender charge is more favorable to Policy owners than a charge deducted entirely from premiums or from the Policy value over the life of the Policy. Because the reduction of the Policy owner's investment in the Account is less than it would be were the administrative surrender charge taken in full in the first Policy year, there is a larger Policy value initially earning a return for the Policy owner. In addition, for a Policy owner who does not lapse or surrender in the early Policy years, the total dollar amount of the charges for issuance and maintenance expenses is no more than Northwestern would be permitted to deduct from premium payments or by way of periodic deductions from Policy value. Also, the total dollar amount of the administrative surrender charge will be no higher than Northwestern would be permitted to deduct if this charge were in the form of a deduction from premium payments and/or from the Policy value prior to the lapse or surrender of a Policy.

3. Applicants represent that the administrative surrender charge has not been increased to take account of the time value of money (*i.e.*, the investment costs attributable to deferment of the charge) or the fact that not all Policy owners would incur the charge.

4. Northwestern does not intend to make a profit on the administrative surrender charge.

5. Administrative charges deducted in the form of a surrender charge are

specifically permitted by Rule 6e–3(T)(b)(13)(iv)(C) for variable life insurance policies offered and sold in reliance on the rule. Applicants submit that the relief requested herein with respect to the administrative surrender charge under the Policies is equally appropriate.

D. Request for Exemptions Relating to Deduction of Insurance Charges From Policy Value

1. Sections 26(a)(2) and 27(c)(2) may be construed to prohibit Northwestern from deducting certain insurance charges from the Policy value. Applicants request exemptions from the foregoing sections and Rule 6e–2(b)(13)(iii)[4] to the extent necessary to permit the deduction of certain insurance charges from Policy value, as described in the application.

2. Applicants submit that the deduction of cost of insurance charges from the Policy value is fair and reasonable, and in accordance with the practice under most other variable life insurance policies.

3. Applicants further submit that deduction from the Policy value of charges for substandard risks and incidental insurance benefits also is reasonable and appropriate. If all such charges were required to be deducted solely from premiums, it would be necessary for Northwestern to: (a) reduce the premium flexibility under the Policy; and/or (b) limit further the classes of insureds for whom the Policy will be available, and limit or eliminate the kinds of rider benefits that Northwestern intends to make available.

4. Applicants submit that Rule 6e–3(T) authorizes deductions from account value for all of these insurance charges in connection with policies eligible to rely on that rule, and that proposed amendments to Rule 6e–2 would authorize deductions from account value of the risk charges for guaranteed benefits.

5. Applicants submit that their method of deducting cost of insurance charges is fair and reasonable, and consistent with general industry practice.

6. Applicants submit that charges for substandard risks and incidental insurance benefits must be deducted from Policy value, as a practical matter.

7. The Policy provides for an annual charge, based on the face amount of insurance, for the death benefit guarantee. Generally, this charge is deducted from annual premiums, but if payment of premiums is suspended, the charge will be deducted from Policy value. In addition, an annual cost of insurance charge based on the amount at risk and the attained age and risk classification of the insured is deducted from Policy value; this charge also applies to the values which support any variable paid-up additional insurance.

8. Applicants represent that the proposed method of deducting insurance charges is not designed to yield more revenues than if these charges were assessed solely against premiums.

9. Northwestern represents that these risk charges are reasonable in relation to the risks assumed under the Policy. The methodology used to support this representation is based on an analysis of the pricing structure of the Policies—including other charges, and an analysis of the various risks—including special risks arising out of provisions that allow additional and unscheduled premium payments and, in certain circumstances, suspension of premium payments. Northwestern undertakes to keep and make available to the Commission the documentation used to support this representation.

10. Northwestern further represents that there is a reasonable likelihood that the distribution financing arrangement of the Account will benefit the Account and Policy owners. Northwestern will keep and make available to the Commission on request a memorandum setting forth the basis for this representation.

11. Applicants agree that if the requested order is granted, such order will be expressly conditioned on Applicants' compliance with the following: the Account will invest only in management investment companies which have undertaken, in the event they should adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve such plan.

E. Request for Exemptions Relating to Use of 1980 Standard Ordinary Mortality Tables

1. Section 27(a)(1) prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exemption from Section 27(a)(1) to the extent that the sales load, as defined in Rule 6e–2(c)(4), does not exceed 9% of the payments to be made on the variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured, based on the Commissioners 1958 Standard Ordinary Mortality Table (the ''1958 CSO Table'').

2. Rule 6e–2(c)(4), in defining ''sales load,'' contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Table and the assumed investment return specified in the Policy. Following the adoption of Rule 6e–2, the National Association of Insurance Commissioners adopted the 1980 CSO Tables, which reflect more recent information and data about mortality. The guaranteed cost of insurance rates under the Policy are based on the 1980 CSO Tables. Applicants request exemptions from Section 27(a)(i) and Rules 6e–2(c)(1), 6e–2(b)(13)(i), and 6e–2(4) to the extent necessary to permit cost of insurance to be calculated based on the 1980 CSO Tables, for purposes of testing compliance with those rules and that statutory provision.

3. Applicants represent that proposed amendments to Rule 6e–2 would require use of the 1980 CSO Tables for purposes of Rules 6e–2(b)(13)(i) and 6e–2(c)(4), where the 1980 CSO Tables relate to the insurance rates guaranteed under an insurance policy.

4. Applicants further represent that because cost of insurance charges based on the 1980 CSO Tables generally are lower than those based on the 1958 CSO Table, lower charges and higher Policy values generally result if charges are based on the 1980, rather than the 1958, CSO Tables.

F. Request for Exemptions Relating to the DAC Tax

1. Section 2(a)(35), in pertinent part, defines ''sales load'' as the difference between the price of a security to the public and that portion of the proceeds from its sale that is received and invested or held for investment by the depositor, less any portion of such difference deducted for trustee's or custodian's fees or other fees that are not properly chargeable to sales or promotional activities.

2. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from payments made under periodic plan certificates other than a deduction for sales load. Sections 27(a)(1) and 27(h)(1) of the 1940 Act, as modified by Rule 6e–2(b)(13)(i), limit the amount of sales load that can be deducted in connection with variable life insurance policies issued in reliance on Rule 6e–2.

3. Applicants state that Rules 6e–2(b)(13)(iii) and 6e–3(T)(b)(13)(iii) each

[4] In pertinent part, Rule 6e–2(b)(13)(iii) provides an exemption from Sections 26(a)(2) and 27(c)(2), subject to certain conditions which Applicants submit that they satisfy.

provide exemptive relief from Section 27(c)(2) to permit an insurer to deduct certain charges other than sales load, including deductions to pay the insurer's tax liabilities—imposed by any State or other governmental entity—arising as a result of its receipt of premium payments. Applicants seek relief from Section 27(c)(2) only to the extent necessary to permit deductions from premium payments received in connection with the Policies in an amount that is reasonable in relation to Northwestern's increased federal tax burden related to the receipt of such premiums. Applicants also request exemptions from Rule 6e–2(c)(4)(v) so that the proposed ''DAC tax'' charge is treated as other than sales load for purposes of Section 27 and the provisions of Section 27 referred to in Rule 6e2.

4. The exemption requested by Applicants is necessary in order for them to rely on certain provisions of Rule 6e–2(b)(13)(i), which provides exemptions from Sections 27(a)(1)and 27(h)(1). Issuers and their affiliates may rely on subparagraph (b)(13)(i) of Rule 6e–2 only if they meet the limitations on ''sales load,'' as defined in paragraph (c)(4) of that rule. Applicants state that these limitations may not be met if the deduction for an increase in Northwestern's federal tax burden is included in sales load.

5. Rule 6e–2(c)(4) defines ''sales load'' as the excess of premium payments over certain itemized charges and adjustments. Applicants submit that a deduction for an insurer's increased federal tax burden as described above does not fall squarely into any of those itemized charges or adjustments. Arguably, then, such a deduction may be treated as ''sales load'' under a literal reading of Rule 6e–2(c)(4).

6. Applicants submit that there is no public policy reason for including deductions made to pay federal taxes in sales load, nor is there any language in the releases in which the Commission adopted Rule 6e–2 or adopted and amended Rule 6e–3(T) suggesting that the exclusion from the definition of sales load of deductions for tax liabilities attributable to premiums was based on the type of governmental entity imposing the taxes.

7. Applicants submit that the public policy underlying Rule 6e–2(b)(13)(i), like that underlying Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a tax burden charge attributable to premium payments as sales load would not further this objective because such a deduction bears no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of ''sales load'' in Rule 6e–2(c)(4).

8. Applicants assert that the source for the definition of sales load found in Rule 6e–2(c)(4) supports this analysis. Applicants submit that the Commission's intent in adopting subparagraph (c)(4) of Rule 6e–2 was to tailor the general terms of Section 2(a)(35) to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, the percentage limits in subparagraph (b)(13)(i) of Rule 6e–2 depend on subparagraph (c)(4). Applicants submit, therefore, that Rule 6e–2(c)(4) does not depart, in principle, from Section 2(a)(35).

9. Applicants assert that Section 2(a)(35) excludes from the definition of ''sales load'' deductions from premiums for ''issue taxes.'' Applicants submit that this suggests that excluding deductions made to pay an insurer's costs attributable to its tax obligations from the definition of ''sales load'' in Rule 6e–2 is consistent with the policies of the 1940 Act.

10. Applicants further submit that the reference in Section 2(a)(35) to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' suggests that the only deductions intended to fall within the definition of ''sales load'' are those properly chargeable to such activities. Because the proposed deductions will be used to compensate Northwestern for its increased federal tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, Applicants assert that the language in Section 2(a)(35) also indicates that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

11. Applicants represent that Northwestern will monitor the reasonableness of the ''DAC tax'' charge to be deducted. Applicants represent, further, that the registration statement for the Policies will: (a) Disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Northwestern's increased federal tax burden under Section 848 resulting from the receipt of premiums. Applicants also represent that the registration statement for the Policies will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to Northwestern's increased federal tax burden under Section 848 resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account in determining such targeted rate of return.

12. Applicants assert that it is proper for an insurer to deduct a charge for the tax burden attributable to premiums received from variable life insurance policies, and to exclude such a deduction from sales load, because the deduction for the insurer's increased federal tax burden is a legitimate expense of the company, and is not for sales and distribution expenses. Applicants note that the Commission has previously considered similar deductions for premium taxes in connection with its adoption of Rule 6e–2 and Rule 6e–3(T). In each case, the Commission permitted deductions for such taxes to be made and to be treated as other than sales load. Applicants assert that the proprietary of a charge for an insurers tax burden attributable to premiums received is the same whether such burden arises under state or federal law.

G. Request for Exemptions Relating to Custodianship Arrangements

1. In pertinent part, Sections 26(a)(1) and 26(a)(2) prohibit Applicants from selling the Policy unless it is issued pursuant to a trust indenture or other such instrument that designates one or more trustees or custodians, qualified as specified, to have possession of all securities in which the Account invests.

2. In pertinent part, Section 27(c)(2) may be read to prohibit Applicants from selling the Policy unless the proceeds of all purchase payments are deposited with a trustee or custodian as specified.

3. Rule 6e–2(b)(13)(iii) affords an exemption from Sections 26(a)(1), 26(a)(2), and 27(c)(2), provided that the life insurer complies, to the extent applicable, with all other provisions of Section 26 as if it were a trustee or custodian for the Account, and assuming that it meets the other requirements set forth in the rule.

4. Applicants represent that the holding of Fund shares by the Account or its depositor under an open account arrangement—without having possession of share certificates and without a trust indenture or other such instrument—may be deemed inconsistent with the foregoing provisions. Accordingly, Applicants request exemptions from Sections

26(a)(1), 26(a)(2) and 27(c)(2), to the extent necessary.

5. Applicants represent that current industry practice calls for unit investment trust separate accounts, such as the Account, to hold shares of management investment companies in uncertificated form. Applicants further represent that holding shares of underlying management investment companies in uncertificated form contributes to efficiency in the operation and sale of such shares by separate accounts, and generally saves costs.

6. Applicants note that, in contrast to the Policies (which are covered by Rule 6e–2), policies covered by Rule 6e–3(T) may rely on Rules 6e–3(T)(b)(13)(iii) (B) and (C) which, in effect, afford the exemptions requested here by the Applicants. The Commission has proposed amendments to Rule 6e–2(b)(13)(iii) to permit life insurers to hold the assets of a separate account without a trust indenture or other such instrument, and to permit a separate account organized as a unit investment trust to hold the securities of any registered investment company that offers its shares to the separate account in uncertificated form. Applicants also note that the Commission has adopted 1940 Act Rule 26a–2 which affords exemptions in connection with variable annuity separate accounts that are essentially similar to those requested here. Accordingly, Applicants presume that the Commission adopted or proposed the foregoing exemptive rules based on a determination that, where state insurance law protects separate account assets and open account arrangements foster administrative efficiency and cost savings, safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture, or the issuance of share certificates.

7. Northwestern represents that: it will comply with all other applicable provisions of Section 26 of the 1940 Act as if it were a trustee or custodian for its Account (subject to the other exemptive relief requested in the application); it will file with the insurance regulatory authority of Wisconsin an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners—the most recent such statement indicated that Northwestern has a combined capital and surplus of at least $1 million; it is examined from time to time by the insurance regulatory authority of Wisconsin as to its financial condition and other affairs; and it is subject to supervision and inspection with respect to its separate account operations.

H. Request for Exemptions Relating to Sale of Fund Shares Without an Underwriter

1. Section 12(b) of the 1940 Act provides, in pertinent part, that it shall be unlawful for any registered open-end company to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe. Rule 12b–1(a)(1) provides, in pertinent part, that, except in compliance with the provisions of that rule, it shall be unlawful for a registered open-end management investment company to act as a distributor of securities of which it is the issuer, except through an underwriter.

2. Applicants request exemption from Section 12(b) and Rule 12b–1(a)(1) to the extent necessary to permit the Fund to sell the shares of its portfolios to the Account without the use of an underwriter, on the condition that Applicants not use the Fund's assets for distribution expenses unless the Fund complies with 1940 Act Rule 12b–1(b).

3. Applicants state that shares of the Fund Portfolios have been and will be sold only to the Account and to other separate accounts of Northwestern, except for the seed money shares purchased by Northwestern itself. The shares will be sold at net asset value without any sales charge or underwriting spread. Applicants represent that the Fund bears no expenses for distribution of its shares.

4. Applicants submit that, in view of the foregoing facts, no useful purpose would be served by requiring the Fund to use an underwriter for the sale of the shares of its portfolios to the Account. Direct sales of these shares to the Account would not expose the Fund to any underwriting risks, since such shares are issued only when requests for their purchase are received from the Account. Nor would the direct sales to the Account create any expenses for the Fund.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions meet the standards of Section 6(c) of the 1940 Act. The requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–23016 Filed 9–15–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Georgia Greene, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Disaster Survey Worksheet.

SBA Form No.: SBA Form 987.

Frequency: On Occasion.

Description of Respondents: Individuals, businesses and public officials within an area requesting a disaster declaration.

Annual Responses: 4,000.

Annual Burden: 333.

Dated: August 21, 1995.

Jackie White,

Acting Chief, Administrative Information Branch.

[FR Doc. 95–23117 Filed 9–15–95; 8:45 am]

BILLING CODE 8025–01–P

Augusta District Advisory Council Public Meeting

The U.S. Small Business Administration Augusta District Advisory Council will hold a public meeting on Tuesday, September 26, 1995 at 10 a.m. at The Woodlands Club, 39 Woods Road, Falmouth, Maine, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration , or others present.

For further information, write or call Mr. Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, (207) 622–8242 x 110.

Dated: September 11, 1995.

Art DeCoursey,

Director, Office of Advisory Council.

[FR Doc. 95–23116 Filed 9–15–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTAION

Federal Aviation Administration

Receipt of a Noise Compatibility Program Revision and Request for Review; Charlotte/Douglas International Airport, Charlotte, NC

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the noise compatibility program that was submitted for Charlotte/Douglas International Airport under the provisions of Title I of the Aviation Safety and Noise Act of 1979 (Pub. L. 96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150 by the City of Charlotte. This revised program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Charlotte/Douglas International Airport were in compliance with applicable requirements effective July 11, 1989.

Upon acceptance of the Noise Exposure Maps, the FAA received the initial noise compatibility program on November 20, 1989. It was approved May 18, 1990. The proposed revision to the noise compatibility program will be approved or disapproved on or before February 19, 1996.

EFFECTIVE DATE: The effective date of the start of FAA's review is August 23, 1995. The public comment period ends October 22, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts, Program Manager, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747. Telephone (404) 305–7153. Comments on the revised noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program revision for Charlotte/Douglas International Airport which will be approved or disapproved on or before February 19, 1996. This notice also announces availability of this program for public review and comment.

This revision will add Churches within the definitions of ''public buildings'' under the approved noise compatibility program Land-Use Corrective Measure No. 2 paragraph entitled ''Soundproofing of Public Buildings.''

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAA) Part 150 promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program revision for Charlotte/Douglas International Airport, effective on August 23, 1995. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for submittal of noise compatibility programs, but further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 19, 1996.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program revision with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 30591

Federal Aviation Administration, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747

T.J. Orr, Aviation Director, Charlotte/Douglas International Airport, P.O. Box 19066, Charlotte, North Carolina

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Atlanta, Georgia, August 23, 1995.

Dell T. Jernigan,

Manager, Atlanta Airports District Office.

[FR Doc. 95–23097 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and To Hold an Environmental Scoping Meeting for Airport Improvements at Manchester Airport, Manchester, New Hampshire

AGENCY: Federal Aviation Administration.

ACTION: Notice of public environmental scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for airport improvements under consideration by the City of Manchester Department of Aviation for Manchester Airport in the City of Manchester and Town of Londonderry, New Hampshire. To insure that all significant issues related to this planning effort are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: John Silva, Environmental Program Manager, Federal Aviation Administration, New

England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone no.: 617–238–7602.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of Manchester Department of Aviation, will prepare an EIS on a proposal to implement a program of airfield and terminal area improvements to meet current and future safety and capacity demands.

The EIS will evaluate a range of actions, including runway and taxiway improvements for Runways 17–35 and 6–24 as well as improvements to the Terminal Complex; Air Cargo Facilities; Aircraft Rescue and Firefighting, and Maintenance/Snow Removal buildings; and Traffic and Access routes.

Comments and suggestions are invited from federal, state, and local agencies, and other interested parties, in order to ensure that a full range of issues related to the airfield and terminal area improvements under consideration are identified and addressed in the scope of work for the EIS.

PUBLIC SCOPING MEETINGS: In order to provide for both agency and public input, two scoping sessions have been scheduled on October 19, 1995. An afternoon Agency Scoping Meeting will be held for federal, state and local agencies at 1:00 pm in the 3rd floor Board Room at Manchester Airport. An evening Public Scoping Workshop for public input will be held at 5:00 pm. This meeting, to which agency personnel are invited, will be held at the Londonderry High School cafeteria (on the left side of the building), 295 Mammoth Road, Londonderry, New Hampshire.

Issued in Burlington, Massachusetts, on September 8, 1995.

John C. Silva,

Acting Manager, Airports Division, FAA, New England Region.

[FR Doc. 95–23906 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) to be held October 11 at 10:00 a.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC in rooms 10234–10236.

The agenda for the fourth meeting of the CTRDAC will include: (1) discussion of the committee report; (2) identification of policy issues; (3) review of work plans/schedule; (4) other business.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Karen Braxton, Staff Assistant to the Designated Federal Official on (202) 267–9451 prior to close of business on October 3. Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Braxton.

Members of the public may present a written statement to the Committee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton (202) 267–9451 at least seven days prior to the meeting. Issued in Washington, DC on September 12, 1995.

Robert D. Smith,

Designated Federal Official, Civil Tiltrotor Development Advisory Committee.

[FR Doc. 95–23101 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on October 10, 1995, at 1 p.m. Arrange for oral presentations by September 29, 1995.

ADDRESSES: The meeting will be held at the Aerospace Industries Association of America, 1250 Eye Street, NW., Wright Room, Washington, DC, 1 p.m.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration (ARM–25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on October 10, 1995, at the Aerospace Industries Association of America, 1250 Eye Street, NW., Wright Room, Washington, DC, 1 p.m. The agenda will include:

- A vote on the proposed recommendation developed by the Flight Data Recorder Working Group.
- Other business.

Copies of the proposed recommendation will be available to interested persons prior to the meeting. A copy may be obtained by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by September 29, 1995, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on September 12, 1995.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–23092 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering And Development Advisory Committee, Challenge 2000 Subcommittee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the Challenge 2000 Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development Advisory Committee to be held Friday, September 29, 1995, 9 a.m. to 5 p.m. The meeting will take place at the FAA, 800 Independence Avenue, SW., Rooms 5 BC, Washington, DC.

This will be an informational meeting for the subcommittee members, with briefings on both the FAA certification process and comparative briefings from other safety-critical industries such as nuclear power and pharmaceutical industries.

Attendance is open to the interested public but limited to the space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Ms. Nancy Lane, AIR–510, 800 Independence Ave., SW., Washington, DC at (202) 267–7061, who will serve as the FAA Designated Federal Official to the Subcommittee.

Members of the public may present a written statement to the Subcommittee at any time.

Issued in Washington, DC, on September 12, 1995.

Randall J. Stevens,

Acting Manager, Research Division.

[FR Doc. 95–23111 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Deadhorse, Alaska; Notice of Change in Facility Operation

Notice is hereby given that on or about October 14, 1995, the Deadhorse, Alaska, Flight Service Station (FSS) hours will change permanently from operating 24 hours a day to operating from 6:00 a.m. to 9:30 p.m. daily. Services to the general aviation public provided by this facility will be provided by the Automated Flight Service Station (AFSS) at Fairbanks, Alaska, during the hours the Deadhorse FSS is closed. This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska on September 7, 1995.

Jacqueline L. Smith,

Regional Administrator, Alaskan Region.

[FR Doc. 95–23094 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Iliamna, Alaska; Notice of Change in Facility Operation

Notice is hereby given that on September 30, 1995, the Iliamna, Alaska, Flight Service Station (FSS) will close until May 1, 1996. Upon reopening on May 1, 1996, the hours of the Iliamna FSS will be 5:45 a.m. to 9:45 p.m. From that date on, Iliamna FSS will operate annually as a seasonal facility, open March 1 through September 30, 5:45 a.m. to 9:45 p.m. When open, Iliamna FSS will operate as a full-service FSS. Services provided to the general aviation public by this facility when open, will be provided by the Automated Flight Service Station at Kenai, Alaska, when Iliamna FSS is closed.

This information will be reflected in the FAA Organization Statement the next time it is reissued. Sec. 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska on September 7, 1995.

Jacqueline L. Smith,

Regional Administrator, Alaskan Region.

[FR Doc. 95–23093 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3365

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

Consolidated Rail Corporation (Conrail) seeks approval of the proposed discontinuance and removal of ''CP Esplen'' Interlocking, milepost 2.4, on Conrail's Mon Line, Pittsburgh Division, and discontinuance of the Form D Control System on the single main track Carnegie Secondary, near Pittsburgh, Pennsylvania. The proposed changes are associated with track reconfiguration and extension of the No. 2 main track southward to ''CP Beck'' on the Mon Line. The proposed changes include: conversion of the Carnegie Secondary to an industrial track; conversion of old No. 1 power-operated switch to hand operation; removal of signals 3E, 3S, 22N, and 21N; installation of new ''CP 2'' near milepost 3.0 on the Mon Line; and installation of an electrically lock hand-operated switch north of ''CP 2'' for the industrial track connection on track No. 2.

The reason given for the proposed changes is to facilitate the extension of track No. 2, which is necessitated by increased coal traffic on the Mon Line.

BS–AP–No. 3366

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director of Signal Engineering, 1900 Continental Plaza, Fort Worth, Texas 76102–5304.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system on the two main tracks, near Alliance, Nebraska, on the Alliance Division, Angora Subdivision, consisting of the discontinuance and removal of ''Prairie'' control point, milepost 3.1 and the reduction of the traffic control system limits from ''Prairie'', milepost 3.1 to ''South Alliance'', milepost 4.53.

The reason given for the proposed changes is to make better use of signals in a traffic congested area.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on September 12, 1995,

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–23115 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 95–77; Notice 1]

Cantab Motors, Ltd.; Receipt of Application for Decision of Inconsequential Noncompliance

Cantab Motors, Ltd. (Cantab) of Purcellville, Virginia, had determined that some of its vehicles fail to comply with the automatic restraint system

requirements of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Cantab has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.1.4 of FMVSS No. 208 requires that vehicles manufactured on or after September 1, 1989, be equipped with a restraint system at each front outboard designated seating position that meets the standard's frontal crash protection requirements by means that require no action by vehicle occupants. This type of system is referred to as an automatic restraint system.

The agency granted an exemption for Cantab to manufacture vehicles without automatic restraints between May 16, 1990 and May 1, 1993. Cantab imported and manufactured nine vehicles without automatic restraint systems during this time period. However, after the exemption had expired, Cantab imported and manufactured nine more vehicles without automatic restraint systems. Of these nine vehicles, seven entered the U.S. during 1994 and two in 1995. These vehicles all meet the requirements of Standard No. 208 prior to the implementation of automatic restraint requirements. Cantab has subsequently applied for an exemption from the automatic restraint requirements for this type of vehicle. Notice of receipt of its application was published on July 14, 1995 [60 FR 36328].

Cantab supports its application for inconsequential noncompliance with the following:

> [Cantab] submits that, during the entire time period subsequent to its initial grant of exemption in May of 1990, it has imported and manufactured a total of eighteen cars. Nine of these were imported during the period of exemption, nine subsequent to its lapsing and prior to [Cantab's] submission of a second application for exemption. Each of these eighteen cars were identically constructed to meet all applicable FMVSS, including those of FMVSS 208 prior to implementation of the automatic restraint requirements. During this time, [Cantab] has made substantial progress in the development of a dual air bag system and expects to have it installed and operative within a year.
>
> [Cantab] has previously suggested to NHTSA in its [May 10, 1995] petition for exemption, the unusual nature of its vehicles—cars driven by enthusiasts for pleasure, rather than daily for business commuting or on long trips, by people who own two or more other passenger cars for such purposes.
>
> [Cantab] respectfully suggests that its nine noncomplying cars, representing a minuscule proportion of the total number of motor vehicles sold and operated in the U.S. during the period of 1994–1995, operated as noted above, constructed with well-proven safety systems, would not materially affect overall motor vehicle safety, and that their operation would be in the public interest and would be consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

Interested persons are invited to submit written data, views, and arguments on the application of Cantab, described above. Comments should refer to the docket number and be submitted to: Docked Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20509. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: October 18, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23055 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–76; Notice 1]

Ford Motor Company; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan has determined that some of its vehicles fail to comply with the display identification requirements of 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, ''Controls and Displays,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Report.'' Ford has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In Footnote 3 to Table 2 in Standard No. 101, it is specified that, ''[i]f the odometer indicates kilometers, then 'KILOMETERS' or 'km' shall appear, otherwise, no identification is required.''

Ford manufactured approximately 300,000 vehicles (1995 model year Rangers, Explorers, Crown Victorias, and Grand Marquis, certain 1994 and 1995 Mustangs, and certain 1995 Ford-built Mazda B-Series pickup trucks) which may not comply with the display identification requirements of Standard No. 101. Within the total population of 300,000 vehicles, any number of between 24 and 124 vehicles were manufactured with an odometer that measures distance in units of kilometers but is not labeled as such as Standard No. 101 requires. Ford has already found and corrected 24 of these noncompliant odometers in service, therefore, up to 100 of them could still exist.

Ford supports its application for inconsequential noncompliance with the following:

> In Ford's judgment, this condition is inconsequential as it relates to motor vehicle safety. [Ford's] basis for this belief is that: 1) an owner of an affected vehicle will readily recognize the condition and return the vehicle to a Ford dealer for corrections; 2) even if the condition were to go undetected, the role of the odometer in alerting drivers to potential safety-related problems is minimal; and 3) no reports of accidents or injuries related to this condition are known or expected.
>
> Ford believes, as evidenced by those odometers already identified by owners, that this condition becomes obvious to an owner early in the ''life'' of a vehicle because of more rapid mileage accumulations, better than expected fuel economy, etc., and that an owner will seek repair for the condition through a Ford dealer. Ford will continue to remedy the condition of any of the vehicles brought to its attention at no cost to the owners, under normal warranty terms.
>
> With respect to the relationship of the odometer to safety, in past rulemaking (FR Vol. 47, No. 216 at 50497) the agency concluded that the role of the odometer in alerting drivers to potential safety-related problems is not crucial. This conclusion was among those leading to the rescission of Federal Motor Vehicle Safety Standard No. 127, Speedometers and Odometers. That standard contemplated that the purpose of the odometer requirement was twofold. First,

it was to inform purchasers of used vehicles of the actual mileage of the vehicles they were purchasing to enable them to ascertain the probable condition of the vehicle. Second, it was to provide an owner with information so that he or she could maintain a periodic maintenance schedule. In rescinding Safety Standard No. 127, the agency acknowledged that its reliance on the Tri-Level Study of the Causes of Traffic Accidents by the Indiana University Institute for Research in Public Safety, which led to the odometer requirement, was misplaced. The agency concluded that although the study found that problems with vehicle systems were causal or contributing factors in up to 25 percent of the accidents studies—such as problems with the brake system, tires, lights and signals, for example—all of those causes involved components which must be periodically replaced or serviced regardless of mileage. The agency thereby concluded that deterioration in performance, such as brake pulling, or in appearance, such as tire wear, etc., are readily apparent to the driver and should do more to alert the driver to potential safety-related problems than the distance traveled indication on the odometer.

Ford agrees with the agency's conclusion that the odometer reading is not a crucial factor in alerting drivers to potential safety-related vehicle problems, and therefore, it submits that the absence of the ''km'' designation is not crucial in this regard. We believe the vehicles that are the subject of this petition present no direct or indirect risk to motor vehicle safety. Furthermore, in the case of the vehicles in question, even if the odometer indication were a crucial indicator or required periodic maintenance, the odometer reading, if relied on for this purpose, would cause a driver to seek maintenance sooner than required because the indicated mileage would be approximately 1.6 times greater than the distance actually traveled.

Therefore, while the absence of the ''km'' designation is technically a noncompliance, and the odometer of the affected vehicles registers distance traveled in kilometers while the speedometer registers in miles per hour, we believe, for the reasons cited above, the condition presents no risk to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application of Ford, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: October 18, 1995.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23054 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–39; Notice 2]

Volkswagen of America, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (VWoA) of Auburn Hills, Michigan, determined that some of its vehicles fail to comply with the power window requirements of 49 CFR 571.118, Federal Motor Vehicle Safety Standard (FMVSS) No. 118, ''Power-Operated Window, Partition, and Roof Panel Systems,'' and filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' VWoA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on May 17, 1995, and an opportunity afforded for comment (60 FR 26475).

Paragraph S4(e) of FMVSS No. 118 states that power operated windows may be closed only ''during the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of its front doors.''

From September 1, 1992 through March 5, 1995, VWoA manufactured approximately 1,200 1995 GTI vehicles and 18,795 1993–1995 Jetta III vehicles that do not comply with the power window requirements of FMVSS No. 118. The power windows in these vehicles can be operated when the ignition key is in the ''off'' position and the passenger side front door has been opened. The windows should not be able to be operated in this scenario.

VWoA supported its application for inconsequential noncompliance with the following:

The purpose of the requirement in S4(e) of FMVSS 118 specifying that the power window system not be functional if the ignition key is in the ''off'' position and one of the front doors has been opened, is to reduce the possibility of unsupervised children operating the power windows in the vehicle. S4(e) is based upon the assumption that before one of the front doors has been opened, an adult remains in the vehicle to supervise and protect children from the safety risks associated with the operation of the power window system. S4(e) further assumes that after one of the front vehicle doors has been opened, no adult remains in the vehicle and thereby creates a risk that children remaining in the vehicle may injure themselves by activating operational power windows without supervision. S4(e) seeks to eliminate that risk.

In the case of the affected vehicles, the power windows cease to be operable if the driver door is opened, but remain operational for a period of 10 minutes after the passenger side front door has been opened. The rationale supporting the 10 minute period is to allow the driver to close any open windows even though he may already have turned off the ignition and the passenger may have opened the door and exited the vehicle. It is a convenience feature permitted by law in Europe and offered by Volkswagen to the market in Europe as a convenience feature.

The power-operated roof panel systems cannot be operated after the ignition key has been turned off.

VWoA believes that its European configuration inadvertently built into certain vehicles delivered in the United States does not affect their safety in a discernible way. VWoA believes that as long as the driver door of the vehicle has not been opened, a person of driving age inevitably remains in the vehicle because the exiting of the driver on the passenger side front door is extremely difficult and therefore unlikely. The affected vehicles are equipped with bucket seats and a center transmission console which cause the movement of the driver to the passenger side of the vehicle without contortion to be difficult and virtually impossible. Also, it makes no sense to suggest that a driver would exit the vehicle on the passenger side of a vehicle with bucket seats and [a] floor mounted transmission lever when he can conveniently open the driver's door for exit.

VWoA has received no customer complaints or claims relating to the ability of the windows to operate after the passenger door has been opened.

It should also be noted that the Volkswagen Owner's Manual contains an express warning against leaving children unattended in a vehicle and against misuse of the ignition key. The warning reads as follows:

WARNING

Do not leave children unattended in the vehicle especially with access to vehicle keys. Unsupervised use of the keys can result in starting of the engine and use of vehicle systems such as the power windows and power sunroof, which could result in serious personal injury.

As explained, the probability of unsupervised children being exposed to injury from power-operated window systems during the 10 minute interval after the ignition key has been turned off and the passenger side front door is opened and before the driver side front door is opened, is non-existent and that therefore this noncompliance is inconsequential to motor vehicle safety.

VWoA requests that this [application] be granted so that an unnecessary and costly consumer recall action [can] be avoided. VWoA expects a particularly low owner response to such a recall, if it were undertaken, because the ability to operate the power windows after the front passenger side door has been opened would likely be viewed by the owner to offer a valuable convenience feature without any apparent safety disadvantage.

No comments were received on the application.

VWoA is correct that the purpose of requiring inoperative power windows is to reduce the possibility of unsupervised children operating them. In the noncompliant vehicles, the power window system remains operable only when the front passenger side door is opened, a time when the operator presumably remains behind the wheel. If the operator exits by the driver's door, the system is disabled; it is not likely that an operator would exit by means of the passenger door since that would entail passing over the cumbersome console between the two seats. Thus, the purpose of the requirement in this situation is still highly likely to be met.

In consideration of the foregoing, the applicant has met its burden of persuasion that the noncompliance herein described is inconsequential to motor vehicle safety. Accordingly, the applicant is hereby exempted from the requirements of 49 U.S.C. 30118 and 30120 to notify and remedy a noncompliance with a Federal motor vehicle safety standard.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 12, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–23053 Filed 9–15–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15–12]

Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms, to Investigate Violations of 18 U.S.C. §§ 1956 and 1957

September 11, 1995.

1. *Purpose.* This Directive delegates to the Director, Bureau of Alcohol, Tobacco and Firearms (ATF), authority to investigate violations of 18 U.S.C. §§ 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. §§ 981, 1956(e) and 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Director, ATF:

a. investigatory authority over violations of 18 U.S.C. § 1956 or 1957 involving 18 U.S.C. §§ 2341–2346 (trafficking in contraband cigarettes); § 38 of the Arms Export Control Act, 22 U.S.C. § 2778 (relating to the importation of items on the U.S. Munitions Import List, except violations relating to exportation, in transit, temporary import, or temporary export transactions); and 18 U.S.C. § 1952 (relating to travelling in interstate commerce, with respect to liquor on which Federal excise tax has not been paid); or any act or activity constituting an offense listed in 18 U.S.C. § 1961(1), with respect to any act or threat involving arson, which is chargeable under State law and punishable for more than one year imprisonment; and

b. seizure and forfeiture authority and related authority under 18 U.S.C. § 981 relating to violations of 18 U.S.C. § 1956 or 1957 within the investigatory jurisdiction of ATF under paragraph 2.a., and seizure authority under 18 U.S.C. § 981 relating to any other violation of 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Director, ATF, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this Directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, the Director, ATF, discovers evidence of a matter within the jurisdiction of another Treasury bureau, the Director, ATF, shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Director, ATF, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the Director, ATF, shall adhere to the provisions on notice and coordination in the ''Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations,'' dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, ATF shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance shall include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Authorities.*

a. 18 U.S.C. §§ 981, 1952, 1956, 1957, 1961, and 2341–2346.

b. 31 U.S.C. §§ 5311–5326 (other than violations of 31 U.S.C. § 5316).

c. 22 U.S.C. § 2778.

d. TO 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.''

e. TO 102–14, ''Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992,'' dated January 10, 1995.

7. *Cancellation.* Treasury Directive 15–12, ''Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms to Investigate Violations of 18 U.S.C. §§ 1956 and 1957,'' dated May 1, 1991, is superseded.

8. *Expiration Date.* This Directive shall expire three years from the date of

issuance unless superseded or cancelled prior to that date.

9. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–23071 Filed 9–15–95; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Directive Number 15–29]

Delegation of Authority to the Commissioner, United States Customs Service, To Investigate Violations of 18 U.S.C. §§ 1956 and 1957

September 11, 1995.

1. *Purpose.* This Directive delegates to the Commissioner, United States Customs Service, authority to investigate violations of 18 U.S.C. §§ 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. §§ 981, 1956(e) and 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Commissioner, United States Customs Service:

a. investigatory authority over violations of 18 U.S.C. § 1956 or 1957 involving 18 U.S.C. §§ 542, 545, 549, 659, 1461–63, 1465, 2251–52, 2314, and 2321; 19 U.S.C. § 1590; 21 U.S.C. § 863; offenses under § 11 of the Export Administration Act of 1979 (50 U.S.C. App. § 2410); offenses under § 206 of the International Emergency Economic Powers Act (50 U.S.C. § 1705); offenses under § 16 of the Trading With the Enemy Act (50 U.S.C. App. § 16); and offenses under § 38 of the Arms Export Control Act (22 U.S.C. § 2778) (relating to the exportation, intransit, temporary import, or temporary export transactions);

b. investigatory authority over violations of 18 U.S.C. § 1956(a)(2)(B)(ii), involving a reporting violation under 31 U.S.C. § 5316;

c. investigatory authority over violations of 18 U.S.C. § 1956(a)(3) relating to violations within the investigatory jurisdiction of the U.S. Customs Service under paragraphs 2.a. and b.; and

d. seizure and forfeiture authority and related authority under 18 U.S.C. § 981 relating to violations of 18 U.S.C. § 1956 or 1957 within the investigatory jurisdiction of the Customs Service under paragraphs 2.a., 2.b., and 2.c., and seizure authority under 18 U.S.C. § 981 relating to any other violation of 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Commissioner, United States Customs Service, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.d.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. Coordination.

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, the U.S. Customs Service discovers evidence of a matter within the jurisdiction of another Treasury bureau or office, the U.S. Customs Service shall immediately notify that bureau or office with investigatory jurisdiction of the investigation and invite that bureau or office to participate in the investigation. The Commissioner, U.S. Customs Service, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level or in the case of the Office of Foreign Assets Control, at the headquarters level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the U.S. Customs Service shall adhere to the provisions on notice and coordination in the ''Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations,'' dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, U.S. Customs Service shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. Authorities.

a. 18 U.S.C. §§ 542, 545, 549, 659, 981,1461–1463, 1465, 1956, 1957, 2251–52, 2314, and 2321.

b. 19 U.S.C. § 1590.

c. 21 U.S.C. § 863.

d. 22 U.S.C. § 2778.

e. 31 U.S.C. § 5316.

f. 50 U.S.C. App. § 16, 1705, and App. 2410.

g. TO 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.''

h. TO 102–14, ''Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992,'' dated January 10, 1995.

7. *Cancellation.* Treasury Directive 15–29, ''Delegation of Authority to the Commissioner, United States Customs Service to Investigate Violations of 18 U.S.C. §§ 1956 and 1957,'' dated May 1, 1991, is superseded.

8. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–23070 Filed 9–15–95; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Directive Number 15–42]

Delegation of Authority to the Commissioner, Internal Revenue Service, To Perform Functions Under the Money Laundering Control Act of 1986, as Amended

September 11, 1995.

1. *Purpose.* This Directive delegates to the Commissioner, Internal Revenue Service (IRS), investigatory, seizure and forfeiture authority under the Money Laundering Control Act of 1986, Public Law 99–570, Subtitle H (October 27, 1986), as amended.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. §§ 981, 1956(e), 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Commissioner, IRS:

a. investigatory authority over violations of 18 U.S.C. §§ 1956 and 1957 where the underlying conduct is subject to investigation under Title 26 or under the Bank Secrecy Act, as amended; 31 U.S.C. §§ 5311–5328 (other than violations of 31 U.S.C. § 5316);

b. seizure and forfeiture authority over violations of 18 U.S.C. § 981 relating to violations of:

(1) 31 U.S.C. §§ 5313 and 5324; and

(2) 18 U.S.C. §§ 1956 and 1957 which are within the investigatory jurisdiction of IRS pursuant to paragraph 2.a.; and

c. seizure authority relating to any other violation of 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is solely with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Commissioner, IRS, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, IRS discovers evidence of a matter within the jurisdiction of another Treasury bureau, to the extent authorized by law, IRS shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Commissioner, IRS, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus in consultation with the Commissioner, IRS.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, IRS shall adhere to the provisions on notice and coordination in the ''Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations,'' dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, IRS shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Authorities.*

a. 18 U.S.C. §§ 981, 1956 and 1957.

b. 31 U.S.C. §§ 5311–5328 (other than violations of 31 U.S.C. § 5316).

c. TO 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.''

d. TO 102–14, ''Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992,'' dated January 10, 1995.

7. *Cancellation.* Treasury Directive 15–42, ''Delegation of Authority to the Commissioner, Internal Revenue Service to Perform Functions Under the Money Laundering Control Act of 1986, as amended,'' dated May 1, 1991, is superseded.

8. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–23069 Filed 9–15–95; 8:45 am]

BILLING CODE 4810–25–P

[Treasury Directive Number 15–54]

Delegation of Authority to the Director, United States Secret Service, To Investigate Violations of 18 U.S.C. §§ 1956 and 1957

September 11, 1995.

1. *Purpose.* This Directive delegates to the Director, United States Secret Service, authority to investigate violations of 18 U.S.C. §§ 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. §§ 981, 1956(e), 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Director, United States Secret Service:

a. investigatory authority over violations of 18 U.S.C. §§ 1956 and 1957 involving an offense under 18 U.S.C. §§ 471–473 (counterfeiting of obligations or securities of the United States); 18 U.S.C. §§ 500–503 (counterfeiting of blank or postal money orders, postage stamps, foreign government postage and revenue stamps, and postmarking stamps); 18 U.S.C. § 657 (involving theft, embezzlement or misapplication by employees of the Federal Deposit Insurance Corporation); and 18 U.S.C. § 1029 (fraud and related activity in connection with access devices); and

b. seizure and forfeiture authority and related authority under 18 U.S.C. § 981 relating to violations of § 1956 or 1957 within the investigatory jurisdiction of Secret Service under paragraph 2.a., and seizure authority under 18 U.S.C. § 981 relating to any other violations of 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Director, United States Secret Service, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, Secret Service discovers evidence of a matter within the jurisdiction of another Treasury bureau, Secret Service shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. Secret Service shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, Secret Service shall adhere to the provisions on notice and coordination in the ''Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations,'' dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, Secret Service shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Authorities.*

a. 18 U.S.C. §§ 471–473, 500–503, 657, 981, 1029, 1956 and 1957.

b. TO 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.''

c. TO 102–14, ''Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992,'' dated January 10, 1995.

7. *Cancellation.* Treasury Directive 15–54, ''Delegation of Authority to the Director, United States Secret Service to Investigate Violations of 18 U.S.C. §§ 1956 and 1957,'' dated May 1, 1991, is superseded.

8. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

Ronald K. Noble,

Under Secretary (Enforcement).

[FR Doc. 95–23068 Filed 9–15–95; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Johannes Vermeer'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the National Gallery of Art from on or about November 12, 1995, through February 11, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: September 12, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–23011 Filed 9–15–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547–0001.

Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Splendors of Imperial China: Treasures from the National Palace Museum, Taipei'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York on or about March 12, 1996 through May 19, 1996, at The Art Institute of Chicago, Chicago, Illinois on or about June 28, 1996 through August 25, 1996, at the Asian Art Museum of San Francisco, San Francisco, California on or about October 14, 1996 through December 8, 1996, and at the National Gallery of Art, Washington, DC on or about January 27, 1997 through April 6, 1997 is in the national interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: September 11, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–23012 Filed 9–15–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202 619–5997, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION WASHINGTON, DC 20207

TIME AND DATE: Thursday, September 21, 1995, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Acetone Petition HP 95–2

The staff will brief the Commission on petition HP 95–2 requesting that the Commission issue a rule to ban acetone packaged for household use in one-gallon containers.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

September 13, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–23236 Filed 9–14–95; 3:12 pm]

BILLING CODE 6355–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the following Board meeting:

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 47438.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., September 20, 1995.

CHANGES IN THE MEETING: The meeting time has been changed to 2:30 p.m.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

Dated: September 14, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–23217 Filed 9–14–95; 3:12 pm]

BILLING CODE 3670–01–M

FEDERAL COMMUNICATIONS COMMISSION

MATTER TO BE CONSIDERED:

Deletion of agenda items from September 14th open meeting.

The following items have been deleted from the list of agenda items scheduled for consideration at the September 14, 1995, Open Meeting and previously listed in the Commission's Notice of September 7, 1995.

Item No., Bureau, and Subject

2—Common Carrier— Title: Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1, Phase II). Summary: The Commission will consider revising proposals related to establishing a permanent method for determining the ''X'' factor for price cap local exchange carriers.

5—Wireless Telecommunications— Title: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services (CC Docket No. 94–54). Summary: The Commission will consider whether commercial mobile radio services should be prohibited from restricting resale of their services.

Dated September 14, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–23229 Filed 9–14–95; 3:40 am]

BILLING CODE 6712–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, September 22, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–23159 Filed 9–14–95; 11:46 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-91-010A]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Colby Cheese

Correction

In rule document 95–4953 beginning on page 11246, in the issue of Wednesday, March 1, 1995, make the following correction:

§58.2479 [Corrected]

On page 11249, in the third column, in §58.2479, in the table entitled ''TABLE I--CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE'', in the subheading entitled ''A'', in the sixth line, ''S'' should be removed.

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Consolidated Farm Service Agency

7 CFR Part 718

RIN 0560-AE29

1995 Wheat, Feed Grains, Upland and Extra Long Staple Cotton, and Rice Price Support Programs

Correction

In rule document 95–20782 beginning on page 44255, in the issue of Friday, August 25, 1995, make the following correction:

On page 44257, in the first column, amendatory instruction No. 5 should read:

''5. Section 718.40 is amended by removing paragraphs (a)(1) and (b)(3), redesignating paragraphs (a)(2) as (a)(1), (b)(4) as (b)(3), respectively, and revising paragraph (c), introductory text, (c)(1) and (c)(2), introductory text, to read as follows:''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49-95]

Proposed Foreign-Trade Zone - St. Lucie County, FL; Application and Public Hearing

Correction

In notice document 95–22503 appearing on page 47148 in the issue of Monday, September 11, 1995, make the following corrections:

In the third column, in the second full paragraph, beginning in the seventh line, ''[60 days from date of publication]'' should read ''November 13, 1995''; and in the last line, ''[75 days from date of publication]'' should read ''November 27, 1995''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty; Administrative Reviews

Correction

In notice document 95–9405 beginning on page 19017 in the issue of Friday, April 14, 1995, make the following correction:

On page 19018, in the second column of the table, under the headings, The People's Republic of China: Hainan Garden Trading Co*, ''08/01/94'' should read ''08/01/93''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34081; FRL 4972-4]

Certain Chemicals; Availability of Reregistration Eligibility Decision Documents for Comment

Correction

In notice document 95–22055 beginning on page 46278 in the issue of Wednesday, September 6, 1995, make the following correction:

On page 46278, in the second column, in the DATES section, in the second and third lines ''October 6, 1995'' should read ''November 6, 1995''.

BILLING CODE 1505–01–D

federal register

Monday
September 18, 1995

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1 and Parts 1, et al.
Federal Acquisition Regulation (FAR); Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–32]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document serves to introduce the final rules which follow and which comprise Federal Acquisition Circular (FAC) 90–32. The Federal Acquisition Regulatory Council has agreed to issue FAC 90–32 to amend the Federal Acquisition Regulation (FAR).

DATES: For effective dates, see individual documents following this one.

FOR FURTHER INFORMATION CONTACT: The team leader or FAR Staff Analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC, 20405 (202) 501–4755. Please cite FAC 90–32 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–32 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Team leader
I	Truth in Negotiations Act and Related Changes	94–720 & 94–721.	Al Winston (703) 602–2119.
II	Protests, Disputes and Appeals	94–730	Craig Hodge (703) 274–8940.
III	Acquisition of Commercial Items	94–790	Lawrence Trowel (703) 695–3858.
IV	Whistleblower Protections for Contractor Employees (Ethics).	94–803	Jules Rothlein (703) 697–4349.
V	Small Business	94–780	Victoria Moss (202) 501–4764.
VI	Publicizing Contract Actions	95–606	Ralph DeStefano (202) 501–1758.
VII	Subcontractor Payments	94–762	John Galbraith (703) 697–6710.
VIII	Reimbursement of Protest Costs	94–731	Craig Hodge (703) 274–8940.

Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Truth in Negotiations Act and Related Changes (FAR Cases 94–720 and 94–721)

This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103–355 to implement those portions of FASA that make specific changes to the Truth in Negotiations Act (TINA) or that impact other areas of the FAR that affect contract pricing.

This rule implements Sections 1201 through 1210 and Sections 1251 and 1252 of the FASA. A new exception is added to the requirement for the submission of ''cost or pricing data'' for commercial items; the approval level for waivers is changed, and prohibitions are placed on acquiring ''cost or pricing data'' when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the FASA.

Coverage has been included that addresses (1) ''information other than cost or pricing data,'' (2) exceptions based on established catalog or market price, (3) interorganizational transfers of commercial items at price, and (4) price competition when only one offer has been received.

The new policy also expands the exception based on adequate price competition and provides for a special exception for commercial items. A new section addressing ''information other than cost or pricing data'' is created and a Standard Form 1448 is provided for use by contractors.

The new policy at FAR 15.804–1(b)(1)(ii) recognizes circumstances when it can be determined that adequate price competition exists even though only one offeror has responded to the Government''s requirement.

In addition, this rule finalizes, with changes, the interim rule in FAC 90–22 that made TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of ''cost or pricing data'' to $500,000 and adding penalties for defective pricing). Provisions were also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995.

Although the instruction to amend contracts without consideration to update the cost or pricing data threshold has been removed from the FAR, the statutory authority and requirement to update the threshold remain in effect. Accordingly, contracting officers shall, if requested by a prime contractor, modify contracts to change the threshold in the contract to the cost or pricing data threshold in paragraph 15.804–2(a)(1), without requiring consideration. The contract modification shall be accomplished by inserting into the contract the current version of the clauses 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, and 52.215–25, Subcontractor Cost or Pricing Data–Modifications, or 52.215–24, Subcontractor Cost or Pricing Data, as applicable. These new contract clauses shall apply only to contract modifications and subcontracts for which agreement on price occurs after the contracting officer has inserted the new clauses.

Item II—Protests, Disputes, and Appeals (FAR Case 94–730)

This final rule implements requirements of the Federal Acquisition Streamlining Act of 1994 pertaining to protests, disputes, and appeals.

The primary changes included in this rule are new definitions of ''day,'' ''filed,'' and ''protest.'' Most of the adjustments merely reflect current practice, except for the definition of ''day,'' which changes from a presumed ''working day'' to a presumed ''calendar day.'' Agencies are now clearly allowed to take corrective action to include payment of costs to the protester and are allowed to stay contract performance in the face of a likely protest. Both agency and GAO protests must now be filed within fourteen calendar days of discovery of protest grounds, instead of the former ten working days. There is

also an explicit warning that, in the event of a conflict between the FAR and GAO protest procedure regulations, the GAO regulations govern. The period of time for submission of the agency administrative report has been adjusted from the former 25 working days to 35 calendar days. Agencies are required to prepare a protest file for prospective, non intervening offerors to review, and to suspend performance of the contract if the protest is filed within ten days of award or five days of debriefing, where the debriefing is required. GAO decisions are normally due out within 125 days, and attorney fees are generally capped at $150 an hour, except for small businesses.

There is also an explicit statement that, in case of conflict with the FAR, GSBCA rules govern questions of GSBCA protest procedure. The GSBCA now has more GAO-like suspension standards and time periods. Agencies are required to reimburse the judgment fund for costs awarded the protester. Protest costs are limited at the GSBCA as they are with GAO protests, such as with the attorney fee cap. Settlements are now generally to be made public information.

In the disputes area, the claims certification threshold begins at $100,000. Claims must be filed within six years of accrual, except for Government claims involving fraud. Small claims now reach disputes of $50,000, and accelerated claims have a threshold of $100,000.

Item III—Acquisition of Commercial Items (FAR Case 94–790)

This final rule implements Title VIII of the Federal Acquisition Streamlining Act of 1994. The rule encourages the acquisition of commercial end items and components by Federal Government agencies as well as contractors and subcontractors at all levels. The most significant revisions are in the following FAR parts:

Part 2 has been amended to incorporate the definitions of ''commercial item,'' ''component,'' ''commercial component'' and ''non developmental item.''

Part 10 has been completely revised by establishing the requirement for market research as the first step in the acquisition process. Market research is an essential element in the later steps of describing the agency's need, developing the overall acquisition strategy and identifying terms and conditions unique to the item being acquired.

Part 11 has been completely revised to address the process of describing agency needs. It contains some of the language on specifications and standards formerly found in FAR Part 10, but takes a more streamlined approach. In addition, the revised Part 11 establishes the Government's order of precedence for requirements documents and addresses the concept of market acceptance. Part 11 also contains coverage on Delivery or Performance Schedules, Liquidated Damages, Priorities and Allocations, and Variations in Quantity taken from the current Part 12 with only minor editorial revisions. The current Part 12 coverage on Suspension of Work, Stop Work Orders, and Government Delay of Work has been moved to Subpart 42.13 with only minor editorial revisions.

Part 12 has been completely revised to address the acquisition of commercial items.

—Subpart 12.1 states that the policies in the revised Part 12 are applicable to all acquisitions of commercial items above the micro-purchase threshold. The requirements of other parts of the FAR apply to commercial items to the extent they are not inconsistent with Part 12.

—Subpart 12.2 identifies special requirements for the acquisition of commercial items.

—Subpart 12.3 establishes standard provisions and clauses for use in the acquisition of commercial items. It is essential that contracting officers be allowed to tailor solicitations and contracts to meet the needs of the particular acquisition and the marketplace for that item. Subpart 12.3 gives contracting officers broad authority to tailor solicitations and contracts, a practice itself that is consistent with commercial practices.

—A new form, the Standard Form (SF) 1449, Solicitation/Contract/Order for Commercial Items, is established. The most significant element is the addition of acceptance blocks at the bottom of the form that will allow suppliers of commercial items to utilize the SF 1449 to document receipt of the supplies or services by the Government, avoiding the need for preparation of separate receipt/acceptance forms.

—Subpart 12.5 identifies the applicability of certain laws to the acquisition of commercial items. It contains the list of laws determined to be inapplicable to executive agency prime contracts for acquisition of commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to commercial items. Agency unique laws determined to be inapplicable to prime contracts are not addressed in this rule and may be addressed separately by the respective agencies. This subpart also contains the list of laws determined to be inapplicable to subcontracts for commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to subcontracts for commercial items.

—Subpart 12.6 identifies two streamlined procedures for the evaluation and solicitation of contracts for commercial items. These procedures may be used at the discretion of the contracting officer.

Part 52 has been amended to include several new provisions and clauses to be used in all solicitations and contracts for the acquisition of commercial items:

—Section 52.212–1, Instructions to Offerors—Commercial Items, contains solicitation instructions for the acquisition of commercial items.

—Section 52.212–2, Evaluation—Commercial Items, contains evaluation information that has been simplified and tailored to meet the requirements of commercial items.

—Section 52.212–3, Offeror Representations and Certifications—Commercial Items, includes, in one provision, the certifications and representations required to comply with laws or Executive orders.

—Section 52.212–4, Contract Terms and Conditions—Commercial Items, contains the terms and conditions believed to be consistent with customary commercial practice.

—Section 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, implements provisions of law or Executive Orders applicable to Government acquisitions of commercial items or commercial components. The clause at 52.212–5 represents the minimum number of clauses required to implement statutes and Executive orders. Certain clauses may apply depending upon the circumstances; the contracting officer will indicate which of these clauses apply for the specific acquisition.

—Section 52.244–6, Subcontracts for Commercial Items and Commercial Components, implements the preference for the acquisition of commercial items or nondevelopmental items as components of items to be supplied under Federal contracts. This clause will be used in all solicitations and contracts for supplies and services other than commercial items.

Item IV—Whistleblower Protections for Contractor Employees (Ethics) (FAR Case 94–803)

The final rule published as Item III of FAC 90–30 added FAR Subpart 3.9, Whistleblower Protections for Contractor Employees, to implement Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994.

The rule contained an effective date of September 19, 1995, but did not discuss the subject of applicability. The rule applies to all contracts in existence as of September 19, 1995, for reprisals to Government contractor employees occurring on or after that date.

Some existing Department of Defense contracts contain a clause addressing whistleblower protections based on a prior statute, 10 U.S.C. 2409a. The remedies provided by FAR Subpart 3.9 do not apply to contracts otherwise covered by the provisions of 10 U.S.C. 2409a.

Item V—Small Business (FAR Case 94–780)

This final rule implements Sections 7101(a) 7106, and 10004 of the Federal Acquisition Streamlining Act (FASA) of 1994. Section 7101(a) of FASA deletes Sections 15(e) and (f) of the Small Business Act (15 U.S.C. 631, et seq.). Those sections established the priority for award of set-asides and provided the statutory basis for a procurement preference for concerns located in Labor Surplus Areas (LSA). Based on this deletion, this rule removes the LSA set-aside program and LSA subcontracting program from the FAR.

Section 7106 of FASA revises Sections 8 and 15 of the Small Business Act to accommodate a Governmentwide goal of 5 percent for women-owned small businesses. This rule deletes existing, separate coverage relating to women-owned businesses and revises existing coverage to place women-owned small businesses on an equal footing with small disadvantaged businesses. In connection with this revision, the Standard Forms 294 and 295 are revised and streamlined.

Section 10004 of FASA, which requires the collection of specified data through the Federal Procurement Data System, is being implemented by FAR case 94–701. This rule augments that coverage by providing a solicitation provision to collect the information on women-owned businesses as required by that FAR case.

Item VI—Publicizing Contract Actions (FAR Case 95–606)

This final rule amends FAR sections 5.207(b)(4) and (b)(6). The amendment deletes the requirement for the Federal Information Processing Standard (FIPS) Number in Commerce Business Daily synopses and, in lieu thereof, requests Government Printing Office (GPO) Billing Account Code Information.

Item VII—Subcontractor Payments (FAR Case 94–762)

This final rule implements Sections 2091 and 8105 of the Federal Acquisition Streamlining Act of 1994. The rule amends FAR Parts 28, 32, and 52 to reflect: statutory requirements related to providing information to subcontractors and prospective subcontractors concerning bonds under the Miller Act; that while the Government does not have privity with subcontractors, and does not serve as a collection agent for them, the Government properly has an interest in the financial capability, managerial competence, and business ethics of companies doing business with the Government; that the contracting officer should be informed about both sides of the argument in a dispute between the prime contractor and its subcontractor in order to exercise good business judgment; and finally, when an assertion raises a creditable question concerning the accuracy of a contractor certification, the contracting officer must decide whether the certification is inaccurate in any material respect, and, if so, bring the matter to the attention of the appropriate authorities, in accordance with agency regulations.

Item VIII—Reimbursement of Protest Costs (FAR Case 94–731)

This final rule implements Sections 1016, 1403, and 1435 of the Federal Acquisition Streamlining Act of 1994. The primary effect of this rule is to allow the Government to seek reimbursement for protest costs it has paid a protester, such as the protester's attorney fees, where that protest has been sustained based upon the awardee's misrepresentation. In addition to any other remedies available, the Government may collect this debt by offsetting the amount against any payment due the awardee under any Government contract the awardee might have.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Federal Acquisition Circular

[Number 90–32]

Federal Acquisition Circular (FAC) 90–32 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified below, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–32 is effective October 1, 1995. FAC Items I, and V through VIII, are applicable for solicitations issued on or after October 1, 1995.

Item II—Where this rule repeats a GSBCA rule that went into effect earlier, the date of the GSBCA rule and its applicability provision prevail; otherwise, this rule is applicable to protests or claims filed on or after October 1, 1995.

Item III—For solicitations issued on or after October 1, 1995: Use of the new policies, provisions and clauses is optional for solicitations issued before December 1, 1995, and mandatory for solicitations issued on or after December 1, 1995.

Item IV—Effective September 19, 1995.

Dated: September 7, 1995.

Roland A. Hassebrock,

Col, USAF Director, Defense Procurement (Acting).

Dated: September 6, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy, General Services Administration.

Dated: September 7, 1995.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 95–22775 Filed 9–15–95; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53

[FAC 90–32; FAR Cases 94–720 and 94–721; Item I]

RIN 9000–AG19; 9000–AG30

Federal Acquisition Regulation; Truth in Negotiations Act and Related Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rules.

SUMMARY: These final rules are issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement those portions of Pub. L. 103–355 that make specific changes to the Truth in Negotiations Act (TINA) or that impact other areas of the FAR that affect contract pricing. These regulatory actions were subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Al Winston, Truth in Negotiations Act (TINA) Team Leader, at (703) 602–2119 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 94–721.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

FAR case 94–721 implements Sections 1201 through 1210 and Sections 1251 and 1252 of the Act. Highlights include making TINA requirements for civilian agencies substantially the same as those for the Department of Defense (increasing the threshold for submission of ''cost or pricing data'' to $500,000 and adding penalties for defective pricing). Provisions are also included that increase the threshold for cost or pricing data submission every 5 years beginning October 1, 1995. A new exception is added to the requirement for the submission of ''cost or pricing data'' for commercial items; the approval level for waivers is changed, and prohibitions are placed on acquiring ''cost or pricing data'' when an exception applies. The coverage includes a clear explanation of adequate price competition as required by the Act.

Also, FAR coverage has been included that addresses (1) ''information other than cost or pricing data'', (2) exceptions based on established catalog or market price, (3) inter-divisional transfers of commercial items at price, and (4) price competition when only one offer has been received.

The FAR language primarily modifies Part 15, together with associated Part 52 clauses and Part 53 forms. However, changes are also made to clauses where threshold changes are made in Part 14 pertaining to sealed bid contracting, and in Part 31 where the cost principle on material costs has been amended to address inter-divisional transfers of commercial items at price. Additional miscellaneous changes in Parts 1, 4, 16, 33, 36, 45, 46, and 49 have also been included.

The interim rule published at 59 FR 62498, December 5, 1994 (FAR case 94–720, FAC 90–22) is adopted as final, as amended by this FAR case 94–721. FAR case 94–720 provided for an immediate increase to the threshold for ''cost or pricing data'' submission by contractors to civilian agencies to $500,000. FAC 90–22 (FAR case 94–720) also removed the certification requirement of commercial pricing for parts or components for contractors doing business with civilian agencies.

Policy for Determining Reasonableness of Price

Two major changes are found in the new coverage. The first change shifts the policy of FAR Part 15 with respect to determining price reasonableness. A hierarchical policy preference for the types of information to be used in assessing reasonableness of price is established. The policy states that no additional information should be obtained from the contractor if there is adequate price competition. This is followed by allowing progressively more intrusive types of data requirements. Obtaining ''cost or pricing data'' is designated as the last choice. Use of ''cost or pricing data'' is coupled with a reminder that unnecessarily requiring that type of data is not desirable and can lead to additional costs to both the Government and the contractor.

New FAR coverage, based on the Act, is presented that expands the exception based on adequate price competition and provides for a special exception for commercial items. A new section addressing ''information other than cost or pricing data'' is created and a Standard Form 1448 is provided for use by contractors.

The new policy at FAR 15.804–1(b)(1)(ii) recognizes circumstances when it can be determined that adequate price competition exists even though only one offeror has responded to the Government's requirement.

Defining ''Cost or Pricing Data''

The second major change accomplished by the coverage is the clarification of the meaning of the term ''cost or pricing data.'' Currently, the FAR uses the term inconsistently. In some places, ''certified cost or pricing data'' is used and in other locations, it states ''cost or pricing data.'' In the new coverage, the term has been clarified in the definition to mean that, among other things, ''cost or pricing data'' is required to be certified in accordance with TINA and FAR 15.804–4, and means all facts that as of the date of agreement on price (or other mutually agreeable date) prudent buyers and sellers would reasonably expect to affect the price negotiations significantly.

Information Other Than Cost or Pricing Data

Since a bright-line test for ''cost or pricing data'' has now been established, it is also possible to craft a second category of data—''information other than cost or pricing data''—that may be required by the contracting officer in order to establish cost realism or price reasonableness. This information can include limited cost information, sales data or pricing information. The intent is also clear with respect to this category of information. Because it is not ''cost or pricing data,'' certification shall not be required and approval to obtain this information is vested in the contracting officer. The new FAR coverage gives a detailed discussion of ''information other than cost or pricing data'' at 15.804–5.

B. Regulatory Flexibility Act

The proposed rule was not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Accordingly, an initial regulatory flexibility analysis was not prepared. Although there were no public comments on this rule that indicated that this line of reasoning was incorrect nor that treatment of small entities in the proposed rule was inappropriate, the final rule may have a significant economic impact on a substantial number of small entities because the final rule will substantially affect the price negotiations of non-competitive commercial item contracts. Small businesses may receive a substantial portion of these awards. The rule is expected to decrease the administrative expense of negotiating these awards by reducing the amount of cost or pricing data that must be submitted, reducing the amount of information necessary to qualify for an exception from cost or pricing data requirements, and streamlining the requirements for information supporting price proposals. Accordingly, a Final Regulatory Flexibility Analysis (FRFA) has been prepared and provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Pub. L. 96–511, is deemed to apply because this final rule contains information collection requirements. Approval was obtained from the Office of Management and Budget (OMB) on March 24, 1995, under OMB Control No. 9000–0013. A request for a three-year extension was submitted to OMB on July 11, 1995. Public comments concerning this request were invited through a Federal Register notice at 60 FR 36406, July 17, 1995.

D. Public Comments

On January 6, 1995, a proposed rule was published in the Federal Register (60 FR 2282). The proposed rule afforded the public a 60-day comment period. During that time, 40 organizations submitted more than 213 comments. A public meeting was also held on this rule on February 13, 1995. Based upon comments received, the TINA drafting team refined the coverage.

On June 19, 1995, at 60 FR 31935, a notification of additional changes was published that revised the original January 6, 1995 proposed rule. Interested parties were advised that the original rule had been modified as a result of earlier comments and that a copy of the revised proposed rule could be obtained from the FAR Secretariat. Those who had commented on the original rule were provided with the updated document. A 30-day written comment period was provided for, and another public hearing was conducted on July 7, 1995. As a result of the second public comment period, the Team received 148 pages of written comments from 18 commenters and one telephonic comment. Based upon comments received, the TINA drafting team further refined the coverage.

The following are highlights of changes that were made to the proposed rule as a result of both rounds of public comments and both public meetings:

- The Rule was edited to improve readability.
- The hierarchical policy at FAR 15.802 was clarified to ensure that it is consistent with TINA and FASA.
- Regulatory guidance implementing the catalog or market price exception to TINA was replaced with more flexible procedures (See 52.215–41 & –42).

—The Standard Form (SF) 1412, ''Request for Exemption from Submission of Cost or Pricing Data,'' was eliminated.
—Relational tests were eliminated.
—Disclosure of lowest prices is no longer mandated.
—TINA based postaward audit access is no longer required.
—Expanded guidance was provided on what constitutes substantial sales.
—Requirement for offerors to account for ''government end use'' when addressing sales to the general public was eliminated.
—Reference to GSA certifications was removed.

- Flexibility in requesting an exception to TINA was improved via generic provisions at FAR 52.215–41 & 52.215–42 that provide broad guidelines on the type of data that would be needed to qualify for a TINA exception.
- The barriers in the proposed rule that prevented easier access to the new commercial item exception have been substantially decreased, to the maximum extent permitted by FASA.
- A Commercial Item definition cross-reference was given.
- A definition of cost realism was added.
- Additional data requirements were removed for qualification under the commercial item exception created by FASA (rebates, credits, warranties, sales to resellers).
- Expanded guidance was provided on effective dates for certification of cost or pricing data.
- The new SF 1448 has been substantially revised to remove reference to cost related information that may not be appropriate for all users of the form.

Disposition of Public Comments

Commercial Exception

Several commenters expressed concern that the proposed coverage continued to subordinate the new commercial item exception to TINA to the traditional TINA exceptions of adequate price competition, catalog or market price, or price set by law or regulation.

The Team has carefully considered this issue. The Team concludes that making the new commercial item exception (Section 1204(d)(2), 1251(d)(2)) co-equal with the original TINA exceptions is consistent with the philosophy of FASA which is intended to make it easier for commercial companies to do business with the Government. However, the Team also concludes that the language at (d)(2), ''and the procurement is not covered by an exception in subsection (b),'' is clear on its face and prevents an absolute co-equal relationship. Nevertheless, upon further consideration of the issue, the Team has decided that there is sufficient statutory flexibility to provide for a more liberal regulatory implementation of the commercial item exception. Therefore, the Team has modified its proposed FAR language to make regulatory use of the commercial item exception more readily available while still providing for a consistent interpretation of statutory requirements. This is accomplished by replacing the words, ''if an exception does not apply'' with the words ''if the contracting officer does not have sufficient information to support an exception'' at 15.804–1(a)(2) and 15.804–1(b)(4).

The Team has also reduced the contractor's risk of doing business with the Government by including a statement in the solicitation provision at 52.215–41 that indicates that providing information on one TINA exception is not a representation that only one TINA exception may apply.

Most Favored Customer

Other commenters were pleased to see that the SF 1412, ''Request for Exemption from Submission of Cost or Pricing Data,'' had been eliminated from the coverage. However, the treatment of ''most favored customer'' pricing remains a major concern. The commenters continue to press for a FAR prohibition on asking for this type of information.

The Team believes that establishing a FAR prohibition on any specific contracting practice is contrary to the philosophy of FASA to empower the contracting officer and to provide for regulatory flexibility. Furthermore, it is bad policy guidance to construct an absolute prohibition because it is not possible to foresee all circumstances and an absolute prohibition could preclude a reasonable course of action under circumstances that could not be foreseen.

With respect to the specific issue, just as the Team believes having requirements that always mandate obtaining ''most favored customer'' pricing is flawed, so would a policy that prohibits obtaining this kind of information also be flawed. The Team is convinced that both policy and procedural rules need to be constructed in a flexible manner so they may be adapted to specific sets of circumstances. As a result of earlier comments, the Team removed the Standard Form 1412 and its associated requirement to disclose this type of information as a condition of applying for a catalog or market price exception to TINA.

The Team has also included policy guidance at 15.802 that indicates a strong preference for pricing contracts with the minimum amount of data needed to accomplish the task.

Specifically, when adequate price competition is present, the contracting officer is strongly admonished not to obtain any additional information from the offeror. As the situation moves away from that of adequate price competition, the negotiation position between the parties moves more in favor of the contractor and the contracting officer is allowed to use more pricing tools. Nevertheless, the policy is to price the contract in the least intrusive manner.

SF 1448, ''Proposal Cover Sheet/Cost or Pricing Data Not Required''

Concern was also expressed that with the elimination of the SF 1412, contracting officers might request submission of catalog or market price exception data on the new SF 1448. The commenters believed that the SF 1448 was not properly designed for that purpose.

Although the SF 1448 is not intended as a substitute for the SF 1412, the Team modified the SF 1448 to eliminate reference to cost related information. This preserves the bright line between ''cost or pricing data'' that can only be submitted on an SF 1411 and all other ''information other than cost or pricing data'' that may be submitted using the SF 1448.

Cost Accounting Standards

Several commenters stated that the Cost Accounting Standards (CAS) needed to be revised to narrow the definition of what constitutes ''cost or pricing data'' for purposes of CAS covered contracts. The commenters believe that until CAS is modified the coverage in the TINA rule would not completely address the issue of commercial contractors being required to expose cost data to the Government and to be accountable for such data.

The Team believes the commenters have identified a valid concern. However, the matter rests with the CAS Board as the problem is that the CAS definition of ''cost data'' is more broadly based than the ''cost or pricing data'' definition in the FAR coverage.

Market Price Exception

Commenters also stated that for the market price exception to be useful to industry it should not be tied to independent verification.

The Team does not agree with the commenters. It believes that it makes sense to maintain this requirement as FASA requires clear FAR standards as to what is required to qualify for a TINA exception. The Team believes independent verification is an essential element of a market price. Furthermore, with the creation of the new FASA commercial item exception to TINA, it is useful to differentiate a price reasonableness determination based on market price from information provided directly by an offeror under the authority of the new FASA commercial item exception.

List of Subjects in 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

The interim rule published at 59 FR 62498, December 5, 1994, FAC 90–22, FAR case 94–720, is adopted as final, as amended by this FAR case 94–721. Therefore, 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 4, 14, 15, 16, 31, 33, 36, 45, 46, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. The table in section 1.106 is amended under the ''FAR Segment'' and ''OMB Control Number'' columns by removing ''52.215–32'' and ''9000–0105'', and ''SF 1412'' and ''9000–0013''; and adding entries, in numerical order, to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.215–41	9000–0013
52.215–42	9000–0013
* * * * *	
SF 1448	9000–0013
SF 1449	9000–0136

PART 4—ADMINISTRATIVE MATTERS

3. Section 4.702 is amended by adding paragraph (a)(3) to read as follows:

4.702 Applicability.

* * * * *

(a)(3) Audit—Commercial Items (52.215–43).

* * * * *

4. Section 4.803 is amended by revising paragraphs (a)(17) and (b)(4) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver, or information other than cost or pricing data.

* * * * *

(b) * * *

(4) Cost or pricing data, Certificates of Current Cost or Pricing Data, or information other than cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.

* * * * *

PART 14—SEALED BIDDING

14.201–7 [Amended]

5. Section 14.201–7 is amended by removing paragraph (d) and redesignating paragraph ''(e)'' as paragraph ''(d).''

PART 15—CONTRACTING BY NEGOTIATION

6. Section 15.106–2 is added to read as follows:

15.106–2 Audit—Commercial items.

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215–43, Audit—Commercial Items, in solicitations and contracts when submission of cost or pricing data is expected to be excepted under 15.804–1(a)(2) (i.e., a commercial item where price is otherwise fair and reasonable). The clause shall also be included in solicitations and contracts when cost or pricing data are required, for incorporation into subcontracts that may be excepted under 15.804–1(a)(2).

15.406–5 [Amended]

7. Section 15.406–5(b) is amended by inserting at the end of the paragraph the parenthetical ''(see 15.804–6 and 15.804–8).''.

8. Section 15.703(a)(2) is revised to read as follows:

15.703 Acquisitions requiring make-or-buy programs.

(a) * * *

(2) Qualifies for an exception from the requirement to submit cost or pricing data under 15.804–1; or

* * * * *

9. Section 15.801 is amended by revising the definitions of ''Cost analysis'' and ''Cost or pricing data'', and adding in alphabetical order ''Information other than cost or pricing data'', ''Subcontract'', ''Commercial item'', and ''Cost realism'' to read as follows:

15.801 Definitions.

Commercial item is defined in 2.101.

Cost analysis means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data or information other than cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

Cost or pricing data means all facts that, as of the date of price agreement or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.804–4. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

(a) Vendor quotations;

(b) Nonrecurring costs;

(c) Information on changes in production methods and in production or purchasing volume;

(d) Data supporting projections of business prospects and objectives and related operations costs;

(e) Unit-cost trends such as those associated with labor efficiency;

(f) Make-or-buy decisions;

(g) Estimated resources to attain business goals; and

(h) Information on management decisions that could have a significant bearing on costs.

Cost realism means the costs in an offeror's proposal are (a) realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various elements of the offeror's technical proposal.

* * * * *

Information other than cost or pricing data means any type of information that is not required to be certified, in accordance with 15.804–4, that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

* * * * *

Subcontract, as used in this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

* * * * *

10. Section 15.802 is revised to read as follows:

15.802 Policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that the Truth in Negotiations Act, as implemented in 15.804–2 and 15.804–5(b) permits, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No further information from the offeror if the price is based on adequate price competition, except as provided by 15.804–5(a)(3).

(2) Information other than cost or pricing data:

(i) Information related to prices (*e.g.*, established catalog or market prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror.

(ii) Cost information, which does not meet the definition of cost or pricing data at 15.801.

(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor, or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

11. Section 15.803 is amended in paragraph (a) by revising the last sentence to read as follows:

15.803 General.

(a) * * * This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data supporting the proposal.

15.804 Cost or pricing data and information other than cost or pricing data.

12. Section 15.804, heading, is revised to read as set forth above.

13. Section 15.804–1 is revised to read as follows:

15.804–1 Prohibition on obtaining cost or pricing data.

(a) *Exceptions to cost or pricing data requirements*. The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see exception standards at paragraph (b)(1) of this subsection);

(ii) Established catalog or market prices of commercial items sold in substantial quantities to the general public (see exception standards at paragraph (b)(2) of this section); or

(iii) Prices set by law or regulation (see exception standards at paragraph (b)(3) of this subsection).

(2) For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under paragraph (a)(1) of this section, but the contracting officer can determine the price is fair and reasonable (see exception standards at paragraph (b)(4) of this section and pricing requirements at 15.804–5(b));

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(5) of this section); or

(4) For modifications to contracts or subcontracts for commercial items, if

the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) of this section and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception standards at paragraph (b)(6) of this subsection).

(b) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* A price is based on adequate price competition if—

(i) Two or more responsible offerors, competing independently, submit priced offers responsive to the Government's expressed requirement and if—

(A) Award will be made to a responsible offeror whose proposal offers either—

(*1*) The greatest value (see 15.605(c)) to the Government and price is a substantial factor in source selection; or

(*2*) The lowest evaluated price; and

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any such finding must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers responsive to the solicitation's expressed requirement, even though only one offer is received from a responsible, responsive offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that—

(*1*) The offeror believed that at least one other offeror was capable of submitting a meaningful, responsive offer; and

(*2*) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition and is reasonable is approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.

(2) *Established catalog or market prices*—(i) *Established catalog price.* Established catalog prices are prices (including discount prices) recorded in a catalog, price list, schedule, or other verifiable and established record that (A) are regularly maintained by the manufacturer or vendor; and (B) are published or otherwise available for customer inspection.

(ii) *Established market price.* An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

(iii) *Based on.* A price may also be based on an established catalog or market price if the item or class of items being purchased is not itself a catalog or market priced commercial item but is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis.

(iv) *Sold in substantial quantities.* An item is sold in substantial quantities if there are sales of more than a nominal quantity based on the norm of the industry segment. In determining what constitutes a substantial quantity, the contracting officer should consider such things as the size of the market; and how recently the item was introduced into the market. Models, samples, prototypes, and experimental units are not substantial quantities. For services to be sold in substantial quantities, they must also be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained principally to provide the services.

(A) The method used to establish sales may be sales order, contract, shipment, invoice, actual recorded sales, or other records, so long as the method used is consistent, provides an accurate indication of sales activity, and is verifiable. If the item would not otherwise qualify for an exception, sales of the item by affiliates may be considered. In addition, sales of essentially the same commercial item by other manufacturers or vendors may be considered in determining whether sales are substantial, provided that the price of those sales is also considered. Data to support sales quantities may also come from other manufacturers, industry associations or marketing groups, annual financial reports, etc.

(B) An exception may apply for an item based on the market price of the item regardless of the quantity of sales of the item previously made by the offeror or the types of customers for these sales, provided that sales of the same or similar items by other sellers meet the exception criteria.

(v) *General public.* The general public ordinarily consists of buyers other than the U.S. Government or its instrumentalities, *e.g.*, U.S. Government corporations. Sales to the general public do not include sales to affiliates of the offerors or purchases by the U.S. Government on behalf of foreign governments, such as for Foreign Military Sales. If the contracting officer can determine without requiring information from the offeror that sales are for Government end use, these sales need not be considered sales to the general public.

(3) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws are sufficient to set a price.

(4) *Commercial items.* For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under 15.804–1(a)(1) or (a)(4), the contracting officer shall grant an exception for a contract, subcontract, or modification of a contract or subcontract if the contracting officer obtains the pricing information described in 15.804–5(b). Cost or pricing data may be obtained for such a commercial item only if the contracting officer makes a written determination that the pricing information is inadequate for performing a price analysis and determining price reasonableness.

(5) *Exceptional cases.* The head of the contracting activity may, without power of delegation, waive the requirement for submission of cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. A waiver may be considered if another exception does not apply but the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the head of the contracting activity has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract.

(6) *Modifications.* This exception only applies when the original contract or subcontract was exempt from cost or pricing data based on adequate price competition, catalog or market price, or price set by law or regulation (15.804–1(a)(1)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804–1(a)(4) applies if the modification does not change the item from a commercial item to a noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the added work.

(c) *Special circumstances when purchasing commercial items.* (1) It is not necessary to obtain information supporting an exception for each line item. Sampling techniques may be used.

(2) If the U.S. Government has acted favorably on an exception request for the same or similar items, the contracting officer may consider the prior submissions as support for the current exception request. Relief from the submission of new information does not relieve the contracting officer from the requirement to determine reasonableness of price on the current acquisition.

(3) When acquiring by separate contract an item included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, the contracting officer should grant an exception and not require documentation if the offeror has provided proof that an exception has been granted for the schedule item. Price analysis shall be performed in accordance with 15.805–2 to determine reasonableness of price.

(4) The contracting officer and offeror may make special arrangements for the submission of exception requests for repetitive acquisitions. These arrangements can take any form as long as they set forth an effective period and the exception criteria at 15.804–1 are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

(d) *Requesting an exception.* In order to qualify for an exception, other than an exception for adequate price competition, from the requirements to submit cost or pricing data, the offeror must submit a written request. The solicitation provision at 52.215–41 or other methods may be used. It is the responsibility of the contracting officer to determine, based on the information submitted, and any other information available to the contracting officer, which exception, if any, applies.

14. Section 15.804–2 is revised to read as follows:

15.804–2 Requiring cost or pricing data.

(a) (1) Pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.804–1 applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.804–1(b)(5) should be considered. The threshold for obtaining cost or pricing data is $500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect on the date of agreement on price, or the date of award, whichever is later; or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see exceptional cases at 15.804–1(b)(5)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases. (For example, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(2) Unless prohibited because an exception at 15.804–1(a)(1) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804–4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.801 and shall not be certified in accordance with 15.804–4.

(d) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.

15.804–3 [Reserved]

15. Section 15.804–3 is removed and reserved.

16. Section 15.804–4 is amended by revising paragraph (a), the double asterisk footnote to the certification statement following paragraph (a), paragraph (c), and paragraph (e); and in paragraphs (f) and (h) by removing the word ''certified''. The revised text reads as follows:

15.804–4 Certificate of Current Cost or Pricing Data.

(a) When cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown following this paragraph (a), and shall include the executed certificate in the contract file.

Certificate of Current Cost or Pricing Data

* * * * *

* * * Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.

* * * * *

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize

delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (*e.g.*, actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

* * * * *

(e) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.

* * * * *

17. Section 15.804–5 is added to read as follows:

15.804–5 Requiring information other than cost or pricing data.

(a)(1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer may require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. The contractor's format for submitting such information shall be used unless the contracting officer determines that use of a specific format is essential. The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804–4.

(3) When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(4) When cost or pricing data are not required because an action is at or below the cost or pricing data threshold, information requested shall include, as a minimum, appropriate information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price. Cost information may also be required. For example, cost information might be necessary to support an analysis of material costs.

(b)(1) When acquiring commercial items for which an exception under 15.804–1(a)(2) may apply, the contracting officer shall seek to obtain from the offeror or contractor information on prices at which the same or similar items have been sold in the commercial market, that is adequate for evaluating, through price analysis, the reasonableness of the price of the action.

(2) If such information is not available from the offeror or contractor, the contracting officer shall seek to obtain such information from another source or sources.

(3) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(4) In requesting information from an offeror under this paragraph (b), the contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

(5) Any information obtained pursuant to this paragraph (b) that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed by the Government.

(c) If, after receipt of offers, the contracting officer concludes there is insufficient information available to determine price reasonableness and none of the exceptions applies, then cost or pricing data shall be obtained.

18. Section 15.804–6 is amended by revising the heading and paragraphs (a) and (b);

Amending Table 15–2 by:

(a) Revising the heading;

(b) Adding introductory text;

(c) Revising the first paragraph of item 1, and the fourth paragraph of Item 1 entitled ''Established Catalog or Market Prices/Prices Set by Law or Regulation'';

(d) Revising item 4; and

(e) Amending 8B by revising the paragraph ''Under Column (2)'' instruction under the table;

Adding Table 15–3 following Table 15–2;

And revising paragraph (c) of 15.804–6; and revising the first sentence of paragraph (d).

The revised and added text reads as follows:

15.804–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Taking into consideration the hierarchy at 15.802, the contracting officer shall specify in the solicitation (see 15.804–8 (h) and (i))—

(1) Whether cost or pricing data are required;

(2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;

(3) Whether information other than cost or pricing data is required, if cost or pricing data are not necessary;

(4) The format (see paragraph (b) of this subsection) in which the cost or pricing data or information other than cost or pricing data shall be submitted; and

(5) Necessary preaward or postaward access to offeror's records if not provided by the use of a standard form or clause.

(b)(1) Cost or pricing data shall be submitted on a SF 1411 unless required to be submitted on one of the termination forms specified in subpart 49.6. The SF 1411 shall not be used unless cost or pricing data are required to be submitted. Contract pricing proposals submitted on a SF 1411 with supporting attachments shall be prepared in accordance with Table 15–2 or as specified by the contracting officer. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

(2) If information other than cost or pricing data is required to support price reasonableness or cost realism, the contracting officer may require such information to be submitted using a SF 1448. Requests for information should be tailored so that only necessary data are requested. The information is not considered cost or pricing data and shall not be certified in accordance with 15.804–4. Information submitted on a SF 1448 shall be prepared following the instructions provided in Table 15–3.

Table 15–2 Instructions for Submission of a Contract Pricing Proposal When Cost or Pricing Data are Required

The SF 1411 provides a cover sheet for use by offerors to submit to the Government a pricing proposal of estimated and/or actual costs only when cost or pricing data are required.

1. The pricing proposal shall be segregated by contract line item with sufficient detail to permit cost analysis. Attach cost-element breakdowns, using the applicable formats prescribed in Item 8A, B, or C of this section, for each proposed line item. These breakdowns must conform to the instructions in the solicitation and any specific requirements established by the contracting officer. Furnish supporting breakdowns for each cost element, consistent with the offeror's cost accounting system.

* * * * *

Established Catalog or Market Prices or Prices Set by Law or Regulation or Commercial Item Not Covered By Another Exception—When an exception from the requirement to submit cost or pricing data is requested, whether the item was produced by others or by the offeror, provide justification for the exception as required by 15.804–1(d).

* * * * *

4. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the contracting officer or an authorized representative. As later information comes into the offeror's possession, it should be promptly submitted to the contracting officer in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or another date agreed upon between the parties if applicable.

* * * * *

8. Headings for Submission of Line-Item Summaries:

* * * * *

B. Change Orders, Modifications, and Claims.

* * * * *

Under Column (2)—Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

* * * * *

Table 15–3 Instructions for Submission of Information Other Than Cost or Pricing Data

SF 1448 is a cover sheet for use by offerors to submit information to the Government when cost or pricing data are not required but the contracting officer has requested information to help establish price reasonableness or cost realism. Such information is not considered cost or pricing data, and shall not be certified in accordance with 15.804–4.

1. The information submitted shall be at the level of detail described in the solicitation or specified by the contracting officer. The offeror's own format is acceptable unless the contracting officer determines that use of a specific format is essential.

A. If adequate price competition is expected, the information may include cost or technical information necessary to determine the cost realism and adequacy of the offeror's proposal, e.g., information adequate to validate that the proposed costs are consistent with the technical proposal, or cost breakdowns to help identify unrealistically priced proposals.

B. If the offer is expected to be at or below the cost or pricing data threshold, and adequate price competition is not expected, the information may consist of data to permit the contracting officer and authorized representatives to determine price reasonableness, e.g., information to support an analysis of material costs (when sufficient information on labor and overhead rates is already available), or information on prices and quantities at which the offeror has previously sold the same or similar items.

2. Any information submitted must support the price proposed. Include sufficient detail or cross references to clearly establish the relationship of the information provided to the price proposed. Support any information provided by explanations or supporting rationale as needed to permit the contracting officer and authorized representatives to evaluate the documentation.

* * * * *

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal (see 15.804–4(c)).

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or specifically identified in writing by the time of agreement on price or another time agreed upon by the parties. * * *

* * * * *

19. Section 15.804–7 is amended by revising paragraphs (b)(7)(i), (ii)(B), and (iii) to read as follows:

15.804–7 Defective cost or pricing data.

* * * * *

(b) * * *

(7)(i) In addition to the price adjustment amount, the Government is entitled to interest on any overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments would not result from amounts paid for contract financing as defined in 32.902.

(ii) * * *

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be (*1*) the date payment was made for the related completed and accepted contract items, or (*2*) for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

* * * * *

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

* * * * *

20. Section 15.804–8 is amended by revising the heading and adding paragraphs (h) and (i) to read as follows:

15.804–8 Contract clauses and solicitation provisions.

* * * * *

(h) *Requirements for cost or pricing data or information other than cost or pricing data.* Considering the hierarchy at 15.802, the contracting officer may insert the provision at 52.215–41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. Use the provision with Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of 15.804–6(b). Use the provision with Alternate II when copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the provision with Alternate III when submission via electronic media is required. Replace the basic provision with Alternate IV when a SF 1411 will not be required because an exception may apply, but information other than cost or pricing data is required as described in 15.804–5.

(i) *Requirements for cost or pricing data or information other than cost or pricing data—modifications.* Considering the hierarchy at 15.802, the contracting officer may insert the clause at 52.215–42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides

instructions to contractors on how to request an exception. Use the clause with Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of 15.804–6(b). Use the clause with Alternate II if copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the clause with Alternate III if submission via electronic media is required. Replace the basic clause with Alternate IV if a SF 1411 is not required because an exception may apply, but information other than cost or pricing data is required as described in 15.804–5.

21. Section 15.805–1 is amended in the first sentence of paragraph (a) by inserting a comma after the word ''engineering''; and by adding paragraph (d) to read as follows:

15.805–1 General.

* * * * *

(d) The Armed Services Pricing Manual (ASPM Volume I, ''Contract Pricing,'' and Volume 2, ''Price Analysis'') was issued by the Department of Defense to guide pricing and negotiating personnel. The ASPM provides detailed discussion and examples applying pricing policies to pricing problems. The ASPM is available for use for instruction and professional guidance. However, it is not directive and its references to Department of Defense forms and regulations should be considered informational only. Copies of ASPM Vol. 1 (Stock No. 008–000–00457–9) and Vol. 2 (Stock No. 008–000–00467–6) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by telephone (202) 512–1800 or facsimile (202) 512–2250, or by mail order from the Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA 15250–7954.

22. Section 15.805–2 is amended by adding paragraph (f) to read as follows:

15.805–2 Price analysis.

* * * * *

(f) Comparison of proposed prices with prices for the same or similar items obtained through market research.

23. Section 15.806–1 is amended in the first sentence of paragraph (a)(2) by removing the phrase ''claims for exemption'' and inserting ''requests for exception'' in its place, and revising (b) to read as follows:

15.806–1 General.

* * * * *

(b) Unless the subcontract qualifies for an exception under 15.804–1, any contractor required to submit cost or pricing data also shall obtain cost or pricing data before awarding any subcontract or purchase order expected to exceed the cost or pricing data threshold, or issuing any modification involving a price adjustment expected to exceed the cost or pricing data threshold.

* * * * *

24. Section 15.806–2 is amended by revising paragraph (a), the first sentence of (c), and (d) to read as follows:

15.806–2 Prospective subcontractor cost or pricing data.

(a) The contracting officer shall require a contractor that is required to submit cost or pricing data also to submit to the Government (or cause submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is

(1) $1,000,000 or more,

(2) Both more than the cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, or

(3) Considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).

* * * * *

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exceptions, the contracting officer shall not require submission of cost or pricing data to the Government in that case. * * *

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of price agreement or, if applicable, another date agreed upon between the parties, given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

* * * * *

25. Section 15.808 is amended in paragraph (a)(5) introductory text by removing the word ''certified''; by revising paragraph (a)(6); by removing paragraph (a)(7) and redesignating paragraphs (a)(8) through (a)(10) as (a)(7) through (a)(9) to read as follows:

15.808 Price negotiation memorandum.

(a) * * *

(6) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.

* * * * *

26. Section 15.812–1 is amended by revising paragraph (b) and the second sentence of paragraph (c) to read as follows:

15.812–1 General.

* * * * *

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public under 15.804–1(b)(2) or a commercial item exception under 15.804–1(b)(4).

(c) * * * The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804–1(b)(1)). * * *

PART 16—TYPES OF CONTRACTS

16.203–4 [Amended]

27. Section 16.203–4 is amended in paragraphs (a)(1)(ii) and (b)(1)(ii) by removing ''15.804–3'' and inserting ''15.804–1'' in its place.

28. Section 16.501(c) is amended by revising the first sentence to read as follows:

16.501 General.

* * * * *

(c) Indefinite-delivery contracts may provide for firm-fixed-prices (see 16.202), fixed prices with economic price adjustment (see 16.203), fixed prices with prospective redetermination (see 16.205), or prices based on catalog or market prices (see 15.804–1(b)(2)). * * *

28a. Section 16.603–4 is amended after the first sentence in paragraph (b)(3) by adding a sentence to read as follows:

16.603–4 Contract clauses.

* * * * *

(b)(3) * * * If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.804–1 for not requiring submission of cost or pricing data, the words ''and cost or pricing data supporting its proposal'' may be deleted from paragraph (a) of the clause. * * *

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

29. Section 31.205–26 is amended by revising paragraphs (e) and (f) to read as follows:

31.205–26 Material costs.

* * * * *

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the item being transferred qualifies for an exception under 15.804–1 and the contracting officer has not determined the price to be unreasonable.

(f) When a catalog or market price exception under 15.804–1(a)(1)(ii) applies under paragraph (e) of this subsection, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

PART 33—PROTESTS, DISPUTES, AND APPEALS

30. Section 33.207(d) is revised to read as follows:

33.207 Contractor certification.

* * * * *

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in 15.804–2(a)(1)(iii) regarding cost or pricing data).

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT ENGINEERING CONTRACTS

31. Section 36.402 is amended by revising the introductory text of paragraph (b) and (b)(1) to read as follows:

36.402 Price negotiation.

* * * * *

(b) The contracting officer shall evaluate proposals and associated cost or pricing data or information other than cost or pricing data and shall compare them to the Government estimate.

(1) When submission of cost or pricing data is not required (see 15.804–1 and 15.804–2), and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost information concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

* * * * *

PART 45—GOVERNMENT PROPERTY

32. Section 45.103(b)(1) is revised to read as follows:

45.103 Responsibility and liability for Government property.

* * * * *

(b) * * *

(1) Negotiated fixed-price contracts for which the contract price is not based upon an exception at 15.804–1;

* * * * *

33. Section 45.106(b)(2) is revised to read as follows:

45.106 Government property clauses.

* * * * *

(b) * * *

(2) If the contract is—

(i) A negotiated fixed-price contract for which prices are not based on an exception at 15.804–1; or

(ii) A fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

* * * * *

PART 46—QUALITY ASSURANCE

46.804 [Amended]

34. Section 46.804 is amended by removing the parenthetical ''(see 15.804–3(c))'' and inserting ''(see 15.804–1(b)(2))''.

PART 49—TERMINATION OF CONTRACTS

35. Section 49.208 is amended in the introductory paragraph by revising the last sentence to read as follows:

49.208 Equitable adjustment after partial termination.

* * * The contractor shall submit the proposal on SF 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

35a. Part 52 is amended by removing the derivation lines following all ''(End of provision)'' or ''(End of clause)'' parentheticals and Alternates.

36. Section 52.214–27 is amended by revising the date of the clause and paragraphs (a) and (e)(2) to read as follows:

52.214–27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding (Oct. 1995)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.804–2(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.804–1 applies.

* * * * *

(e) * * *

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause.)

37. Section 52.214–28 is amended by revising the date of the clause and paragraphs (b) and (d) to read as follows:

52.214–28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

* * * * *

Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding (Oct. 1995)

* * * * *

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1).

(End of clause.)

52.214–29 [Amended]

37a. Section 52.214–29 is amended in the introductory text by removing the citation ''14.201–7(e)'' and inserting ''14.201–7(d)'' in its place.

38. Section 52.215–22 is amended by revising the date of the clause, and paragraph (d)(2) to read as follows:

52.215–22 Price Reduction for Defective Cost or Pricing Data.

* * * * *

Price Reduction for Defective Cost or Pricing Data (Oct. 1995)

* * * * *

(d) * * *

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause.)

39. Section 52.215–23 is amended by revising the clause date and paragraphs (a) and (e)(2) to read as follows:

52.215–23 Price Reduction for Defective Cost or Pricing Data—Modifications

* * * * *

Price Reduction for Defective Cost or Pricing Data—Modifications (Oct. 1995)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), except that this clause does not apply to any modification if an exception under FAR 15.804–1 applies.

* * * * *

(e) * * *

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

40. Section 52.215–24 is amended by revising the date of the clause, and paragraph (a) to read as follows:

52.215–24 Subcontractor Cost or Pricing Data.

* * * * *

Subcontractor Cost or Pricing Data (Oct 1995)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

41. Section 52.215–25 is amended by revising the date of the clause and paragraphs (b) and (d) to read as follows:

52.215–25 Subcontractor Cost or Pricing Data—Modifications.

* * * * *

Subcontractor Cost or Pricing Data—Modifications (Oct 1995)

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804–1 applies.

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804–2(a)(1) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

42. Section 52.215–26 is amended by revising the clause date and paragraph (b) to read as follows:

52.215–26 Integrity of Unit Prices.

* * * * *

Integrity of Unit Prices (Oct 1995)

* * * * *

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public or to an item qualifying for a commercial item exception to cost or pricing data. A price is based on an established catalog or market price only if the item being purchased is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.

* * * * *

43. Sections 52.215–41 through 52.215–43 are added to read as follows:

52.215–41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

As prescribed in 15.804–8(h), insert the following provision:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Oct 1995)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds _____ * (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) For a commercial item exception, information on prices at which the same item or similar items have been sold in the commercial market.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

---

*Insert dollar amount for sampling (see 15.804–1(c)(1))

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15–2 of FAR 15.804–6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804–4.

(c) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(End of provision)

Alternate I (Oct 1995). As prescribed in 15.804–8(h), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

Alternate II (Oct 1995). As prescribed in 15.804–8(h), add the following paragraph (d) to the basic provision:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct. 1995). As prescribed in 15.804–8(h), add the following paragraph (d) to the basic provision (if Alternate II is also used, redesignate as paragraph (e)):

(d) Submit the cost portion of the proposal via the following electronic media: *(Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.).*

Alternate IV (Oct. 1995). As prescribed in 15.804–8(h), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804–6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data).*

52.215–42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

As prescribed in 15.804–8(i), insert the following clause:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Oct. 1995)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804–2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds _____* (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) Information on modifications of contracts or subcontracts for commercial items.

(A) If (*1*) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, catalog or market prices of commercial items, or prices set by law or regulation; and (*2*) the modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor may provide information on prices at which the same item or similar items have been sold in the commercial market.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(3) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15–2 of FAR 15.804–6(b)(2).

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804–4.

(End of clause.)

Alternate I (Oct. 1995). As prescribed in 15.804–8(i), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

Alternate II (Oct. 1995). As prescribed in 15.804–8(i), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) The Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct. 1995). As prescribed in 15.804–8(i), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: (*Insert media format*).

Alternate IV (Oct. 1995). As prescribed in 15.804–8(i), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804–6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.*)

*Insert dollar amount for sampling (see 15.804–1(c)(1)).

52.215–43 Audit—Commercial Items.

As prescribed at 15.106–2, insert the following clause:

Audit—Commercial Items (Oct. 1995)

(a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.

(b) This paragraph applies to solicitations and contracts or subcontracts for commercial items that may be or have been granted an exception from submittal of cost or pricing data only under FAR 15.804–1(a)(2). In order to determine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market, the Contracting Officer and authorized representatives have a right to examine such information provided by the offeror, Contractor, or subcontractor, and all records that directly relate to such information. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace. This right shall expire two years after the date of award of the contract, or two years after the date of any modification to the contract, with respect to which this information is provided.

(c) If the prime Contractor and each higher-tier subcontractor were required to submit cost or pricing data, the Contractor and each subcontractor shall insert the substance of this clause, including this paragraph (c), in each subcontract for which submission of cost or pricing data was required or for which an exception was granted under FAR 15.804–1(a)(2).

(End of clause.)

52.216–2 [Amended]

44. Section 52.216–2 is amended in the clause heading by revising the date to read ''(Oct. 1995)''; in paragraph (a)(2) by removing ''15.804–3'' and inserting ''15.804–1'' in its place; and removing the parenthetical following ''(End of clause)''.

52.216–3 [Amended]

45. Section 52.216–3 is amended in the clause heading by removing ''(APR 1984)'' and inserting ''(Oct. 1995)''; in paragraph (a)(2) by removing the reference ''15.804–3'' and inserting ''15.804–1''; and by removing the parenthetical following ''(End of clause)''.

46. Section 52.216–5 is amended by revising the clause date and paragraph (d)(1)(i)(A); and by removing the parenthetical following ''(End of clause)'' to read as follows:

52.216–5 Price Redetermination—Prospective.

* * * * *

Price Redetermination—Prospective (Oct. 1995)

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree;

* * * * *

47. Section 52.216–6 is amended by revising the introductory text, the clause date, and paragraph (c)(1)(ii) to read as follows:

52.216–6 Price Redetermination—Retroactive.

As prescribed in 16.206–4, insert the following clause:

Price Redetermination—Retroactive (Oct. 1995)

* * * * *

(c) * * *

(1) * * *

(ii) A statement on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

* * * * *

48. Section 52.216–25 is amended by revising the introductory paragraph; and the parentheticals following the end of the main clause and the end of Alternate I are removed to read as follows:

52.216–25 Contract Definitization.

As prescribed in 16.603–4(b)(3), insert the following clause:

* * * * *

49. Section 52.222–48 is amended by revising the clause date, redesignating paragraphs (a) (i), (ii), and (iii) as (a) (1), (2), and (3), and revising newly redesignated paragraph (a)(2) to read as follows:

52.222–48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.

* * * * *

Exemption From Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical and/or Office and Business Equipment—Contractor Certification (Oct. 1995)

(a) * * * (2) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical and/or office and business equipment. An ''established catalog price'' is a price (including discount price) recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by the manufacturer or the Contractor and is either published or otherwise available for inspection by customers. An ''established market price'' is a current price, established in the course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated by data from sources independent of the manufacturer or Contractor; and * * *

* * * * *

PART 53—FORMS

50. Section 53.215–2 is revised to read as follows:

53.215–2 Price negotiation (SF's 1411 and 1448).

The following standard forms are prescribed for use in connection with requirements for obtaining cost or pricing data or information other than cost or pricing data from offerors or contractors, as specified in 15.804:

(a) SF 1411 (REV. OCT./95), *Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).* (See 15.804–6(b)(1).) SF 1411 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

(b) SF 1448 (OCT/95), *Proposal Cover Sheet (Cost or Pricing Data Not Required).* (See 15.804–6(b)(2).) SF 1448 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

51. Section 53.301–1411 is revised and 53.301–1448 is added to read as follows:

BILLING CODE 6820–EP–P

53.301–1411 Contract Pricing Proposal Cover Sheet.

CONTRACT PRICING PROPOSAL COVER SHEET
(Cost or Pricing Data Required)

1. SOLICITATION/CONTRACT/MODIFICATION NUMBER

OMB No.: 9000-0013
Expires:

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

2a. NAME OF OFFEROR

2b. FIRST LINE ADDRESS

2c. STREET ADDRESS

2d. CITY | 2e. STATE | 2f. ZIP CODE

3a. NAME OF OFFEROR'S POINT OF CONTACT

3b. TITLE OF OFFEROR'S POINT OF CONTACT

3c. TELEPHONE: AREA CODE | NUMBER

4. TYPE OF CONTRACT *(Check)*

- ☐ a. NEW CONTRACT
- ☐ b. CHANGE ORDER
- ☐ c. PRICE REVISION/ REDETERMINATION
- ☐ d. LETTER CONTRACT
- ☐ e. UNPRICED ORDER
- ☐ f. OTHER *(Specify)*

5. TYPE OF CONTRACT *(Check)*

☐ FFP ☐ CPFF ☐ CPIF ☐ CPAF
☐ FPI ☐ OTHER *(Specify)*

6. PROPOSED COST *(A + B = C)*

A. COST	B. PROFIT/FEE	C. TOTAL

7. PERFORMANCE

PLACE		PERIOD	
a.		a.	
b.		b.	

8. List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. *(Continue on reverse, and then on plain paper, if necessary. Use same headings.)*

a. LINE ITEM NO.	b. IDENTIFICATION	c. QUANTITY	d. TOTAL PRICE	e. PROP. REF. PAGE

9. PROVIDE THE FOLLOWING *(If available)*

NAME OF CONTRACT ADMINISTRATION OFFICE

STREET ADDRESS

CITY | STATE | ZIP CODE

TELEPHONE ▶ AREA CODE | NUMBER

NAME OF AUDIT OFFICE

STREET ADDRESS

CITY | STATE | ZIP CODE

TELEPHONE ▶ AREA CODE | NUMBER

10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? *(If "yes" identify)*
☐ YES ☐ NO

11a. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? *(If Yes," complete item 11b)*
☐ YES ☐ NO

11b. TYPE OF FINANCING *(Check one)*
☐ ADVANCE PAYMENT ☐ PROGRESS PAYMENTS
☐ GUARANTEED LOANS

12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? *(If "Yes," identify item(s), customer(s) and contract number(s) on reverse of form.)*
☐ YES ☐ NO

13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31, COST PRINCIPLES? *(If "no," explain on reverse of form)*
☐ YES ☐ NO

14. COST ACCOUNTING STANDARDS BOARD (CASB) DATA *(Public Law 91-379 as amended and FAR PART 30)*

a. WILL THIS CONTRACT ACTION BE SUBJECT TO CASB REGULATIONS? *(If "No," explain in proposal)*
☐ YES ☐ NO

b. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT (CASB DS-1 or 2)? *(If "Yes," specify in proposal the office to which submitted and if determined to be adequate)*
☐ YES ☐ NO

c. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NONCOMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*
☐ YES ☐ NO

d. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? *(If "Yes," explain in proposal)*
☐ YES ☐ NO

This proposal is submitted in response to the solicitation, contract, modification, etc., in item 1 and reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.804-6(b)(1), and Table 15-2. By submitting this proposal, the offeror, if selected for negotiation, grants the contracting officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form, or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

15. NAME OF OFFEROR *(Type)*

16. TITLE OF OFFEROR *(Type)*

16. NAME OF FIRM

17. SIGNATURE

18. DATE OF SUBMISSION

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1411 (REV. 10-95)
Prescribed by GSA - FAR (48 CFR) 53.215-2(a)

BILLING CODE 6820–EP–C

53.301 Proposal Cover Sheet

BILLING CODE 6820–EP–P

PROPOSAL COVER SHEET
(Cost or Pricing Data Not Required)

1. SOLICITATION/CONTRACT/MODIFICATION NUMBER

OMB NO.: 9000-0013
Expires:

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

2a. NAME OF OFFEROR

2b. FIRST LINE ADDRESS

2c. STREET ADDRESS

2d. CITY | 2e. STATE | 2f. ZIP CODE

3a. NAME OF OFFEROR'S POINT OF CONTACT

3b. TITLE OF OFFEROR'S POINT OF CONTACT

3c. TELEPHONE: AREA CODE | NUMBER

4. TYPE OF CONTRACT ACTION *(Check)*

- ☐ A. NEW CONTRACT
- ☐ B. CHANGE ORDER
- ☐ C. PRICE REVISION/ REDETERMINATION
- ☐ D. LETTER CONTRACT
- ☐ E. UNPRICED ORDER
- ☐ F. OTHER *(Specify)*

5. TYPE OF CONTRACT *(Check)*

☐ FFP ☐ CPFF ☐ CPIF ☐ CPAF
☐ FPI ☐ OTHER *(Specify)*

6. PERFORMANCE

PLACE(S)		PERIOD(S)	
a.		a.	
b.		b.	
c.		c.	

7. List and reference the identification, quantity and total price proposed for each contract line item. *(Continue on reverse, if necessary. Use same headings)*

a. LINE ITEM NO.	b. IDENTIFICATION	c. QUANTITY	d. TOTAL PRICE	e. PROP. REF. PAGE

8. PROVIDE THE FOLLOWING *(If available)*

NAME OF CONTRACT ADMINISTRATION OFFICE			NAME OF AUDIT OFFICE		
STREET ADDRESS			STREET ADDRESS		
CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE
TELEPHONE ▶	AREA CODE	NUMBER	TELEPHONE ▶	AREA CODE	NUMBER

This proposal is submitted in response to the solicitation, contract, modification, etc. in Item 1. By submitting this proposal, the offeror, if selected for discussions, grants the contracting officer or an authorized representative the right to examine, at any time before award, any of those books, records, documents, or other records directly pertinent to the information requested or submitted. See instructions at Table 15-3.

9a. NAME OF OFFEROR *(Typed)*

9b. TITLE OF OFFEROR *(Typed)*

10. NAME OF FIRM

11. SIGNATURE

12. DATE OF SUBMISSION

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1448 (10-95)
Prescribed by GSA - FAR (48 CFR) 53.215-2(a

[FR Doc. 95–22776 Filed 9–15–95; 8:45 am]
BILLING CODE 6820–EP–C

48 CFR Parts 1, 33, 42, 50, and 52

[FAC 90–32; FAR Case 94–730; Item II]

RIN 9000–AG28

Federal Acquisition Regulation; Protests, Disputes, and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (the Act) dated October 13, 1994, to implement the Act's requirements with respect to disputes and protests to the General Accounting Office and General Services Administration Board of Contract Appeals. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Effective date:* October 1, 1995.

Applicability date: Where this rule repeats a GSBCA rule that went into effect earlier, the date of the GSBCA rule and its applicability provision prevails; otherwise, this rule is applicable to protests or claims filed on or after the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Mr. Craig E. Hodge, Protests/Disputes Team Leader, at (703) 274–8940 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–730, Protests, Disputes and Appeals.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, (the Act) provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements.

This notice announces FAR revisions developed under FAR Case 94–730, Protests, Disputes, and Appeals. The Act changed the General Accounting Office (GAO) protest procedures, the General Services Board of Contract Appeals (GSBCA) protest procedures, and the alternative dispute resolution (ADR) procedures. This rule reflects those changes to GAO, GSBCA, and ADR procedures that require revisions to the FAR.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because a relatively small number of firms file protests or claims. In addition, this rule is generally derivative of GAO and GSBCA rules which implement the statute. Neither the GAO nor the GSBCA concluded that the rules they were promulgating, which form the basis for this rule, had a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the change to the FAR does not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

On January 10, 1995, a proposed rule was published in the Federal Register (60 FR 2630). In response to the notice of proposed rulemaking, 19 public comments were received.

The largest number of public comments concerned the definition of ''accrual''. Some commenters felt that contractor and Government claims were to be treated differently because ''accrual'' was defined only in terms of the contractor claim. To resolve that problem, a general definition of ''accrual'' has been added. Several commenters requested retroactive language be added. Therefore, the six-year limitation was specifically applied only to contracts awarded after the end of the current fiscal year. There were also a number of alternate definitions of ''accrual'' proposed. In addition to the discovery of the events, a discovery of some damage has been added to cover the unusual case where the party is aware of the events giving rise to the claim, but not of any resulting damage.

In the protest area, commenters exhibited the most interest in the GAO bid protest file, and requested guidance on GAO and GSBCA witness fee limitations. The protest file requirement has been clarified. Although the GAO rule was concerned with providing protest files to the intervenors, Congress mandated protest files be made available by the contracting officer even to parties which failed to intervene. The extent to which the discussion of protest files differs between the proposed GAO regulation and this regulation reflects that difference. In any event, the GAO final regulation dropped the requirement for a protest file. Further specific guidance concerning witness fee limitations has now been incorporated in the regulation.

List of Subjects in 48 CFR Parts 1, 33, 42, 50 and 52

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 1, 33, 42, 50, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 33, 42, 50, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

2. Section 1.602–3 is amended by revising paragraph (c)(2) to read as follows:

1.602–3 Ratification of unauthorized commitments.

* * * * *

(c) * * *

(2) The ratifying official has the authority to enter into a contractual commitment;

* * * * *

PART 33—PROTESTS, DISPUTES, AND APPEALS

3. Section 33.101 is amended by adding in alphabetical order the definitions ''Day'' and ''Filed'', and revising the definition ''Protest'' to read as follows:

33.101 Definitions.

Day, as used in this subpart, means a calendar day, unless otherwise specified. In the computation of any period—

(a) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(b) The last day after the act, event, or default is included unless—

(1) The last day is a Saturday, Sunday, or legal holiday; or

(2) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

(c) In the case of the 5-day period after a debriefing date and the 10-day period after contract award for filing a protest resulting in a suspension (as described at 33.104(c)), Saturdays, Sundays, and legal holidays shall be counted.

Filed, as used in this subpart, means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m., local time.

* * * * *

Protest, as used in this subpart, means a written objection by an interested party to any of the following:

(a) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(b) The cancellation of the solicitation or other request.

(c) An award or proposed award of the contract.

(d) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

4. Section 33.102 is amended by revising paragraph (a); redesignating paragraphs (b) and (c) as (c) and (e), respectively, and adding new paragraphs (b) and (d); and revising newly designated paragraphs (e)(2) and (e)(3) to read as follows:

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency, the General Accounting Office (GAO), or for automatic data processing acquisitions under 40 U.S.C. 759 (ADP contracts), the General Services Board of Contract Appeals (GSBCA or the Board). (See 19.302 for protests of small business status and 22.608–3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.)

(b) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the General Accounting Office; and

(2) Pay appropriate costs as stated in 33.104(h).

* * * * *

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in 33.104(c)(1) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) * * *

(2) May protest to the GAO in accordance with GAO regulations (4 CFR Part 21). An interested party who has filed a protest regarding an ADP procurement with the GAO may not file a protest with the GSBCA with respect to that procurement.

(3) May protest to the GSBCA regarding an award of an ADP contract in accordance with GSBCA Rules of Procedure (48 CFR Chapter 61). An interested party who has filed a protest regarding an ADP procurement with GSBCA (40 U.S.C. 759(f)) may not file a protest with the GAO with respect to that procurement.

5. Section 33.103 is amended in the first sentence of (b)(1) by removing ''or'' and inserting ''and'' in its place; revising the second and third sentences of (b)(2) and the second sentence in (b)(4); and adding (b)(5) to read as follows:

33.103 Protests to the agency.

* * * * *

(b) * * *

(2) * * * In all other cases, protests shall be filed not later than 14 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

* * * * *

(4) * * * Failure to substantially comply with any of the requirements of this paragraph (b) may be grounds for dismissal of the protest.

(5) The agency should furnish a copy of the written protest ruling to the protester by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

6. Section 33.104 is amended—

a. By revising the introductory text, paragraphs (a)(1), (a)(3), the first sentence of (a)(4)(i) introductory text, (a)(4)(ii) (A) and (B), (a)(5) introductory text, (a)(5) (i), (ii), and (iii), (a)(6), (c)(1), (c)(5), (e), (f), (g), and (h);

b. By removing from the first sentence of (a)(2) the words ''substantial and'';

c. By adding a sentence to the end of paragraph (a)(2)(ii); and

d. By removing from (b)(1)(ii) the word ''calendar''; and by removing the word ''protestor'' and inserting ''protester'' in (a)(4)(i) introductory text, (a)(4)(ii)(C), and (d), and by removing the word ''Protestor's'' in paragraph (a)(4)(i)(B) and adding ''Protester's'' in its place.

The revised and added text reads as follows:

33.104 Protests to GAO.

Procedures for protests to GAO are found at 4 CFR Part 21 (GAO Bid Protest Regulations). In the event guidance concerning GAO procedure in this section conflicts with 4 CFR Part 21, 4 CFR Part 21 governs.

(a) *General procedures.* (1) A protester is required to furnish a copy of its complete protest to the official and location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 day after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest within 1 day.

(2) * * *

(ii) * * * However, if the protester has identified sensitive information and requests a protective order, then the contracting officer shall obtain a redacted version from the protester to furnish to other interested parties, if one has not already been provided.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 35 days after the GAO notifies the agency by telephone that a protest has been filed, or within 20 days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) Advises the agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency's request for an extension. Any new date is documented in the agency's file.

(ii) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency

shall, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the protest file. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. Information exempt from disclosure under 5 U.S.C. 552 may be redacted from the protest file. The protest file shall be made available to non-intervening actual or prospective offerors within a reasonable time after submittal of an agency report to the GAO. The protest file shall include an index and as appropriate—

(A) The protest;

(B) The offer submitted by the protester;

(C) The offer being considered for award or being protested;

(D) All relevant evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions; and

(G) Any other documents that the agency determines are relevant to the protest, including documents specifically requested by the protester.

(iii) The agency report to the GAO shall include—

(A) A copy of the documents described in 33.104(a)(3)(ii);

(B) The contracting officer's signed statement of relevant facts and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest file that may be necessary to determine the merits of the protest;

(C) A list of the documents withheld from the protester, or intervenors, and the reasons for withholding them. The list identifies any documents specifically requested by, and withheld from, the protester; and

(D) A list of parties being provided the documents.

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protestor and any intervenors. * * *

* * * * *

(ii)(A) If the protester requests additional documents within 2 days after the protester knew the existence or relevance of additional documents, or should have known, the agency shall provide the requested documents to the GAO within 5 days of receipt of the request.

(B) The additional documents shall also be provided to the protester and other interested parties within this 5-day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order.

* * * * *

(5) The GAO may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties.

* * * * *

(6) The protester and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 14 days, or 7 days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 7 days after the hearing.

* * * * *

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by 15.1004, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c) (2) and (3) of this section.

* * * * *

(5) When the agency receives notice of a protest filed with the GAO after the dates contained in subparagraph (c)(1), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

* * * * *

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protester, or other interested party who has responded to the notice in paragraph (a)(2) of this section. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO. All parties may file comments on the hearing and report within 7 days of the hearing.

(f) *GAO decision time.* GAO issues its recommendation on a protest within 125 days from the date of filing of the protest with the GAO, or within 65 days under the express option. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.

(g) *Notice to GAO.* If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report the failure to the GAO not later than 5 days after the expiration of the 60-day period. The report shall explain the reasons why the GAO's recommendation, exclusive of costs, has not been followed by the agency.

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive

of profit, of filing and pursuing the protest, including reasonable attorney, consultant and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.

(2) If the GAO recommends the award of costs to an interested party, the agency shall attempt to reach an agreement on the amount of the cost to be paid. If the agency and the interested party are unable to agree on the amount to be paid, GAO may, upon request of the interested party, recommend to the agency the amount of cost that the agency should pay.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, ''Small business concern''), costs under paragraph (h)(2) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and Expert and Consultant Appointments, 60 FR 45649, September 1, 1995 (5 CFR 304.105); or

(ii) For attorneys' fees that exceed $150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a ''reasonable'' level for attorneys' fees for small businesses.

(4) A recommended award of costs may be paid by the agency from funds available to or for the use of the agency for the acquisition of supplies or services. Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs which have not yet been paid.

(5) If the GAO recommends that the agency pay costs (as defined in paragraph (h)(1) of this section) and the agency does not promptly pay the costs, the agency shall promptly report to GAO the reasons for the failure to follow the GAO recommendation.

(6) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government and those exclusions should be reflected in the cost agreement.

7. Section 33.105 is amended—

a. By adding an introductory paragraph;

b. By revising (a)(1) and the introductory text of (d)(1);

c. By removing from (a)(2)(i) ''working day'' and inserting ''work day'' in its place, from (a)(2)(ii) ''five working days'' and inserting ''3 work days''; from (b)(6) ''protestors'' and inserting ''protesters''; from (c) ''15'' and inserting ''10'', from (d)(1)(i) the word ''calendar'', and from (e) ''25 work days'' and ''45 work days'' and inserting ''35 days'' and ''65 days'', respectively;

d. By redesignating paragraphs (f) and (g) as (g) and (h), respectively, and revising the newly redesignated (g) and (h), and

f. By adding new paragraphs (d)(4) and (f).

The revised and added text reads as follows:

33.105 Protests to GSBCA.

Procedures for protests to the GSBCA, are found at 48 CFR Chapter 61 (GSBCA Rules). In the event guidance concerning GSBCA procedures in this subpart conflicts with 48 CFR Chapter 61, 48 CFR Chapter 61 governs.

(a)(1) Upon request of an interested party in connection with any procurement that is subject to Section 111 of the Federal Property and Administrative Services Act (40 U.S.C. 759), the GSBCA reviews any decision by the contracting officer that is alleged to violate a statute, a regulation, or the conditions of a delegation of procurement authority. ADP acquisition protests not covered under this section may not be heard by the GSBCA, but may be heard by the agency, the courts, or GAO. A protester shall furnish a copy of its complete protest to the official and location designated in the solicitation, or in the absence of such a designation, to the contracting officer on the same day the protest is filed with the GSBCA. Any request for a hearing on either a suspension of procurement authority or on the merits shall be in the protest.

* * * * *

(d)(1) If a protest contains a timely request for a suspension of procurement authority, the Board will hold a hearing, unless the agency does not contest an order suspending its procurement authority. A timely request for suspension of procurement authority is one that is filed before award, within 10 days of award, or within five days of the offered debriefing, when the debriefing is required by 15.1004, whichever applies. The Board suspends the procurement authority unless the agency establishes that—

* * * * *

(4) A suspension shall not preclude the agency concerned from continuing the procurement process up to, but not including, the award of the contract unless the Board determines the action is not in the best interests of the United States.

* * * * *

(f) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be made part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If an agency is party to a settlement agreement, the submission of the agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

(g)(1) The GSBCA may declare an appropriate prevailing party to be entitled to the cost, exclusive of profit, of—

(i) Filing and pursuing the protest, including reasonable attorney, consultant and expert witness fees; and

(ii) Bid and proposal preparation.

(2) Costs awarded under subparagraph (g)(1) of this section, or payments of amounts due under settlement agreements, shall be paid out in accordance with the procedures provided in 31 U.S.C. 1304 (the Permanent Indefinite Judgment Fund). The agency concerned shall reimburse that fund out of funds available for the procurement.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, ''Small business concern''), costs under paragraph (g)(1) of this section for—

(i) Consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and Expert and Consultant Appointments, 60 FR 45649, September 1, 1995 (5 CFR 304.105); or

(ii) Attorneys' fees that exceed $150 per hour, unless the Board determines, on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a ''reasonable'' level for attorneys' fees for small businesses.

(4) Within 30 days after receipt by the agency of an application for costs, the agency may file an answer.

(h) The GSBCA's final decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

8. Section 33.201 is amended by adding in alphabetical order definitions for ''Accrual of a claim'' and ''Alternative dispute resolution (ADR)'' removing the definition ''Alternative means of dispute resolution (ADR)''; and in the definition ''Claim'' by removing the amount ''$50,000'' and inserting ''$100,000'' in its place.

33.201 Definitions.

Accrual of a claim occurs on the date when all events, which fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

Alternative dispute resolution (ADR) means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures may include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

* * * * *

9. Section 33.206 is revised to read as follows:

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.

33.207 [Amended]

10. Section 33.207 is amended in paragraph (a)(1) by removing ''$50,000'' and inserting ''$100,000'' in its place.

33.208 [Amended]

11. Section 33.208 is amended in paragraph (c) by removing ''as defined in 33.201,''.

12. Section 33.211 is amended in paragraph (a)(4)(v) by removing ''$10,000'' and ''$50,000'' and inserting ''$50,000'' and ''$100,000'', respectively; in (c)(1), (c)(2) and (e) by removing ''$50,000'' and inserting ''$100,000'' in its place; and by revising paragraph (f) to read as follows:

33.211 Contracting officer's decision.

* * * * *

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period determined by the tribunal.

* * * * *

13. Section 33.214 is amended by redesignating paragraphs (b) through (d) as (c) through (e) and adding a new paragraph (b) to read as follows:

33.214 Alternative dispute resolution (ADR).

* * * * *

(b) If the contracting officer rejects a request for ADR from a small business contractor, the contracting officer shall provide the contractor written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

* * * * *

14. Subpart 42.16 is added to read as follows:

Subpart 42.16—Small Business Contract Administration

42.1601 General.

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30-day period, the contracting officer shall, within the period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

15. Section 50.303 is redesignated as 50.303–1 and a new 50.303 heading is added to read as follows:

50.303 Contract adjustment.

* * * * *

16. Section 50.303–2 is added to read as follows:

50.303–2 Contractor certification.

A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that (a) the request is made in good faith and (b) the supporting data are accurate and complete to the best of that person's knowledge and belief.

50.304, 50.305 & 50.306 [Amended]

17. Sections 50.304(a) introductory text, 50.305(a) and 50.306 introductory text are amended by removing the reference ''50.303'' and inserting ''50.303–1'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 52.233–1 is amended by revising the date of the clause, the third sentence in paragraph (c), and paragraphs (d)(1) and (g); in (d)(2)(i)(A) and twice in (e) by removing ''$50,000'' and inserting ''$100,000'' to read as follows:

52.233–1 Disputes.

* * * * *

Disputes (Oct 1995)

* * * * *

(c) * * * However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. * * *

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

* * * * *

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent,

may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575–580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

* * * * *

19. Section 52.233–2 is amended by revising the date of the clause and adding paragraph (c) to read as follows:

52.233–2 Service of Protest.

* * * * *

Service of Protest (Oct 1995)

* * * * *

(c) In this procurement, you may not protest to the GSBCA because of the nature of the supplies or services being procured. (*Contracting Officer shall strike the word ''not'' where the GSBCA is a correct forum.*)

(End of provision)

20. Section 52.233–3 is amended by revising the date of the clause and the first sentence of (a) to read as follows:

52.233–3 Protest after Award.

* * * * *

Protest After Award (Oct 1995)

* * * * *

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. * * *

* * * * *

[FR Doc. 95–22777 Filed 9–15–95; 8:45 am]

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48 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 31, 36, 42, 44, 46, 47, 49, 52, and 53

[FAC 90–32; FAR Case 94–790; Item III]

RIN 9000–AG38

Federal Acquisition Regulation; Acquisition of Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement the revised statutory authorities in Title VIII of the Act for the acquisition of commercial items and components by Federal Government agencies as well as contractors and subcontractors at all levels. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

Applicability date: For solicitations issued on or after October 1, 1995; use of the new policies, provisions and clauses is optional for solicitations issued before December 1, 1995, and mandatory for solicitations issued after December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Colonel Laurence M. Trowel, Commercial Item Team Leader, at (703) 695–3858 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–790.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. This notice announces revisions developed under FAR case 94–790, Acquisition of Commercial Items, which encourage the acquisition of commercial end items and components by Federal Government agencies as well as contractors and subcontractors at all levels. The most significant revisions are in the following FAR parts:

Part 2 has been amended to incorporated the definitions of ''commercial item,'' ''component,'' ''commercial component'' and ''nondevelopmental item'' from the Act with only minor revisions for clarification. The clause at 52.202–1, Definitions, has been similarly revised to make the definitions available to prime and subcontractors.

Part 10 has been completely revised to address market research. It contains some language taken from the current FAR Part 11. This new part establishes the requirement for market research as the first step in the acquisition process. Market research is an essential element in the later steps of describing the agency's need, developing the overall acquisition strategy and identifying terms and conditions unique to the item being acquired.

Part 11 has been completely revised to address the process of describing agency needs. It contains some of the language on specifications and standards formerly found in FAR Part 10, but takes a more streamlined approach. In addition, the revised Part 11 establishes the Government's order of precedence for requirements documents and addresses the concept of market acceptance contained in the Act. The revised Part 11 also contains coverage on Delivery or Performance Schedules, Liquidated Damages, Priorities and Allocations, and Variations in Quantity taken from the current Part 12 with only minor editorial revisions. The current Part 12 coverage on Suspension of Work, Stop Work Orders, and Government Delay of Work has been moved to Subpart 42.13 with only minor editorial revisions.

Part 12 has been completely revised to address the acquisition of commercial items. The Team created this entirely new coverage to address in one FAR part the policies for the acquisition of commercial items.

—Subpart 12.1 states that the policies in the revised Part 12 are applicable to all acquisitions of commercial items above the micro-purchase threshold. The requirements of other parts of the FAR apply to commercial items to the extent they are not inconsistent with Part 12;

—Subpart 12.2 identifies special requirements for the acquisition of commercial items. These requirements generally reflect the requirements of Title VIII.

—Subpart 12.3 establishes standard provisions and clauses for use in the acquisition of commercial items. This approach is essential to meet the requirements of the statute and provide contracting officers and industry with an easy to use, simplified method for acquiring commercial items. However, it is essential that contracting officers be allowed to tailor solicitations and contracts to meet the needs of the particular acquisition and the marketplace for that item. Subpart 12.3 gives contracting officers broad authority to tailor solicitations and contracts, a practice itself that is consistent with commercial practices. The Act requires that some limitations be placed on this authority to tailor, and that has also been accommodated in this subpart.

—A new form, the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, was established.

The SF 1449 combines features of the SF 33, Solicitation, Offer and Award; the SF 1447, Solicitation/Contract; and the DD 1155, Order for Supplies and Services. The most significant element is the addition of acceptance blocks at the bottom of the form (patterned after the DD Form 1155). This will allow suppliers of commercial items to utilize the SF 1449 to document receipt of the supplies or services by the government avoiding the need for preparation of separate receipt/acceptance forms.

—Subpart 12.5 identifies the applicability of certain laws to the acquisition of commercial items. This subpart is intended to meet the requirements of Section 8003(a) of the Act which requires that the FAR contain a list of laws determined to be inapplicable to prime contracts for commercial items.

—Section 12.503 contains the list of laws determined to be not applicable to executive agency prime contracts for acquisition of commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to commercial items. In each instance, the specific prescriptive language elsewhere in the FAR has been revised to reflect this modified applicability. FAR 12.503 only includes those laws that apply to prime contracts awarded by both DOD and civilian agencies. Agency unique laws determined to be not applicable to prime contracts are not addressed in this rule and may be addressed separately by the respective agencies.

—Section 12.504 contains the list of laws determined to be not applicable to subcontracts for commercial items. This list has been expanded to also include those laws that have been revised in some manner to modify their applicability to subcontracts for commercial items.

—Subpart 12.6 identifies two streamlined procedures for the evaluation and solicitation of contracts for commercial items. These procedures may be used at the discretion of the contracting officer.

Part 52 has been amended to include several new provisions and clauses to be inserted in all solicitations and contracts for the acquisition of commercial items:

—Section 52.212–1, Instructions to Offerors—Commercial Items, contains solicitation instructions unique to Government procurement and is based upon existing FAR language. The information has been simplified and tailored to meet the requirements of commercial items. For the most part, the simplified paragraphs in the new provision do not contain new concepts.

—Section 52.212–2, Evaluation—Commercial Items, contains evaluation information that has been simplified and tailored to meet the requirements of commercial items. Again, this provision does not contain new concepts and is generally based upon provisions prescribed in Parts 14 and 15. This provision may be used at the discretion of the contracting officer. It requires the contracting officer to establish specific evaluation factors and the relative order of importance for each acquisition.

—Section 52.212–3, Offeror Representations and Certifications—Commercial Items, includes the certifications and representations required to comply with laws or Executive orders. Instead of using the numerous certifications contained in the FAR, the Team drafted a single provision containing all the requirements that may apply to the acquisition of commercial items.

—Section 52.212–4, Contract Terms and Conditions—Commercial Items, contains the terms and conditions the Team believes are consistent with customary commercial practice by addressing general areas that previous studies have identified as the ‘‘core’’ areas covered by commercial contracts. Several concepts included in the clause at 52.212–4 represent significant changes from standard Government practices to commercial-like practices.

—Section 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive orders—Commercial Items, implements provisions of law or executive orders applicable to Government acquisitions of commercial items or commercial components. The Team believes the clause at 52.212–5 represents the minimum number of clauses required to implement statutes and Executive orders. Certain clauses may apply depending upon the circumstances; the contracting officer will indicate which of these clauses apply for the specific acquisition. In addition, this clause provides that the contractor is not required to include any FAR provision or clause in its subcontracts other than those listed in the clause as applying to subcontracts for commercial items.

—Section 52.244–6, Subcontracts for Commercial Items and Commercial Components, implements the preference for the acquisition of commercial items or nondevelopmental items as components of items to be supplied under Federal contracts. This clause will be inserted in all solicitations and contracts for supplies and services other than commercial items. It provides that the contractor is not required to include in its subcontracts for commercial items any FAR provision or clause, other than those listed in the clause.

B. Regulatory Flexibility Act

This final rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule will have this impact as a result of the following:

(1) It establishes a much broader definition of ‘‘commercial items’’ compared to the language of Part 11, it includes certain modifications to existing items, and includes certain commercial services. In all these cases, small business is very likely to benefit from this expanded definition;

(2) It establishes a requirement for conducting market research in certain circumstances before issuing solicitations which should benefit small business by ensuring the contracting activity has conducted sufficient research to be aware of the availability of commercial items and the practices used in the commercial marketplace to acquire them. The rule also cautions contracting officers not to request potential sources to submit more than the minimum information necessary as a part of market research.

(3) It establishes a preference for the acquisition of commercial items thereby enabling more small businesses that offer commercial items to participate in Government acquisition;

(4) It establishes a preference for stating Government requirements in terms of functions to be performed, performance required, or essential physical characteristics rather than detailed, Government-unique design specifications thereby allowing a broader range of products of small businesses to satisfy the Government need;

(5) It establishes the Government order of precedence for requirements documents emphasizing performance-oriented documents and nongovernment standards rather than Federal/Military-unique standards thereby allowing a broader range of small businesses to participate in Government acquisitions;

(6) It allows contracting officers the flexibility to use either the streamlined solicitation procedure in the revised Subpart 12.6 for acquiring commercial items, or the existing procedures in Parts 13, 14 or 15, as applicable, if they are more streamlined and beneficial, thereby allowing maximum flexibility for contracting with small businesses;

(7) It allows the use of the streamlined terms and conditions for acquiring commercial items for every acquisition above the micropurchase threshold thereby allowing the maximum number of small businesses to benefit from these procedures;

(8) It requires, except in unique circumstances, that the Government rely on the contractor's quality assurance system thereby allowing small businesses to utilize their own quality system when selling commercial items rather than a Government-specified system;

(9) It requires that, when acquiring commercial items, the contracting officer use the solicitation provisions and contract clauses specifically established for acquiring commercial items. The contracting officer may tailor those provisions and clauses when the customary practices in the market dictate the use of other terms and conditions or when a waiver is approved; and

(10) By significantly limiting the flow down of Government-unique terms and conditions to subcontractors at all levels thereby minimizing the burden on a significant number of small businesses.

A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Acquisition of Commercial Items was submitted to the Office of Management and Budget and approved through OMB Control No. 9000–0136. Public comments concerning this request were invited in a Federal Register notice at 60 FR 11219, March 1, 1995.

D. Public Comments

Title VIII of the Act makes significant statutory revisions to facilitate the acquisition of commercial items and components by Federal Government agencies, as well as contractors and subcontractors at all levels. This final rule incorporates revisions to two proposed rules resulting from a public meeting held on April 3, 1995, and written comments received in response to publication of the two proposed rules in the Federal Register. The first proposed rule was published in the Federal Register on March 1, 1995 (60 FR 11198), under FAR case 94–790. That proposed rule made changes throughout the FAR to incorporate provisions of Title VIII. The second proposed rule was published in the Federal Register on March 22, 1995 (60 FR 15220), under FAR case 94–791. That case contained the list of laws required by Section 8003(a) of the Act that were determined to be inapplicable to Executive agency contracts and subcontracts for commercial items. FAR case 94–791 also contained the list of contract clauses determined to be applicable to subcontracts for the acquisition of commercial items. On April 4, 1995, a correction to the proposed rule under FAR case 94–791 was published in the Federal Register (60 FR 17184), to correct section 52.212–5 to include access to contractor records by the Comptroller General of the United States for contracts awarded using other than sealed bidding in excess of the simplified acquisition threshold.

A total of 559 written comments were received on the proposed rule from 60 commentors. Each comment was analyzed by the Commercial Items Drafting Team and, where appropriate, changes were made in the proposed FAR language as reflected in this final rule. The comments largely fell in the following general areas:

1. Definitions of Commercial Items and Nondevelopmental Item

The language describing a ''minor'' modification was revised to clarify the intent. The revised language was drawn from a related Congressional report. The definition of nondevelopmental items was also clarified to alleviate confusion regarding what commentors identified as the ''circular logic'' of commercial items being a subset of nondevelopmental items, and certain nondevelopmental items being a subset of commercial items. The revision clarifies the distinction between commercial items and nondevelopmental items. Several commentors asked that specific examples of items that would be considered ''commercial'' be included in the definition. The Team rejected this suggestion citing the impossibility of developing examples that would adequately describe the range of commercial items the government might buy while not unnecessarily limiting the breadth of the definition.

2. Decision to Utilize Commercial Items Authority

Several commentors expressed confusion over how the Government would decide when the commercial items authorities in Part 12 could be used. FAR 10.002 was revised to include language explaining the decision process that would follow the completion of market research.

3. Market Acceptance

Several commentors were concerned with the lack of sufficient guidance on market acceptance. Several changes were made in an effort to balance the concerns expressed by the public and those expressed by Government agencies. The final rule clarifies the circumstances where market acceptance may be appropriate, cautions that it is not appropriate when new or evolving commercial items may meet the agency's needs, and contains guidance on developing criteria for demonstrating market acceptance.

4. Relationship of Part 12 to Other FAR Parts

Several commentors expressed confusion over the relationship of Part 12 to other Parts, especially Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; and Part 15, Contracting By Negotiation. FAR 12.203 was revised to clarify that Part 12 contains unique policies for the acquisition of commercial items. These unique policies are intended to be used in conjunction with the existing procedures contained in Parts 13, 14, and 15 for the solicitation, evaluation, and award of contracts, purchase orders and other instruments. Part 12 will take precedence over other FAR parts only where the policies in those parts are inconsistent.

5. Use of the Standard Form (SF) 1449

Several commentors questioned the rationale for requiring the use of the new SF 1449 for all acquisitions of commercial items. The SF 1449 was specifically developed in conjunction with the provisions and clauses developed for the acquisition of commercial items. The SF 1449 and the prescribed provisions and clauses are designed to complement each other in several respects. Forms currently prescribed in the FAR contain references to FAR provisions and clauses that are not used for commercial items, and references to the Uniform

Contract Format, also not used for acquiring commercial items. Finally, the use of a single form throughout the Federal Government for all acquisitions of commercial items will aid those offerors that will, as a result of the publication of this rule, seek to do business with the Federal Government.

6. Quality Assurance

Several commentors questioned the intent of the language regarding the reliance on contractors' existing quality assurance systems. The rule has been revised to clarify that where buyer in-process inspection is a customary practice, any Government inprocess inspection shall be conducted in a manner consistent with commercial practice.

7. Commercial Item Pricing

Commentors suggested that Part 12 should discuss the techniques for pricing commercial items. The policies and procedures for determining the price reasonableness of commercial items are contained in Subpart 15.8 and the Team did not want to conflict with those policies. However, a brief summary of pricing considerations used when contracting by negotiation under Part 15 has been included in Part 12.

8. Technical Data and Computer Software

In response to numerous comments on technical data and computer software, the final rule has been revised. The subpart on technical data has been revised to cover the general principle that the Government will acquire only technical data customarily provided to the public, except as provided by agency-specific statutes. The technical data subpart references FAR Part 27 and agency supplements, where detailed rules implementing the technical data statutes can be found. A new section on computer software was added to require that commercial computer software be acquired under licenses customarily provided to the public to the extent those licenses are consistent with Federal procurement law.

9. Discretionary Use of FAR Provisions and Clauses

Several commentors asked if existing FAR provisions and clauses could be used if needed. Guidance concerning the discretionary use of other FAR clauses, consistent with market research and customary commercial practice, has been provided in the final rule. Specific examples of FAR clauses that may be appropriate for use include clauses for ordering procedures for indefinite delivery contracts and option exercise.

10. Tailoring of Provisions and Clauses

Additional guidance concerning contracting officer authority to tailor Part 12 clauses, consistent with customary commercial market practices, has also been provided. Specific paragraphs of the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, that are based in statute and may not be tailored, have been identified.

11. Unique Requirements Regarding Terms and Conditions for Commercial Items.

Many commentors from both industry and Government noted that the new terms and conditions prescribed for commercial items are significantly different than the existing FAR provisions and clauses. In response to the numerous questions and concerns, the Team expanded the discussion in the proposed rule describing the key features of these unique provisions and clauses.

12. Laws Inapplicable to Contractors and Subcontractors

The language describing the laws determined inapplicable to prime and subcontractors has been revised to clarify several areas of confusion. In addition, the Service Contract Act (SCA) was added to the list of laws inapplicable to subcontractors. The proposed rule clearly did not call out the SCA for flow down to subcontractors in paragraph (e) of the clause at 52.212–5, but inadvertently omitted the law from the list of laws inapplicable to subcontractors. Finally, as indicated in the March 22, 1995, Federal Register notice, the DOD-unique laws identified in the proposed rule have been removed from the FAR rule and will appear in the DOD FAR Supplement (DFARS) coverage.

13. Certification Regarding Debarment and Suspension

A certification regarding an offeror's debarment, suspension or ineligibility for award was added to the provision at 52.212–3 to implement the requirements of Executive Order 12549.

14. Acceptance and Warranties

The language concerning acceptance and warranties in the clause at 52.212–4 was revised to incorporate the acceptance principles found in the Uniform Commercial Code. It was also revised to establish the implied warranties of merchantability and fitness for a particular purpose as the Government's minimum warranties. Corresponding guidance is provided in Part 12 on evaluating and incorporating express warranties, which may overcome the implied warranties, and ensuring any express warranty and the acceptance terms of the contract are consistent with the concepts contained in the rule.

15. Terminations

Guidance on procedures for contract terminations, reflecting the language in the clause at 52.212–4, has been provided in FAR Part 12. In addition, language has been included to clarify that negotiation of termination charges in terminations for the Government's convenience does not require government unique record keeping, compliance with the cost accounting standards or the contract cost principles.

16. Limitation of Liability

The limitation of contractor liability language, which appeared in the proposed rule in the ''Warranty'' paragraph of the clause at 52.212–4, has been moved to a separate paragraph to clarify that the limitation does not apply solely to liability relating to any warranty.

17. Subcontracting Plans

The requirement for Small, Small Disadvantaged and Women Owned Small Business Subcontracting Plans was included in the clause at 52.212–5 after it was determined that there was no exemption from this requirement for commercial items. However, in this regard, the Office of Procurement Policy (OFPP) is preparing to issue Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items. This Policy Letter states that when a subcontracting plan is required, annual commercial subcontracting plans that relate to the company's commercial and noncommercial production are authorized and preferred for (1) prime contracts for commercial items; or (2) subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item. The policy revisions contained in Policy Letter 95–1 will be incorporated into the FAR by a separate FAR case.

18. Other Revisions to the Proposed Rule

Numerous other revisions were made to the proposed rule to correct inconsistencies, clarify intent, improve editorial clarity and to bring the language of the case up to the latest FAR baseline through FAC 90–31.

List of Subjects in 48 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 31, 36, 42, 44, 46, 47, 49, 52 and 53

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 31, 36, 42, 44, 46, 47, 49, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 22, 23, 31, 36, 42, 44, 46, 47, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.101 is amended by adding in alphabetical order the definitions ''Commercial component'', ''Commercial item'', ''Component'', ''Market research'', and ''Nondevelopmental item'' to read as follows:

2.101 Definitions.

* * * * *

Commercial component means any component that is a commercial item.

Commercial item means—

(a) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(1) Has been sold, leased, or licensed to the general public; or,

(2) Has been offered for sale, lease, or license to the general public;

(b) Any item that evolved from an item described in paragraph (a) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(c) Any item that would satisfy a criterion expressed in paragraphs (a) or (b) of this definition, but for—

(1) Modifications of a type customarily available in the commercial marketplace; or

(2) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. ''Minor'' modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(d) Any combination of items meeting the requirements of paragraphs (a), (b), (c), or (e) of this definition that are of a type customarily combined and sold in combination to the general public;

(e) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (a), (b), (c), or (d) of this definition, and if the source of such services—

(1) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(2) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(f) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(g) Any item, combination of items, or service referred to in paragraphs (a) through (f), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(h) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

Component means any item supplied to the Federal Government as part of an end item or of another component.

* * * * *

Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs.

* * * * *

Nondevelopmental item means—

(a) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(b) Any item described in paragraph (a) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(c) Any item of supply being produced that does not meet the requirements of paragraph (a) or (b) solely because the item is not yet in use.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.404 is amended by removing ''or'' from the end of paragraph (b)(4); by redesignating paragraph (b)(5) as (b)(6) and adding a new paragraph (b)(5); and by revising paragraph (c) to read as follows:

3.404 Solicitation provision and contract clause.

* * * * *

(b) * * *

(5) The solicitation is for a commercial item (see parts 2 and 12); or

* * * * *

(c) The contracting officer shall insert the clause at 52.203–5, Covenant Against Contingent Fees, in solicitations and contracts exceeding the simplified acquisition threshold in part 13 other than those for commercial items (see Parts 2 and 12).

4. Section 3.502–2 is amended by revising the introductory text of paragraph (i) to read as follows:

3.502–2 General.

* * * * *

(i) Requires each contracting agency to include in each prime contract, except contracts for commercial items (see part 12), a requirement that the prime contractor shall—

* * * * *

5. Section 3.502–3 is revised to read as follows:

3.502–3 Contract clause.

The contracting officer shall insert the clause at 52.203–7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold in part 13, other than those for commercial items (see part 12).

6. Section 3.503–2 is revised to read as follows:

3.503–2 Contract clause.

The contracting officer shall insert the clause at 52.203–6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold in

part 13. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.

PART 5—PUBLICIZING CONTRACT ACTIONS

7. Section 5.203 is amended by revising paragraphs (a), (b), and (c) to read as follows:

5.203 Publicizing and response time.

* * * * *

(a) A notice of contract action shall be published in the CBD at least 15 days before issuance of a solicitation except when the combined CBD synopsis/solicitation procedure for acquisition of commercial items is used (see 12.603).

(b) The contracting officer shall establish a solicitation response time which will afford potential offerors a reasonable opportunity to respond for (1) each contract action, including actions via FACNET, in an amount estimated to be greater than $25,000, but not greater than the simplified acquisition threshold; or (2) each contract action for the acquisition of commercial items in an amount estimated to be greater than $25,000 (see part 12). The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

(c) Except for the acquisition of commercial items (see 5.203(b)), agencies shall allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the contract action is expected to exceed the simplified acquisition threshold.

* * * * *

8. Section 5.207 is amended by adding paragraph (e)(4) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(e) * * *

(4) If, under the proposed acquisition, the Government does not intend to acquire a commercial item using part 12, the synopsis shall refer to Numbered Note 26.

* * * * *

PART 6—COMPETITION REQUIREMENTS

9. Section 6.303–2 is amended by revising paragraph (a)(8) to read as follows:

6.303–2 Content.

(a) * * *

(8) A description of the market research conducted (see part 10) and the results or a statement of the reason market research was not conducted.

* * * * *

10. Section 6.502 is revised to read as follows:

6.502 Duties and responsibilities.

(a) Agency and procuring activity competition advocates are responsible for promoting the acquisition of commercial items, promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

(b) Agency competition advocates shall—

(1) Review the contracting operations of the agency and identify and report to the agency senior procurement executive—

(i) Opportunities and actions taken to acquire commercial items to meet the needs of the agency;

(ii) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency;

(iii) Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;

(iv) Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contracting actions of the agency;

(2) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing—

(i) Such advocate's activities under this subpart;

(ii) New initiatives required to increase the acquisition of commercial items;

(iii) New initiatives required to increase competition;

(iv) New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;

(v) Any barriers to the acquisition of commercial items or competition that remain; and

(vi) Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research;

(3) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

(4) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

PART 7—ACQUISITION PLANNING

7.101 [Amended]

11. Section 7.101 is amended by removing the definition ''Market survey''.

12. Section 7.102 is revised to read as follows:

7.102 Policy.

(a) Agencies shall perform acquisition planning and conduct market research (see part 10) for all acquisitions in order to promote and provide for—

(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq.*); and

(2) Full and open competition (see part 6) or, when full and open competition is not required in accordance with part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1)).

(b) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

13. Section 7.103 is amended by revising paragraph (b); and in paragraph (m) by removing ''10.002(c)'' and inserting ''11.001(b)'' to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available,

nondevelopmental items in response to agency solicitations (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq.*); and

* * * * *

14. Section 7.105 is amended in paragraph (a)(5) by removing ''subpart 12.1'' and inserting ''subpart 11.4'' in its place; in paragraph (a)(8)(iii) by removing the parenthetical ''(see 10.002(c))''; by revising paragraph (b)(1); in paragraph (b)(6) by removing ''part 10'' and inserting ''part 11'' in its place; in paragraph (b)(7) by removing ''subpart 12.3'' and inserting ''subpart 11.6'' in its place; and by revising paragraph (b)(12)(i) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action*—(1) *Sources.* Indicate the prospective sources of supplies and/or services that can meet the need. Consider required sources of supplies or services (see part 8). Include consideration of small business, small disadvantaged business, and women-owned small business concerns (see part 19). Address the extent and results of the market research and indicate their impact on the various elements of the plan (see part 10).

* * * * *

(12) * * *

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see subpart 7.3) and distribution of commercial items;

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.1104 [Amended]

15. Section 8.1104 is amended in paragraph (e)(1) by removing ''52.212–9'' and inserting ''52.211–16'' in its place.

PART 9—CONTRACTOR QUALIFICATIONS

16. Section 9.106–1 is amended by revising paragraph (a) to read as follows:

9.106–1 Conditions for preaward surveys.

(a) A preaward survey is normally required when the information on hand or readily available to the contracting officer is not sufficient to make a determination regarding responsibility. However, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

* * * * *

17. Section 9.306 is amended in the introductory text of paragraph (f) by revising the parenthetical to read ''(see 11.404)''.

18. Section 9.405–2 is amended by revising the second sentence of paragraph (b) introductory text to read as follows:

9.405–2 Restrictions on subcontracting.

* * * * *

(b) * * * By operation of the clause at 52.209–6, Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment, contractors shall not enter into any subcontract in excess of $25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *

* * * * *

19. Part 10 is revised to read as follows:

PART 10—MARKET RESEARCH

Sec.
10.000 Scope of part.
10.001 Policy.
10.002 Procedures.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements requirements of 41 U.S.C. 253a(a)(1), 41 U.S.C 264b, and 10 U.S.C. 2377.

10.001 Policy.

(a) Agencies shall—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items which meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold; and

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost; and

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as terms for warranties, buyer financing, maintenance and packaging, and marking; and

(v) Ensure maximum practicable use of recovered materials (see subpart 23.4) and promote energy conservation and efficiency.

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial items or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information specific to the item being acquired and should include—

(i) Whether the Government's needs can be met by—

(A) Items of a type customarily available in the commercial marketplace;

(B) Items of a type customarily available in the commercial marketplace with modifications; or

(C) Items used exclusively for governmental purposes;

(ii) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs;

(iii) Customary practices, including warranty, buyer financing, discounts, etc., under which commercial sales of the products are made;

(iv) The requirements of any laws and regulations unique to the item being acquired;

(v) The availability of items that contain recovered materials and items that are energy efficient;

(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and

(vii) Size and status of potential sources (see part 19).

(2) Techniques for conducting market research may include any or all of the following:

(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.

(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

(iv) Querying Government data bases that provide information relevant to agency acquisitions.

(v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.

(vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.

(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

(c) If market research indicates commercial or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with 10.001(a)(3)(ii) and determine whether the need can be restated to permit commercial or nondevelopmental items to satisfy the agency's needs.

(d)(1) If market research establishes that the Government's need may be met by a type of item or service customarily available in the commercial marketplace that would meet the definition of a commercial item at subpart 2.1, the contracting officer shall solicit and award any resultant contract using the policies and procedures in part 12.

(2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, part 12 shall not be used. When publication of the notice at 5.201 is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use part 12 for the acquisition (see 5.207(e)(4)).

(e) Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

20. Part 11 is revised to read as follows:

PART 11—DESCRIBING AGENCY NEEDS

Sec.
11.000 Scope of part.
11.001 Definitions.
11.002 Policy.

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.
11.102 Standardization program.
11.103 Market acceptance.
11.104 Items peculiar to one manufacturer.

Subpart 11.2—Using and Maintaining Requirements Documents

11.201 Identification and availability of specifications.
11.202 Maintenance of standardization documents.
11.203 Customer satisfaction.
11.204 Solicitation provisions and contract clauses.

Subpart 11.3—Acquiring Other Than New Material, Former Government Surplus Property and Residual Inventory

11.301 Policy.
11.302 Solicitation provisions and contract clauses.

Subpart 11.4—Delivery or Performance Schedules

11.401 General.
11.402 Factors to consider in establishing schedules.
11.403 Supplies or services.
11.404 Contract clauses.

Subpart 11.5—Liquidated Damages

11.501 General.
11.502 Policy.
11.503 Procedures.
11.504 Contract clauses.

Subpart 11.6—Priorities and Allocations

11.600 Scope of part.
11.601 Definitions.
11.602 General.
11.603 Procedures.
11.604 Solicitation provisions and contract clauses.

Subpart 11.7—Variation in Quantity

11.701 Supply contracts.
11.702 Construction contracts.
11.703 Contract clauses.

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

Material, as used in this part, includes, but is not limited to, raw material, parts, items, components, and end products.

New, as used in this part, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

Other than new, as used in this part, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

Reconditioned, as used in this part, means restored to an earlier normal operating condition by readjustments and replacement of parts.

Remanufactured, as used in this part, means factory rebuilt to new equipment performance specification and unused subsequent to rebuilding.

11.002 Policy.

(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1), 10 U.S.C. 2377, 41 U.S.C. 253a(a), and 41 U.S.C. 264b, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see part 6), with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial

items suitable to meet the agency's needs are not available, nondevelopmental items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

(d) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), as amended, and Executive Order 12873, dated October 20, 1993, establish requirements for the procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services. Requiring activities shall prepare plans, drawings, specifications, standards (including voluntary standards), and purchase descriptions that consider the requirements set forth in part 23.

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.

(a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

(1) Documents mandated for use by law.

(2) Performance-oriented documents.

(3) Detailed design-oriented documents.

(4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

(b) Agencies should prepare product descriptions to achieve maximum practicable use of recovered material and other materials that are environmentally preferable (see subparts 23.4 and 23.7).

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual and, for DOD components, DOD 4120.3–M, Defense Standardization Program Policies and Procedures. The Federal Standardization Manual may be obtained from General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407. DOD 4120.3–M may be obtained from DOD Single Stock Point, Standardization Document Order Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094.

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103–355 provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

(1) Have either—

(i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

(1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;

(2) Relate to an item's performance and intended use, not an offeror's capability;

(3) Are supported by market research;

(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and

(5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government's requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to—

(1) Describe the circumstances justifying the use of commercial market acceptance criteria; and

(2) Support the specific criteria being used.

11.104 Items peculiar to one manufacturer.

Agency requirements shall not be written so as to require a particular brand-name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(a) The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or can not be modified to meet, the agency's minimum needs; and

(b) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1).

Subpart 11.2—Using and Maintaining Requirements Documents

11.201 Identification and availability of specifications.

(a) Solicitations citing requirements documents listed in the General Services Administration (GSA) Index of Federal Specifications, Standards and Commercial Item Descriptions, the DoD Index of Specifications and Standards (DoDISS), or other agency index shall identify each document's approval date and the dates of any applicable amendments and revisions. Do not use general identification references, such as ''the issue in effect on the date of the solicitation.'' Contracting offices will not normally furnish these cited documents with the solicitation, except when—

(1) The requirements document must be furnished with the solicitation to

enable prospective contractors to make a competent evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the documents in reasonable time to respond to the solicitation; or

(3) A prospective contractor requests a copy of a Government promulgated requirements document.

(b) Contracting offices shall clearly identify in the solicitation any pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DoDISS. Such documents shall be furnished with the solicitation or specific instructions shall be furnished for obtaining or examining such documents.

(c) When documents refer to other documents, such references shall

(1) Be restricted to documents, or appropriate portions of documents, that apply in the acquisition;

(2) Cite the extent of their applicability;

(3) Not conflict with other documents and provisions of the solicitation; and

(4) Identify all applicable first tier references.

(d) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the General Services Administration, Federal Supply Service Bureau, Specification Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407, telephone (202) 755–0325/0326. The DoDISS may be purchased from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094, telephone (215) 697–2569.

(e) Agencies may generally obtain from the GSA Specification Section or the DOD Standardization Documents Desk those nongovernment (voluntary) standards adopted for use by Federal or Defense activities. Standards not available from these sources may be obtained from Government libraries, activities subscribing to document handling services or the organization responsible for the preparation, publication or maintenance of the standard.

11.202 Maintenance of standardization documents.

(a) Recommendations for changes to standardization documents listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions should be submitted to the General Services Administration, Federal Supply Service, Office of Acquisition, Washington, DC 20406. Agencies shall submit recommendations for changes to standardization documents listed in the DoDISS to the cognizant preparing activity.

(b) When an agency cites an existing standardization document but modifies it to meet its needs, the agency shall follow the guidance in Federal Standardization Manual and, for Defense components, DoD 4120.3–M, Defense Standardization Program Policies and Procedures.

11.203 Customer satisfaction.

Acquisition organizations shall communicate with customers to determine how well the requirements document reflects the customer's needs and to obtain suggestions for corrective actions. Whenever practicable, the agency may provide affected industry an opportunity to comment on the requirements documents.

11.204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.211–1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that

(1) Are issued by civilian agency contracting offices and

(2) Cite specifications listed in the Index that are not furnished with the solicitation.

(b) The contracting officer shall insert the provision at 52.211–2, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS), in solicitations that

(1) Are issued by DoD contracting offices and

(2) Cite specifications listed in the DoDISS that are not furnished with the solicitation.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.211–3, Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are not furnished with the solicitation, but may be obtained from a designated source.

(d) The contracting officer shall insert a provision substantially the same as the provision at 52.211–4, Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are available for examination at a specified location.

Subpart 11.3—Acquiring Other Than New Material, Former Government Surplus Property, and Residual Inventory

11.301 Policy.

(a) Agencies shall allow offers of other than new material, former Government surplus property, or residual inventory unless it is determined that such materials are unacceptable. When acquiring commercial items, the contracting officer should consider the customary practice in the industry for the item being acquired. When only new material is acceptable, the solicitation shall clearly identify the material that must be new. Offerors providing other than new material shall be required to comply with the clause at 52.211–5, New Material, the provision at 52.211–6, Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property, and the clause at 52.211–7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, as appropriate.

(b) Agencies shall specify products, including packaging, that contain the highest practicable percentage of recovered and environmentally preferable materials, and where applicable, post-consumer material, consistent with performance requirements, availability, price reasonableness, and cost-effectiveness.

(c) Contracting officers shall consider the following when determining whether other than new materials, former Government surplus property, or residual inventory are acceptable:

(1) Safety of persons or property.

(2) Specification and performance requirements.

(3) Price reasonableness.

(4) Total cost to the Government (including maintenance, inspection, testing, and useful life).

(d) When a contract calls for material to be furnished at cost, the allowable charge for former Government surplus property shall not exceed the cost at which the contractor acquired the property.

11.302 Solicitation provisions and contract clauses.

(a) The contracting officer may insert the clause at 52.211–5, New Material, in solicitations and contracts for supplies. The clause shall not be used if it would be contrary to customary commercial practices for the item being acquired.

(b) The contracting officer shall insert the provision at 52.211–6, Listing of Other Than New Material, Residual Inventory, and Former Government

Surplus Property, in solicitations containing the clause at 52.211–5.

(c) The contracting officer shall insert the clause at 52.211–7, Other Than New Material, Residual Inventory, and Former Government Surplus Property, in contracts containing the clause at 52.211–5.

Subpart 11.4—[Redesignated from 12.1]

21. and 22. Subpart 11.4 is redesignated from Subpart 12.1 and sections 12.101 through 12.104 are redesignated as sections 11.401 through 11.404, respectively.

23. Newly redesignated section 11.401 is amended in paragraph (a) by revising the last sentence; and in the parenthetical of paragraph (c) by removing ''Subpart 12.2'' and inserting ''Subpart 11.5''. The revised text reads as follows:

11.401 General.

(a) * * * Schedules that are unnecessarily short or difficult to attain

(1) Tend to restrict competition,

(2) Are inconsistent with small business policies, and

(3) May result in higher contract prices.

* * * * *

24. Newly redesignated section 11.402 is amended by revising paragraphs (a) (2) and (5) to read as follows:

11.402 Factors to consider in establishing schedules.

(a) * * *

(2) Industry practices;

* * * * *

(5) Production time;

* * * * *

11.404 [Amended]

25. Newly redesignated section 11.404 is amended in paragraph (a)(2) by removing ''52.212–1'' and inserting ''52.211–8''; in paragraph (a)(3) by removing ''52.212–2'' and inserting ''52.211–9''; and in paragraph (b) by removing ''52.212–3'' and inserting ''52.211–10''.

Subpart 11.5—[Redesignated From Subpart 12.2]

26. Subpart 11.5 is redesignated from Subpart 12.2 and sections 11.501 through 11.504 are redesignated from sections 12.201 through 12.204, respectively.

11.504 [Amended]

27. Newly designated 11.504 is amended in paragraph (a) by removing ''52.212–4'' and inserting ''52.211–11''; in paragraph (b) by removing ''52.212–5'' and inserting ''52.211–12''; and in paragraph (c) by removing ''52.212–6'' and ''52.212–5'' and inserting ''52.211–13'' and ''52.211–12'', respectively.

Subpart 11.6 [Redesignated From 12.3]

28. Subpart 11.6 is redesignated from Subpart 12.3 and sections 11.600 through 11.604 are redesignated from sections 12.300 through 12.304, respectively.

11.604 [Amended]

29. Newly redesignated section 11.604 is amended in paragraph (a) by removing ''52.212–7'' and inserting ''52.211–14''; and in paragraph (b) by removing ''52.212–8'' and inserting ''52.211–15''.

Subpart 11.7—[Redesignated From 12.4]

30. Subpart 11.7 is redesignated from Subpart 12.4 and sections 11.701 through 11.703 are redesignated from 12.401 through 12.403, respectively.

11.703 [Amended]

31. Newly redesignated section 11.703 is amended in paragraph (a) by removing ''52.212–9'' and inserting ''52.211–16''; in paragraph (b) by removing ''52.212–10'' and inserting ''52.211–17''; and in paragraph (c) by removing ''52.212–11'' and inserting ''52.211–18''.

32. Subpart 12.5 is redesignated as Subpart 42.13 and sections 12.501 through 12.505 are redesignated as sections 42.1301 through 42.1305, respectively.

33. Part 12 is revised to read as follows:

PART 12—ACQUISITION OF COMMERCIAL ITEMS

Sec.
12.000 Scope of part.
12.001 Definition.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.
12.102 Applicability.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.
12.202 Market research and description of agency need.
12.203 Procedures for solicitation, evaluation, and award.
12.204 Solicitation/contract form.
12.205 Offers.
12.206 Use of past performance.
12.207 Contract type.
12.208 Contract quality assurance.
12.209 Pricing of commercial items when contracting by negotiation.
12.210 Contract financing.
12.211 Technical data.
12.212 Computer software.
12.213 Other customary commercial practices.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.
12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.
12.302 Tailoring of provisions and clauses for the acquisition of commercial items.
12.303 Contract format.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.
12.402 Acceptance.
12.403 Termination.
12.404 Warranties.

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.
12.501 Applicability.
12.502 Procedures.
12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.
12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

12.601 General.
12.602 Streamlined evaluation of offers.
12.603 Streamlined solicitation for commercial items.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

12.001 Definition.

Subcontract, as used in this part, includes, but is not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

Subpart 12.1—Acquisition of Commercial Items— General

12.101 Policy.

Agencies shall—

(a) Conduct market research to determine whether commercial items or

nondevelopmental items are available that could meet the agency's requirements;

(b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

12.102 Applicability.

(a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at section 2.101.

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of this chapter. When a policy in another part of this chapter is inconsistent with a policy in this part, this part 12 shall take precedence for the acquisition of commercial items.

(d) This part shall not apply to the acquisition of commercial items—

(1) At or below the micro-purchase threshold (see subpart 13.6);

(2) Using the SF 44 (see section 13.505–3);

(3) Using the imprest fund (see subpart 13.4); or

(4) Using the Governmentwide commercial purchase card (see subpart 13.6).

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

Public Law 103–355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

12.202 Market research and description of agency need.

(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services to offer. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's need in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

12.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in 12.603.

12.204 Solicitation/contract form.

The Standard Form 1449, Solicitation/Contract/Order for Commercial Items, shall be used by the contracting officer when issuing written solicitations and awarding contracts and placing orders for commercial items. This form contains the information necessary for solicitations and contracts. The form may also be used for documenting receipt, inspection and acceptance of commercial items. Other forms shall not be used for solicitation or award of contracts or orders for the acquisition of commercial items.

12.205 Offers.

(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Contracting officers may, considering the circumstances described in 5.203(b), allow fewer than 30 days response time for receipt of offers for commercial items.

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in subpart 9.1, section 13.106–1, or subpart 15.6, as applicable.

12.207 Contract type.

Agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery contracts (see subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with economic price adjustment. Use of any other contract type to acquire commercial items is prohibited.

12.208 Contract quality assurance.

Contracts for commercial items shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

12.209 Pricing of commercial items when contracting by negotiation.

(a) When contracting by negotiation for commercial items, the policies and procedures in part 15 shall be used to establish the reasonableness of prices.

(b) The provisions and clauses prescribed in this part for the acquisition of commercial items do not include the provisions and clauses prescribed in part 15 because they assume prices for commercial items will either

(1) Not be subject to the Truth in Negotiations Act because the contract

price is below the dollar threshold for application of the Act; or

(2) Be based upon one of the exceptions to cost or pricing data requirements contained in 15.804–1(a)(1).

(c) If the contracting officer determines it is appropriate to use the commercial item exception to cost or pricing data requirements (see 15.804–1(a)(2)), the provisions and clauses prescribed in 15.804–8 and 15.106 for this purpose shall be inserted in an addendum to the solicitation and contract.

(d) If the contracting officer is required to obtain cost or pricing data (see 15.804–1(b)(4) and 15.804–2), the provisions and clauses prescribed in 15.804–8 and 15.106 for this purpose shall be inserted in an addendum to the solicitation and contract.

(e) When a contract is priced using the exceptions at 15.804–1(a)(1), no cost or pricing data may be obtained for modifications unless the proposed modification would change the contract from a contract for a commercial item to a contract for other than a commercial item (see 15.804–1(b)(6)). If the exceptions at 15.804–1(a)(1) are not used, the contracting officer may be required to obtain cost or pricing data to determine the reasonableness of prices for subsequent modifications (see 15.804–2(a)(1)) and the contracting officer shall insert the provisions and clauses prescribed for this purpose in an addendum to the solicitation and contract.

12.210 Contract financing.

Customary market practice for some commercial items may include buyer contract financing. The contracting officer may offer Government financing in accordance with the policies and procedures in part 32.

12.211 Technical data.

Except as provided by agency-specific statutes, the Government shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see part 27 or agency FAR supplements).

12.212 Computer software.

(a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

(b) With regard to commercial computer software and commercial computer software documentation, the Government shall have only those rights specified in the license contained in any addendum to the contract.

12.213 Other customary commercial practices.

It is customary practice in the commercial marketplace for both the buyer and seller to propose terms and conditions for a given transaction, each written from their particular perspectives. The terms and conditions prescribed in this part 12 seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other customary commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or executive order.

Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with Section 8002 of Public Law 103–355 (41 U.S.C 264, note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) To implement this Act, the contracting officer shall insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) The provision at 52.212–1, Instructions to Offerors—Commercial Items. This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 26, SF 1449). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with 12.302;

(2) The provision at 52.212–3, Offeror Representations and Certifications—Commercial Items. This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4;

(3) The clause at 52.212–4, Contract Terms and Conditions—Commercial Items. This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 26, SF 1449). The contracting officer may tailor this clause in accordance with 12.302; and

(4) The clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.2125(b) or (c) are applicable to the specific acquisition. When cost information is obtained pursuant to part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at 52.212–2, Evaluation— Commercial Items, in solicitations for commercial items (see 12.602); or

(2) Include a similar provision containing all evaluation factors required by section 13.106–1, Subpart 14.2 or subpart 15.6, as an addendum (see 12.302(d)).

(d) *Use of required provisions and clauses.* Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in 12.302. For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at 16.505 may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in 17.208 may be used for this purpose. If the provision at 52.212–2 is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in part 23 regarding the use of recovered material when appropriate for the item being acquired.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, customary commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in customary commercial practices across markets and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212–1, Instructions to Offerors—Commercial Items, and the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring 52.212–4, Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

(1) Assignments;

(2) Disputes;

(3) Payment;

(4) Invoice;

(5) Other compliances; and

(6) Compliance with laws unique to Government contracts.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 26 of the SF 1449 if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the SF 1449; a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the SF 1449; any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this part 12 shall be assembled, to the maximum extent practicable, using the following format:

(a) Standard Form (SF) 1449;

(b) Continuation of any block from SF 1449, such as—

(1) Block 10 if set-aside for emerging small businesses;

(2) Block 16B for remittance address;

(3) Block 18 for contract line item numbers;

(4) Block 19 for schedule of supplies/services; or

(5) Block 24 for accounting data;

(c) Contract clauses—

(1) 52.212–4, Contract Terms and Conditions—Commercial Items, by reference (see SF 1449, Block 26);

(2) Any addendum to 52.212–4; and

(3) 52.212–5, Contract Terms and Conditions Required to Implement Statutes and Executive Orders;

(d) Any contract documents, exhibits or attachments; and

(e) Solicitation provisions—

(1) 52.212–1, Instructions to Offerors—Commercial Items, by reference (see SF 1449, Block 26);

(2) Any addendum to 52.212–1;

(3) 52.212–2, Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and

(4) 52.212–3, Offeror Representations and Certifications—Commercial Items.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.

This subpart provides—

(a) Guidance regarding tailoring of the paragraphs in the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, when the paragraphs do not reflect the customary practice for a particular market; and

(b) Guidance on the administration of contracts for commercial items in those areas where the terms and conditions in 52.212–4 differ substantially from those contained elsewhere in the FAR.

12.402 Acceptance.

(a) The acceptance paragraph in 52.212–4 is based upon the assumption that the Government will rely on the contractor's assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not

prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial items.

(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government's available postaward remedies (see 12.404).

(c) The acquisition of commercial items under other circumstances such as on an ''as is'' basis may also require acceptance procedures different from those contained in 52.212–4. The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other paragraphs of the clause.

12.403 Termination.

(a) *General.* The clause at 52.212–4 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause. However, the paragraphs in 52.212–4 entitled ''Termination for the Government's Convenience'' and ''Termination for Cause'' contain concepts which differ from those contained in the termination clauses prescribed in part 49. Consequently, the requirements of part 49 do not apply when terminating contracts for commercial items and contracting officers shall follow the procedures in this section. Contracting officers may continue to use part 49 as guidance to the extent that part 49 does not conflict with this section and the language of the termination paragraphs in 52.212–4.

(b) *Policy.* The contracting officer should exercise the Government's right to terminate a contract for commercial items either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.

(c) *Termination for cause.* (1) The paragraph in 52.2124 entitled ''Excusable Delay'' requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.

(2) The Government's rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government's preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess reprocurement costs together with any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall—

(i) Indicate the contract is terminated for cause;

(ii) Specify the reasons for the termination;

(iii) Indicate which remedies the Government intends to seek or provide a date by which the Government will inform the contractor of the remedy; and

(iv) State that the notice constitutes a final decision of the contracting officer and that the contractor has the right to appeal under the Disputes clause (see 33.211).

(d) *Termination for the Government's convenience.* (1) When the contracting officer terminates a contract for commercial items for the Government's convenience, the contractor shall be paid—

(i) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination, and

(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in part 31. The Government does not have any right to audit the contractor's records solely because of the termination for convenience.

(2) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

12.404 Warranties.

(a) *Implied warranties.* The Government's post award rights contained in 52.212–4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when—

(i) The seller knows the particular purpose for which the Government intends to use the item; and

(ii) The Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.

(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

(b) *Express warranties.* The Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 264 note) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if—

(i) The warranty is adequate to protect the needs of the Government, e.g., items covered by the warranty and length of warranty;

(ii) The terms allow the Government effective postaward administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and

(iii) The warranty is cost-effective.

(2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in 52.212–4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

(3) Express warranties shall be included in the contract by addendum (see 12.302).

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.

As required by Section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), this subpart lists provisions of laws that are not applicable to contracts for the acquisition of commercial items, or are not applicable to subcontracts, at any tier, for the acquisition of a commercial item. This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

12.501 Applicability.

(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial items.

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

(c) For purposes of this subpart, contractors awarded subcontracts under subpart 19.8, Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in 12.503 has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial items.

(b) For subcontracts for the acquisition of commercial items or commercial components, the clauses at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244–6, Subcontracts for Commercial Items and Commercial Components, reflect the applicability of the laws listed in 12.504 by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

12.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 43, Walsh-Healey Act (see subpart 22.6).

(2) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).

(3) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 5.203).

(4) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see 23.501).

(b) Certain requirements of the following laws have been eliminated for executive agency contracts for the acquisition of commercial items:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see 23.105).

(2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 22.305).

(3) 41 U.S.C. 57(a) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see 3.502).

(4) 41 U.S.C. 423(e)(1)(B), Requirement for a certain certification under the Procurement Integrity Act (see 3.104–9).

(5) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see 23.105).

(6) 49 U.S.C. 40118, Requirement for a certificate and clause under the Fly American provisions (see 47.405).

(c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.804).

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR chapter 99).

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

(1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see subpart 19.2).

(2) 19 U.S.C. 1202, Tariff Act of 1930 (see subpart 25.6).

(3) 19 U.S.C. 1309, Supplies for Certain Vessels and Aircraft (see subpart 25.6).

(4) 19 U.S.C. 2701, *et seq.*, Authority to Grant Duty Free Treatment (see subpart 25.6).

(5) 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see subpart 3.8).

(6) 41 U.S.C. 43, Walsh-Healey Act (see subpart 22.6).

(7) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see subpart 27.4).

(8) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see subpart 3.4).

(9) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see subpart 15.1).

(10) 41 U.S.C. 351, Service Contract Act of 1965, as amended (see subpart 22.10).

(11) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see subpart 5.2).

(12) 41 U.S.C. 418a, Rights in Technical Data (see subpart 27.4).

(13) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see subpart 23.5).

(14) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see subpart 47.5) (inapplicability effective May 1, 1996).

(15) 49 U.S.C. 40118, Fly American provisions (see subpart 47.4).

(16) Public Law 90–469, William Langer Jewel Bearing Plant Special Act (see subpart 8.2).

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see subpart 23.1).

(2) 40 U.S.C. 327, *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see subpart 22.3).

(3) 41 U.S.C. 423(e)(1)(B), Requirement for certain certifications under the Procurement Integrity Act (see subpart 3.1).

(4) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see subpart 23.1).

(c) The applicability of the following laws have been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see subpart 3.5).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see subpart 15.8).

(3) 41 U.S.C. 422, Cost Accounting Standards (see 48 CFR chapter 99).

Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

12.601 General.

This subpart provides optional procedures for—

(a) Streamlined evaluation of offers for commercial items; and

(b) Streamlined solicitation of offers for commercial items for use where appropriate.

These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212–2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106–1 if the acquisition is being made using the procedures in part 13. When the provision at 52.212–2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. This provision contemplates an approach designed to select the source whose offer will provide the Government with the greatest value in terms of performance and other factors. Other methods of evaluation and basis for award may be more appropriate for a given acquisition.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in section 13.106–1 or subpart 15.6, as applicable. The contracting officer shall ensure the instructions provided in the provision at 52.212–1, Instructions to Offerors—Commercial Items, and the evaluation criteria provided in the provision at 52.212–2, Evaluation—Commercial Items, are in agreement.

(c) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any tradeoffs considered.

12.603 Streamlined solicitation for commercial items.

(a) When a written solicitation will be issued, the contracting officer may use the following procedure to reduce the time required to solicit and award contracts for the acquisition of commercial items. This procedure combines the Commerce Business Daily (CBD) synopsis required by 5.203 and the issuance of the solicitation into a single document with the following limitations:

(1) Section 5.207 limits submissions to the CBD to 12,000 textual characters (approximately 3 ½ single-spaced pages).

(2) This combined CBD synopsis/solicitation is only appropriate where the solicitation is relatively simple and is not recommended for use when lengthy addenda to the solicitation are necessary.

(b) When using the combined synopsis/solicitation procedure, the SF 1449 is not used for issuing the solicitation.

(c) To use these procedures, the contracting officer shall—

(1) Prepare the synopsis as described at 5.207 for items 1–16.

(2) In item 17, Description, include the following additional information:

(i) The following statement:

This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in FAR Subpart 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.

(ii) The solicitation number and a statement that the solicitation is issued as an invitation to bid (IFB), request for quotation (RFQ) or request for proposal (RFP).

(iii) A statement that the solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular _____.

(iv) A notice regarding any set-aside and the associated standard industrial classification code and small business size standard. Also include a statement regarding the Small Business Competitiveness Demonstration Program, if applicable.

(v) A list of contract line item number(s) and items, quantities and units of measure, (including option(s), if applicable).

(vi) Description of requirements for the items to be acquired.

(vii) Date(s) and place(s) of delivery and acceptance and FOB point.

(viii) A statement that the provision at 52.212–1, Instructions to Offerors—Commercial, applies to this acquisition and a statement regarding any addenda to the provision.

(ix) A statement regarding the applicability of the provision at 52.212–2, Evaluation—Commercial Items, if used, and the specific evaluation criteria to be included in paragraph (a) of that provision. If this provision is not used, describe the evaluation procedures to be used.

(x) A statement advising offerors to include a completed copy of the provision at 52.212–3, Offeror Representations and Certifications—Commercial Items, with its offer.

(xi) A statement that the clause at 52.212–4, Contract Terms and Conditions—Commercial Items, applies to this acquisition and a statement regarding any addenda to the clause.

(xii) A statement that the clause at 52.212–5, Contract Terms and Conditions Required To Implement Statutes Or Executive Orders—Commercial Items, applies to this acquisition and a statement regarding which, if any, of the additional FAR clauses cited in the clause are applicable to the acquisition.

(xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements, warranty requirements or GSA Delegation of Procurement Authority (DPA) case number (see 48 CFR 201–39.106–4)) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

(xiv) A statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating, if applicable.

(xv) A statement regarding any applicable Commerce Business Daily numbered notes.

(xvi) The date, time and place offers are due.

(xvii) The name and telephone number of the individual to contact for information regarding the solicitation.

(3) Allow response time for receipt of offers as follows:

(i) Because the CBD synopsis and solicitation are contained in a single document, it is not necessary to publish a separate CBD synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined CBD synopsis/solicitation, contracting officers shall establish a response time in accordance with 5.203(b), but shall allow at least 15 days response time from the date the notice is published in the CBD.

(4) Publish amendments to solicitations in the same manner as the initial synopsis/solicitation.

PART 14—SEALED BIDDING

14.201–2 [Amended]

34. Section 14.201–2 is amended in the parenthetical of paragraphs (b) and (c) by removing ''part 10, Specifications, Standards, and Other Product Descriptions'' and inserting ''part 11'' in its place; in paragraph (d) by removing ''(see 10.004(e))''; and in the parenthetical of paragraph (f) by revising the parenthetical to read ''(see subpart 11.4, Delivery or Performance Schedules).''

14.404–1 [Amended]

35. Section 14.404–1 is amended in paragraph (b) by removing ''10.008'' and inserting ''11.201''.

PART 15—CONTRACTING BY NEGOTIATION

15.406–2 [Amended]

36. Section 15.406–2 is amended in the parenthetical of paragraph (c) by removing ''part 10, Specifications, Standards, and Other Product Descriptions'' and inserting ''part 11''; in paragraph (d) by removing ''(see 10.004(e))''; and in paragraph (f) by revising the parenthetical to read ''(subpart 11.4, Delivery or Performance Schedules, and 47.301–1).''

37. Section 15.501 is amended by revising the definition ''Commercial product offer'' to read as follows:

15.501 Definitions.

* * * * *

Commercial item offer means an offer of a commercial item the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.

* * * * *

15.503 [Amended]

38. Section 15.503 is amended in paragraph (b) by removing the word ''product'' and inserting ''item''.

39. Section 15.704 is amended by revising the second sentence to read as follows:

15.704 Items and work included.

* * * Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. * * *

PART 16—TYPES OF CONTRACTS

40. Section 16.201 is amended by adding a sentence at the end of the paragraph to read as follows:

16.201 General.

* * * The contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items.

41. Section 16.202–2 is amended by revising the introductory paragraph to read as follows:

16.202–2 Application.

A firm-fixed-price contract is suitable for acquiring commercial items (see parts 2 and 12) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see part 11) when the contracting officer can establish fair and reasonable prices at the outset, such as when—

* * * * *

42. Section 16.301–3 is amended by redesignating paragraphs (a) through (c) as paragraph (a)(1) through (a)(3), respectively; designating the introductory text as paragraph (a) introductory text and adding new (b) to read as follows:

16.301–3 Limitations.

* * * * *

(b) The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items (see parts 2 and 12).

16.603–2 [Amended]

43. Section 16.603–2 is amended in paragraph (e) by removing ''12.304'' and inserting ''11.604''.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

44. Section 22.305 is amended by redesignating paragraph (g) as (h) and adding a new paragraph (g) to read as follows:

22.305 Contract clause.

* * * * *

(g) Contracts for commercial items (see parts 2 and 12).

* * * * *

45. Section 22.604–1 is amended by revising paragraph (a) to read as follows:

22.604–1 Statutory exemptions.

* * * * *

(a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase ''in the open market'' generally (such as commercial items, see part 12); or where a specific purchase is made under the conditions described in 6.302–2 in circumstances where immediate delivery is required by the public exigency.

* * * * *

PART 23—ENVIRONMENTAL, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

46. Section 23.104 is amended in paragraph (a)(1) by removing the word ''or'' the second time it is used; in paragraph (a)(2) by removing the period and inserting ''; or'' and adding paragraph (a)(3) to read as follows:

23.104 Exemptions.

(a) * * * (3) for commercial items.

* * * * *

47. Section 23.501 is amended by redesignating paragraphs (b) through (d) as (c) through (e) and adding a new paragraph (b) to read as follows:

23.501 Applicability.

* * * * *

(b) Contracts for the acquisition of commercial items (see part 12);

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.106–3 [Amended]

48. Section 31.106–3 is amended in the section heading and the first sentence of the undesignated paragraph by removing the word ''products'' and inserting ''items'' in their place.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.202 [Amended]

49. Section 36.202 is amended in paragraph (a) by removing ''part 10'' and inserting ''part 11'' in its place.

36.206 [Amended]

50. Section 36.206 is amended by removing ''12.202'' and inserting ''11.502''.

36.303 [Amended]

51. Section 36.303 is amended in paragraph (c)(4) by removing ''12.1'' and inserting ''11.4''.

PART 42—CONTRACT ADMINISTRATION

42.1105 [Amended]

53. Section 42.1105 is amended by removing the reference ''subpart 12.3'' and inserting ''subpart 11.6''.

Subpart 42.13—[Redesignated from Subpart 12.5]

42.1304 [Amended]

54. and 55. Newly redesignated section 42.1304 (redesignated from 12.504) is amended in paragraph (a) by removing ''52.212–15'' and inserting ''52.242–17''; and at the end of paragraph (d) by removing the period and inserting '', or information other than cost or pricing data.'' in its place.

42.1305 [Amended]

56. Newly redesignated section 42.1305 (redesignated from 12.505) is amended in paragraph (a) by removing ''52.212–12'' and inserting ''52.24214''; in paragraph (b)(1) by removing ''52.212–13'' and inserting ''52.242–15''; in paragraph (c) by removing ''52.21214'' and inserting ''52.242–16''; and in paragraph (d) by removing ''52.212–15'' and inserting ''52.242–17''.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

57. Subpart 44.4, consisting of sections 44.400 through 44.403, is added to read as follows:

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

Sec.
44.400 Scope of subpart.
44.401 Applicability.
44.402 Policy requirements.
44.403 Contract clause.

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Public Law 103–355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term ''subcontract'' has the same meaning as defined in part 12.

44.402 Policy requirements.

(a) Contractors and subcontractors at all tiers shall, to the maximum extent practicable:

(1) Be required to incorporate commercial items or nondevelopmental items as components of items delivered to the Government; and

(2) Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244–6, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244–6 are required to be in subcontracts for commercial items or commercial components.

(c) Agencies may supplement the clause at 52.244–6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244–6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts for supplies or services other than commercial items.

PART 46—QUALITY ASSURANCE

58. Section 46.101 is amended by adding in alphabetical order the definition ''Commercial item'' to read as follows:

46.101 Definitions.

* * * * *

Commercial item (see 2.101).

* * * * *

59. Section 46.102 is amended in paragraph (e) by removing ''and''; by redesignating paragraph (f) as (g) and adding a new paragraph (f) to read as follows:

46.102 Policy.

* * * * *

(f) Contracts for commercial items shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection (Section 8002 of Public Law 103–355). Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice; and

* * * * *

46.202 [Amended]

60. Section 46.202 is amended by removing ''three'' and inserting ''four''.

61. Sections 46.202–1 through 46.202–3 are redesignated as 46.202–2 through 46.202–4 and a new 46.202–1 is added to read as follows:

46.202–1 Contracts for commercial items.

When acquiring commercial items (see part 12), the Government shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

46.202–2 [Amended]

62. Newly redesignated section 46.202–2 is amended in paragraph (b)(1) by removing ''(see 46.204 and Table 46–1)''.

46.202–4 [Amended]

63. Newly redesignated section 46.202–4 is amended in paragraph (a)(1) by removing ''(see 46.204 and Table 46–1)''.

64. Section 46.203 is amended by revising paragraph (a)(1); at the end of paragraph (a)(2) by removing ';or'' and inserting a period; and by removing paragraph (a)(3). The revised text reads as follows:

46.203 Criteria for use of contract quality requirements.

* * * * *

(a) * * *

(1) Commercial (described in commercial catalogs, drawings, or industrial standards; see part 2); or

* * * * *

46.204 [Removed and reserved]

65. Section 46.204 and Table 46–1 are removed.

46.301 [Amended]

66. Section 46.301 is amended by removing ''46.202–1(b)'' and inserting ''46.202–2(b)'' in its place.

46.311 and 46.402 [Amended]

67. Sections 46.311 and 46.402(e) are amended by removing ''46.202–3'' and inserting ''46.202–4'' in their place.

46.404 [Amended]

68. Section 46.404 is amended at the end of paragraph (a) by removing ''46.202–1'' and inserting ''46.202–2'' in its place; in paragraph (b) introductory text by removing ''46.202–1(b)'' and inserting ''46.202–2(b)'' in its place; and in paragraph (b)(2) by removing the last sentence.

69. Section 46.709 is revised to read as follows:

46.709 Warranties of commercial items.

The contracting officer should take advantage of commercial warranties, including extended warranties, where appropriate and in the Government's best interests, offered by the contractor for the repair and replacement of commercial items (see part 12).

70. Section 46.710 is amended by revising the first sentence of the introductory paragraph; by removing paragraphs (a)(2) and (b)(2) and redesignating paragraphs (a)(3) through (a)(6) as (a)(2) through (a)(5), and paragraphs (b)(3) through (b)(5) as (b)(2) through (b)(4), respectively. The revised text reads as follows:

46.710 Contract clauses.

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of a warranty is appropriate (see 46.709 for warranties for commercial items). * * *

* * * * *

PART 47—TRANSPORTATION

71. Section 47.405 is amended by revising the last sentence to read as follows:

47.405 Contract clause.

* * * This clause does not apply to contracts awarded using the simplified acquisition procedures in part 13 or contracts for commercial items (see part 12).

72. Section 47.504 is amended by adding paragraph (e) to read as follows:

47.504 Exceptions.

* * * * *

(e) Beginning May 1, 1996, subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(13)). This exception does not apply to grants-in-aid shipments, such as agricultural and food-aid shipments, to shipments covered under Export-Import Bank loans or guarantees, and to subcontracts under Government contracts or agreements for ocean transportation services.

PART 49—TERMINATION OF CONTRACTS

49.402–7 [Amended]

73. Section 49.402–7 is amended in the last sentence of paragraph (a) by removing ''52.212–4'' and inserting ''52.211–11'' in its place.

74. Section 49.501 is revised to read as follows:

49.501 General.

This subpart prescribes the principal contract termination clauses. For contracts for the acquisition of commercial items, this part provides administrative guidance which may be followed when it is consistent with the requirements and procedures in the clause at 52.212–4, Contract Terms and Conditions—Commercial Items. In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this chapter.

49.607 [Amended]

75. Section 49.607 is amended by removing from the introductory text ''12.5'' and inserting ''42.13''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

76. Section 52.202–1 is amended by revising the date of the clause; by redesignating paragraphs (b) and (c) as (f) and (g), and adding new paragraphs (b), (c), (d), and (e) to read as follows:

52.202–1 Definitions.

* * * * *

Definitions (Oct. 1995)

* * * * *

(b) *Commercial component* means any component that is a commercial item.

(c) *Commercial item* means—

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) *Minor* modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. ''Minor'' modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services—

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) *Component* means any item supplied to the Federal Government as part of an end item or of another component.

(e) *Nondevelopmental item* means—

(1) Any previously developed item of supply used exclusively for governmental

purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

* * * * *

(End of clause)

52.203–4 [Amended]

77. Section 52.203–4 is amended in the first sentence of the introductory text by removing ''(b)(5)'' and inserting ''(b)(6)'' in its place.

78. Section 52.203–6 is amended by revising the date of the clause and adding an Alternate I following paragraph (c) to read as follows:

52.203–6 Restrictions on Subcontractor Sales to the Government.

Restrictions on Subcontractor Sales to the Government (Oct. 1995)

* * * * *

Alternate I (OCT. 1995). As prescribed in 3.503–2, substitute the following paragraph in place of paragraph (b) of the basic clause:

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

52.210–1 through 52.210–7 [Redesignated]

79. Sections 52.210–1 through 52.210–7 are redesignated as 52.211–1 through 52.211–7.

52.212–1 through 52.212–11 [Redesignated]

80. Sections 52.212–1 through 52.212–11 are redesignated as 52.211–8 through 52.211–18.

52.212–12 through 52.212–15 [Redesignated]

81. Sections 52.212–12 through 52.212–15 are redesignated as 52.242–14 through 52.242–17, respectively.

52.212–1 through 52.212–5 [Added]

82. Part 52 is amended by adding new sections 52.212–1 through 52.212–5 to read as follows:

Sec.

52.212–1 Instructions to Offerors-Commercial Items.
52.212–2 Evaluation-Commercial Items.
52.212–3 Offeror Representations and Certifications-Commercial Items.
52.212–4 Contract Terms and Conditions-Commercial Items.
52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items.

52.212–1 Instructions to Offerors—Commercial Items.

As prescribed in 12.301(b)(1), insert the following provision:

Instructions to Offerors—Commercial Items (Oct. 1995)

(a) *Standard industrial classification (SIC) code and small business size standard.* The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show——

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) ''Remit to'' address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR 52.212–3;

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

(g) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation.* (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW., Washington, DC 20407 ((202) 755–0325/0326).

(2) The DOD Index of Specifications and Standards (DODISS) and documents listed in it may be obtained from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094 (telephone (215) 697–2569).

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Individual documents may be ordered from the Telespecs ordering system by touch-tone telephone. A customer number is required to use this service and can be obtained from the Standardization Documents Order Desk or the Special Assistance Desk (telephone (610) 607–2667/2179).

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication or maintenance.

(End of provision)

52.212–2 Evaluation—Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

Evaluation—Commercial Items (Oct. 1995)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

_____

_____

(Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.605) and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.)

Technical and past performance, when combined, are _____ (Contracting Officer state, in accordance with FAR 15.605, the relative importance of all other evaluation factors, when combined, when compared to price.)

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of Provision)

52.212–3 Offeror Representations and Certifications Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

Offeror Representations and Certifications—Commercial Items (Oct. 1995)

(a) *Definitions.* As used in this provision:

Emerging small business means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

Small disadvantaged business concern means a small business concern that—

(1) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business, having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and

(2) Has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization and which meets the requirements of 13 CFR Part 124.

Women-owned small business concern means a small business concern—

(a) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(b) Whose management and daily business operations are controlled by one or more women.

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer identification number (TIN) (26 U.S.C. 6050M).* (1) Taxpayer Identification Number (TIN).

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis. _____

(2) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(3) Common Parent.

☐ Offeror is not owned or controlled by a common parent.

Name and TIN of common parent:

Name _____

TIN _____

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) *Small disadvantaged business concern.* The offeror represents and certifies that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) *Women-owned small business concern.* The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) *Women-owned business concern.* The offeror represents that it ☐ is, ☐ is not, a women-owned business concern.

(5) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

_____

(6) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has certified itself to be a small business concern under the size standards for this solicitation.]*

(i) *(Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).) The offeror represents as part of its offer that it ☐ is, ☐ is not an emerging small business.*

(ii) (*Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).)* Offeror represents and certifies as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts)

(Check one of the following):

Number of Employees	*Average Annual Gross Revenues*
____ 50 or fewer	____ $1 million or less
____ 51–100	____ $1,000,001–$2 million

Number of Employees

____ 101–250
____ 251–500
____ 501–750
____ 751–1,000
____ Over 1,000

Average Annual Gross Revenues

____ $2,000,001–$3.5 million
____ $3,500,001–$5 million
____ $5,000,001–$10 million
____ $10,000,001–$17 million
____ Over $17 million

(d) Certifications and representations required to implement provisions of Executive Order 11246—

(1) *Certification of non-segregated facilities.* (Applies only if the contract amount is expected to exceed $10,000)—

By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(2) Previous Contracts and Compliance. The offeror represents that—

(i) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

(ii) It ☐ has, ☐ has not, filed all required compliance reports.

(3) Affirmative Action Compliance. The offeror represents that—

(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60–1 and 60–2), or

(ii) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the contract is expected to exceed $100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no 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 on his or her behalf in connection with the award of any resultant contract.

(f) *Buy American Act—Trade Agreements—Balance of Payments Program Certificate.* (Applies only if FAR clause 52.225–9, Buy American Act—Trade Agreement—Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled ''Buy American Act—Trade Agreements Balance of Payments Program'') and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(2) Excluded End Products:

Line item No.	Country of origin
_____	_____
_____	_____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(i) The offeror certifies that the following supplies qualify as ''designated or NAFTA country end products'' as those terms are defined in the clause entitled ''Buy American Act—Trade Agreements—Balance of Payments Program:''

_____
_____
_____

(Insert line item numbers)

(ii) The offeror certifies that the following supplies qualify as ''Caribbean Basin country end products'' as that term is defined in the clause entitled ''Buy American Act—Trade Agreements—Balance of Payments Program'':

_____
_____
_____

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(g) *Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program Certificate.* (Applies only if FAR clause 52.22521, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (g)(2) of this provision, is a domestic end product (as defined in the clause entitled ''Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act-Balance of Payments Program'' and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(2) Excluded End Products:

Line item No.	Country of origin
_____	_____
_____	_____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(2) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. Offerors must certify by inserting the applicable line item numbers in the following:

The offeror certifies that the following supplies qualify as ''NAFTA country end products'' as that term is defined in the clause entitled ''Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program:''

_____
_____
_____

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(h) *Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549).* The offeror certifies, to the best of its knowledge and belief, that—

(1) The offeror and/or any of its principals ☐ are, ☐ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

(2) ☐ Have, ☐ have not, within a three-year period preceding this offer, 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 Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving

stolen property; and ☐ are, ☐ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) *Procurement Integrity Certification (41 U.S.C. 423).* (Applies only if the contract is expected to exceed $100,000.)

I, the undersigned, am the officer or employee responsible for the preparation of this offer. I certify, to the best of my knowledge and belief, that either—

☐ I have no information, or

☐ I have disclosed information to the Contracting Officer concerning a violation or possible violation of subsection (a), (b), (d) or (f) of 41 U.S.C. 423, Procurement Integrity, or its implementing regulations that may have occurred during the conduct of this procurement.

Signature of the officer or employee responsible for the offer and date.

(End of Provision)

52.212–4 Contract Terms and Conditions—Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

Contract Terms and Conditions—Commercial Items (Oct 1995)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233–1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202–1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include—

(1) Name and address of the Contractor;

(2) Invoice date;

(3) Contract number, contract line item number and, if applicable, the order number;

(4) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(6) Terms of any prompt payment discount offered;

(7) Name and address of official to whom payment is to be sent; and

(8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment. Payments under this contract may be made by the Government either by check, electronic funds transfer, or the Automated Clearing House, at the option of the Government.

In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules

and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51–58, Anti-Kickback Act of 1986; 41 U.S.C. 251 related to whistle blower protections; and 49 U.S.C 40118, Fly American.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212–5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(End of clause)

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Oct 1995)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222–3, Convict Labor (E.O. 11755); and

(2) 52.233–3, Protest After Award (31 U.S.C 3553 and 40 U.S.C. 759).

(b) The Contractor agrees to comply with the FAR and FIRMR clauses in this paragraph (b) which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer shall check as appropriate.)

_____ (1) 52.203–6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

_____ (2) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

_____ (3) 52.219–8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d) (2) and (3));

_____ (4) 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4));

_____ (5) 52.219–14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

_____ (6) 52.222–26, Equal Opportunity (E.O. 11246).

_____ (7) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

_____ (8) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

_____ (9) 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

_____ (10) 52.225–3, Buy American Act—Supplies (41 U.S.C. 10).

_____ (11) 52.225–9, Buy American Act—Trade Agreements Act—Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501–2582).

_____ (12) 52.225–17, Buy American Act—Supplies Under European Community Sanctions for End Products (E.O. 12849).

_____ (13) 52.225–18, European Community Sanctions for End Products (E.O. 12849).

_____ (14) 52.225–19, European Community Sanctions for Services (E.O. 12849).

_____ (15) 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (41 U.S.C 10, Pub. L. 103–187).

_____ (16) 52.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

_____ (17) 201–39.5202–3, Procurement Authority (FIRMR).

(This acquisition is being conducted under _____ delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is _____).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer check as appropriate.)

_____ (1) 52.222–41, Service Contract Act of 1965, As amended (41 U.S.C. 351, *et seq.*).

_____ (2) 52.222–42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

_____ (3) 52.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

_____ (4) 52.222–44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

_____ (5) 52.222–47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor agrees to comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215–2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components—

(1) 52.222–26, Equal Opportunity (E.O. 11246);

(2) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)); and

(3) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

(4) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(End of clause)

83. In the list of newly designated sections below, for each clause or provision indicated in the left column, remove the reference listed in the middle column and insert the reference listed in the right column:

Clause/provision	Remove	Insert
52.211–1	10.011(a)	11.203(a)
52.211–2	10.011(b)	11.203(b)
52.211–3	10.011(c)	11.203(c)
52.211–4	10.011(d)	11.203(d)
52.211–5	10.011(e)	11.203(e)
52.211–6	10.011(f)	11.203(f)
52.211–7	10.011(g)	11.203(g)
52.211–8	12.104(a)(2)	11.404(a)(2)
52.211–9	12.104(a)(3)	11.404(a)(3)
52.211–10	12.104(b)	11.404(b)
52.211–11	12.204(a)	11.504(a)
52.211–11	12.202	11.502(b)
52.211–12	12.202	11.502(b)
52.211–12	12.204(b)	11.504(b)
52.211–13	12.204(c)	11.504(c)
52.211–14	12.304(a)	11.604(a)
52.211–15	12.304(b)	11.604(b)
52.211–16	12.403(a)	11.703(a)
52.211–17	12.403(b)	11.703(b)
52.211–18	12.403(c)	11.703(c)
52.242–14	12.505(a)	42.1305(a)
52.242–15	12.505(b)	42.1305(b)
52.242–16	12.505(c)	42.1305(c)
52.242–17	12.505(d)	42.1305(d)

84. Section 52.244–6 is added to read as follows:

52.244–6 Subcontracts for Commercial Items and Commercial Components.

As prescribed in 44.403, insert the following clause:

Subcontracts for Commercial Items and Commercial Components (Oct 1995)

(a) *Definition.*

Commercial item, as used in this clause, has the meaning contained in the clause at 52.202–1, Definitions.

Subcontract, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:

(1) 52.222–26, Equal Opportunity (E.O. 11246);

(2) 52.222–35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));

(3) 52.222–36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and

(4) 52.247–64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

52.246–11 [Amended]

85. & 86. Section 52.246–11 is amended in the introductory text by removing ''46.202–3'' and inserting ''46.202–4'' in its place.

52.246–17 and 52.246–18 [Amended]

87. Sections 52.246–17 and 52.246–18 are amended by removing and reserving Alternate I.

PART 53—FORMS

88. Section 53.212 is added to read as follows:

53.212 Acquisition of commercial items.

SF 1449 (OCT 1995), Solicitation/Contract/Order for Commercial Items. SF 1449 is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

89. Section 53.301–1449 is added to read as follows:

53.301–1449 (OCT 1995), Solicitation/Contract/Order for Commercial Items

BILLING CODE 6820–EP–P

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER | PAGE 1 OF

2. CONTRACT NO. | 3. AWARD/EFFECTIVE DATE | 4. ORDER NUMBER | 5. SOLICITATION NUMBER | 6. SOLICITATION ISSUE DATE

7. FOR SOLICITATION INFORMATION CALL: ▶ a. NAME | b. TELEPHONE NUMBER *(No collect calls)* | 8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY CODE

10. THIS ACQUISITION IS
☐ UNRESTRICTED
☐ SET ASIDE: % FOR
☐ SMALL BUSINESS
☐ SMALL DISADV. BUSINESS
☐ 8(A)
SIC:
SIZE STANDARD:

11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED
☐ SEE SCHEDULE

12. DISCOUNT TERMS

☐ 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)

13b. RATING

14. METHOD OF SOLICITATION
☐ RFQ ☐ IFB ☐ RFP

15. DELIVER TO CODE

16. ADMINISTERED BY CODE

17a. CONTRACTOR/ OFFEROR CODE FACILITY CODE

TELEPHONE NO.

☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER

18a. PAYMENT WILL BE MADE BY CODE

18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	(Attach Additional Sheets as Necessary)				

25. ACCOUNTING AND APPROPRIATION DATA

26. TOTAL AWARD AMOUNT *(For Govt. Use Only)*

☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED.

☐ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED.

28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN. ☐

29. AWARD OF CONTRACT: REFERENCE _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: ☐

30a. SIGNATURE OF OFFEROR/CONTRACTOR

31a. UNITED STATES OF AMERICA *(SIGNATURE OF CONTRACTING OFFICER)*

30b. NAME AND TITLE OF SIGNER *(TYPE OR PRINT)* | 30c. DATE SIGNED

31b. NAME OF CONTRACTING OFFICER *(TYPE OR PRINT)* | 31c. DATE SIGNED

32a. QUANTITY IN COLUMN 21 HAS BEEN
☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED

32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE | 32c. DATE

33. SHIP NUMBER | 34. VOUCHER NUMBER | 35. AMOUNT VERIFIED CORRECT FOR
☐ PARTIAL ☐ FINAL

36. PAYMENT
☐ COMPLETE ☐ PARTIAL ☐ FINAL

37. CHECK NUMBER

38. S/R ACCOUNT NUMBER | 39. S/R VOUCHER NUMBER | 40. PAID BY

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT

41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER | 41c. DATE

42a. RECEIVED BY *(Print)*

42b. RECEIVED AT *(Location)*

42c. DATE REC'D (*YY/MM/DD*) | 42d. TOTAL CONTAINERS

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1449 (10-95)
Prescribed by GSA - FAR (48 CFR) 53.212

[FR Doc. 95–22778 Filed 9–15–95; 8:45 am]

BILLING CODE 6820–EP–C

48 CFR Part 3

[FAC 90–32; FAR Case 94–803; Item IV]

RIN 9000–AG16

Federal Acquisition Regulation; Whistleblower Protections for Contractor Employees (Ethics)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendment to final rule.

SUMMARY: At 60 FR 37774, July 21, 1995, a final rule was issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is now issuing an *Applicability Date,* in addition to the *Effective Date,* of the regulation.

DATES: Effective Date: September 19, 1995.

Applicability Date: This regulation will apply to contracts in existence as of September 19, 1995, for reprisals to Government contractor employees occurring on or after that date. The remedy provided by this regulation does not apply to contracts otherwise covered by provisions of 10 U.S.C. 2409a.

FOR FURTHER INFORMATION CONTACT: Mr. Julius Rothlein, Ethics Team Leader, at (703) 697–4349 in reference to this FAR case.

SUPPLEMENTARY INFORMATION:

Background:

FAC 90–30, FAR case 94–803, implemented Sections 6005 and 6006 of the Act, Whistleblower Protections for Contractor Employees. These protections are now virtually identical for contractors employed by both DOD and civilian agencies.

The rule as originally published did not specifically discuss the extent of retroactivity. The rule did not require a contract clause. To clarify this, the FAR Council is establishing the extent of the rule's retroactivity.

Some existing Department of Defense contracts contain a contractor employee whistleblower clause, based on prior statute (10 U.S.C. 2409a). That law was narrower in scope and only applied to certain DoD contracts.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

[FR Doc. 95–22779 Filed 9–15–95; 8:45 am]

BILLING CODE 6820–EP–P

48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53

[FAC 90–32; FAR Case 94–780; Item V]

RIN 9000–AG37

Federal Acquisition Regulation; Small Business

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council has agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections 7101(a) and 7106 and to augment regulation implementation of Section 10004 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), dated October 13, 1994. Section 7101(a) of FASA deletes sections 15(e) and (f) from the Small Business Act. Those sections established the priority for award of set-asides and provided the statutory basis for a procurement preference for concerns located in Labor Surplus Areas (LSA). Based on this deletion, this rule removes the LSA set-aside program and LSA subcontracting program from the FAR.

Section 7106 of FASA revises sections 8 and 15 of the Small Business Act to accommodate a Governmentwide goal of 5 percent for women-owned small businesses. This rule deletes existing, separate coverage relating to women-owned businesses and revises existing coverage to place women-owned small businesses on an equal footing with small disadvantaged businesses. In connection with this revision, the Standard Forms 294 and 295 are revised and streamlined.

Section 10004 of FASA, which requires the collection of specified data through the Federal Procurement Data System, is being implemented by FAR case 94–701. This rule augments that coverage by providing a solicitation provision to collect the information on women-owned businesses as required by that FAR case.

This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Small Business Team Leader, at (202) 501–4764 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–780.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. The following sections of the Federal Acquisition Streamlining Act are implemented by this final rule:

Section 7101, Repeal of Certain Requirements, paragraph (a), deletes sections 15(e) and (f) from the Small Business Act. These sections established the priority for the award of contracts and subcontracts in carrying out the set-aside programs.

Section 7106, Procurement Goals for Small Business Concerns Owned by Women, establishes a Governmentwide goal for participation by women-owned small business concerns in prime and subcontracts and revises sections 8 and 15 of the Small Business Act to accommodate the goal.

Section 10004, Data Collection through the Federal Procurement Data System, has been implemented in FAR case 94–701. This rule augments that implementation.

These sections are implemented in this final rule by way of the following substantial changes:

Elimination of the Labor Surplus Area (LSA) set-aside program;

Development of coverage giving women-owned small businesses equal standing with small and small disadvantaged business in subcontracting plans;

Issuance of an abbreviated provision to allow firms to represent their status as small, small disadvantaged and/or women-owned small business in one place;

Simplification and streamlining of the Standard Form (SF) 294, Subcontract for Individual Contracts, and SF 295, Summary Subcontract Report;

Inclusion of a solicitation provision collecting information on women-owned businesses.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule requires large business contractors to submit and negotiate a subcontracting plan addressing subcontracting with women-owned small businesses. The rule further provides for imposition of liquidated damages on those firms which do not make a good faith effort to comply with that subcontracting plan. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the final rule contains information collection requirements. Requests for approval of the revised information collection requirements concerning OMB Control Numbers 9000–0006, Subcontracting Plans/Subcontracting Report for Individual Contracts, and 9000–0007, Summary Subcontract Report, were submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collections were approved through March 31, 1998. Public comments concerning this request were invited through a Federal Register notice published on January 6, 1995. Based on the comments received concerning these information collection requirements, substantial changes were made to SFs 294 and 295. The most significant changes include removal of blocks which collect information not essential to program management, changing the reporting frequency for the SF 295 from quarterly to semi-annually (DOD only), removing signature blocks from the SF 294 (to facilitate electronic submittal) and clarifying the instructions on the reverse.

D. Public Comments

On January 6, 1995, a proposed rule was published in the Federal Register (60 FR 2302). In response to the notice of proposed rulemaking, 114 public comments were received. In order to more effectively implement those sections of the Act addressed in the proposed rule, the proposed rule has been divided into distinguishable segments. Section 4004, Small Business Reservation, has been added to FAR Case 94–770. Section 7102, Contracting Program for Certain Small Business Concerns, remains under consideration in light of the Supreme Court's recent decision in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995), which set forth a new standard for evaluating the constitutionality of race-based affirmative action programs, and the President's directive of July 19, 1995, that executive agencies review such programs under that standard. Section 7102 has been assigned FAR case 94–781. The comments of all respondents were considered in developing this final rule. As a result, the following changes have been made:

Requirements for acquisition plans were revised to include consideration of women-owned small business concerns.

Use of the provision entitled ''Priority for Labor Surplus Area Concerns'' was limited to sealed bids.

The Standard Forms 294 and 295 were simplified and streamlined.

List of Subjects in 48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 4, 5, 6, 9, 14, 15, 16, 17, 19, 20, 25, 26, 42, 44, 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Section 4.602 is amended by revising paragraph (a)(2) to read as follows:

4.602 Federal Procurement Data System.

(a) * * *

(2) A means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small, small disadvantaged and women-owned small business concerns are sharing in Federal contracts; and

* * * * *

3. Section 4.603 is added to read as follows:

4.603 Solicitation provision.

The contracting officer shall insert the provision at 52.204–5, Women-Owned Business, in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold in Part 13, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.002 [Amended]

4. Section 5.002 is amended in paragraph (c) by removing ''labor surplus area'' and inserting ''women-owned small business'' in its place.

5.207 [Amended]

5. Section 5.207 is amended in paragraph (c)(2)(xiii) by removing ''and labor surplus area concerns'', and in paragraph (d) by removing ''or labor surplus area (LSA)''.

5.404–1 [Amended]

6. Section 5.404–1 is amended in paragraph (b)(6)(ii) by removing ''or LSA''.

7. Section 5.503 is amended by revising the second sentence of paragraph (a) to read as follows:

5.503 Procedures.

(a) * * * Contracting officers shall give small, small disadvantaged and women-owned small business concerns maximum opportunity to participate in these acquisitions.

* * * * *

PART 6—COMPETITION REQUIREMENTS

8. Section 6.203 is revised to read as follows:

6.203 Set-asides for small business concerns.

(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97–219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.

(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to set-asides.

6.501 [Amended]

9. Section 6.501 is amended in paragraph (c) by removing ''and disadvantaged''.

PART 9—CONTRACTOR QUALIFICATIONS

10. Section 9.104–3 is amended by revising the last sentence of paragraph (c) to read as follows:

9.104–3 Application of standards.

* * * * *

(c) * * * If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with Small, Small Disadvantaged Business and Women-Owned Small Business Concerns, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

* * * * *

PART 14—SEALED BIDDING

14.205–1 [Amended]

11. Section 14.205–1(e) is amended in the last sentence after the word ''Disadvantaged'' by inserting ''and women-owned''.

14.205–4 [Amended]

12. Section 14.205–4 is amended in the fourth sentence of paragraph (b) by inserting after the word ''small'' the phrase '', small disadvantaged and women-owned small''; and removing ''and labor surplus areas (see 20.104(e) and (f))''; and in the last sentence of paragraph (b) by removing ''parts 19 and 20'' and inserting in its place ''part 19''.

13. Section 14.206 is revised to read as follows:

14.206 Small business set-asides.

(See Part 19.)

14.408–6 [Amended]

14. Section 14.408–6 is amended by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3).

14.502 [Amended]

15. Section 14.502(b)(3) is amended by removing the text following the word ''business'' and inserting in its place ''set-aside (see 19.502–2).''

PART 15—CONTRACTING BY NEGOTIATION

15.705 [Amended]

16. Section 15.705 is amended in paragraph (b) by removing ''business and labor surplus area'' and inserting in its place '', small disadvantaged and women-owned small business''.

15.706 [Amended]

17. Section 15.706 is amended at the end of the first sentence of paragraph (b) by removing ''and disadvantaged business utilization'' and inserting in its place ''business''; and in paragraph (d)(4) by removing ''labor surplus area'' and inserting in its place ''women-owned small business''.

15.905–1 [Amended]

18. Section 15.905–1 is amended in the first sentence of paragraph (c) by inserting after the word ''individuals,'' the phrase ''women-owned small businesses,''; and removing the phrase ''labor surplus areas,''.

PART 16—TYPES OF CONTRACTS

16.103 [Amended]

19. Section 16.103 is amended in paragraph (d)(3) by removing the words ''or labor surplus area concerns''.

16.505 [Amended]

20. Section 16.505 is amended in paragraphs (d)(4) and (d)(5)(ii) by removing the phrase ''or labor surplus area''.

PART 17—SPECIAL CONTRACTING METHODS

17.104–1 [Amended]

21. Section 17.104–1 is amended—

a. In paragraph (a) by removing the phrase ''or labor surplus area'',

b. In paragraph (b) by removing the phrase ''or labor surplus area''; and

c. In paragraph (b)(2) by removing ''(Partial labor surplus area set-asides are only authorized for DOD activities at this time.)''.

PART 19—SMALL BUSINESS PROGRAMS

22. The heading of Part 19 is revised to read as set forth above.

* * * * *

23. Section 19.001 is amended by adding, in alphabetical order, the definitions *Labor surplus area, Labor surplus area concern, and Women-owned small business concern* to read as follows:

19.001 Definitions.

* * * * *

Labor surplus area means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

* * * * *

Women-owned small business concern means a small business concern—

(a) Which is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(b) Whose management and daily business operations are controlled by one or more women.

24. Section 19.201 is amended by revising paragraphs (a), (b), (c)(9), and (d) to read as follows:

19.201 General policy.

(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business concerns, small disadvantaged business concerns, and women-owned small business concerns. Such concerns shall also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.

(b) Heads of contracting activities are responsible for effectively implementing the small business programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small, small disadvantaged and women-owned small business program requirements and take all reasonable action to increase participation in their activities' contracting processes by these businesses.

(c) * * *

(9) Make recommendations in accordance with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside, or under Subpart 19.8 as a Section 8(a) award.

(d) Small Business Specialists shall be appointed and act in accordance with agency regulations.

25. Section 19.202 is amended by revising the first sentence to read as follows:

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed

in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subpart 19.5 or 19.8. * * *

26. Section 19.202–3 is revised to read as follows:

19.202–3 Equal low bids.

In the event of equal low bids (see 14.408–6), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.

27. Section 19.202–5 is amended by revising paragraphs (a) and (b) to read as follows:

19.202–5 Data collection and reporting requirements.

* * * * *

(a) Require each prospective contractor to represent whether it is a small business, small disadvantaged business or women-owned small business (see the provision at 52.219–1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small, small disadvantaged, and women-owned small businesses in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see Subpart 4.6).

* * * * *

28. Section 19.301 is amended by revising the first sentence of paragraph (d) to read as follows:

19.301 Representation by the offeror.

(d) If the SBA determines that the status of a concern as a ''small business,'' a ''small disadvantaged business'' or a ''women-owned small business'' has been misrepresented in order to obtain a set-aside contract, an 8(a) subcontract, a subcontract that is to be included as part or all of a goal contained in a subcontracting plan, or a prime or subcontract to be awarded as a result, or in furtherance of any other provision of Federal law that specifically references Section 8(d) of the Small Business Act for a definition of program eligibility, the SBA may take action as specified in Section 16(d) of the Act. * * *

* * * * *

29. Section 19.304 is revised to read as follows:

19.304 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.219–1, Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

(b) When contracting by sealed bidding, the contracting officer shall insert the provision at 52.219–2, Equal Low Bids, in solicitations and contracts when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

19.401 [Amended]

30. Section 19.401 is amended in paragraph (a) by removing the phrase ''and small disadvantaged business''.

31. Section 19.402 is amended by revising paragraph (c)(1)(ii) to read as follows:

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(1) * * *

(ii) New qualified small, small disadvantaged and women-owned small business sources, and

* * * * *

32. Section 19.501 is amended in the third sentence of paragraph (a) by removing ''or, except for the Department of Defense, restricted to small businesses located in labor surplus areas''; and by revising the first sentence of paragraph (h) to read as follows:

19.501 General.

* * * * *

(h) Section 305 of Public Law 103–403 authorizes public and private organizations for the handicapped to participate for fiscal year 1995 in acquisitions set-aside for small business concerns. * * *

* * * * *

19.504 [Reserved]

33. Section 19.504 is removed and reserved.

34. Section 19.505 is revised to read as follows:

19.505 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center representative, written notice shall be furnished to the appropriate SBA center representative within 5 working days of the contracting officer's receipt of the recommendation.

(b) The SBA procurement center representative may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 working days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 working days. Pending issuance of a decision to the SBA procurement center representative, the contracting officer shall suspend action on the acquisition.

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate, the SBA procurement center representative may—

(1) Within 1 working day, request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

(2) The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA

(i) May appeal to the Secretary of the Department concerned, and

(ii) Shall notify the contracting officer whether the further appeal has, in fact, been taken.

If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken.

(d) When the contracting officer has been notified within the 15-day period that the SBA has appealed to the agency head, the head of the contracting activity (or designee) shall forward justification for its decision to the agency head. The contracting officer shall suspend contract action until notification is received that the SBA appeal has been settled.

(e) The agency head shall reply to the SBA within 30 working days after receiving the appeal. The decision of the agency head shall be final.

(f) A request to suspend action on an acquisition need not be honored if the contracting officer determines that proceeding to contract award and performance is in the public interest. The contracting officer shall include in the contract file a statement of the facts justifying the determination, and shall promptly notify the SBA representative of the determination and provide a copy of the justification.

35. Section 19.506 is revised to read as follows:

19.506 Withdrawing or modifying set-asides.

(a) If, before award of a contract involving a set-aside, the contracting officer considers that award would be detrimental to the public interest, (*e.g.*, payment of more than a fair market price), the contracting officer may withdraw the set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative, if one is assigned, stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class set-aside to withdraw one or more individual acquisitions.

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be promptly referred to the SBA representative (if one is assigned) for review. If an SBA representative is not assigned, disagreements between the agency small business specialist and the contracting officer shall be resolved using agency procedures. However, the procedures are not applicable to automatic dissolutions of set-asides (see 19.507) or dissolution of set-asides under $100,000.

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a set-aside and include it in the contract file.

19.508 [Amended]

36. Section 19.508 is amended by removing and reserving paragraph (b).

Subpart 19.7—Subcontracting With Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

37. The heading of Subpart 19.7 is revised to read as set forth above.

38. Section 19.702 is amended by revising the introductory text and paragraph (b)(4) to read as follows:

19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold in Part 13 shall agree in the contract that small business concerns, small disadvantaged business concerns and women-owned small business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small disadvantaged business concerns and women-owned small business concerns.

* * * * *

(b) * * *

(4) For modifications to contracts that do not contain the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (or equivalent prior clauses).

* * * * *

39. Section 19.703 is amended by revising paragraph (a) introductory text, (a)(1), and (b) to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business concern, small disadvantaged business concern or a woman-owned small business concern.

(1) To represent itself as a small business concern or a women-owned small business concern, a concern must meet the appropriate definition in 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1601 through 121.1608. Protests challenging a subcontractor's disadvantaged status representation shall be filed in accordance with 13 CFR 124.601 through 124.610. Protests challenging a subcontractor's status as a women-owned small business concern shall be filed in accordance with Small Business Administration procedures.

40. Section 19.704 is amended by revising paragraphs (a)(1), (a)(3), (a)(4), (a)(6), and (b) to read as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(1) Separate percentage goals for using small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors;

* * * * *

(3) A description of the efforts the offeror will make to ensure that small business concerns, small disadvantaged business concerns and women-owned small business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (see 19.708(b)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $500,000 ($1,000,000 for construction) to adopt a plan similar to the plan required by the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (see 19.708(c));

* * * * *

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small, small disadvantaged and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master subcontracting plan which contains all the elements required by the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, except goals. Master plans shall be effective for a 1-year period after approval by the contracting officer; however, a master plan when incorporated in an individual plan shall apply to that contract throughout the life of the contract.

* * * * *

19.705–1 [Amended]

41. Section 19.705–1 is amended in the first sentence by removing the phrase ''for Small and Small Disadvantaged Business Concerns''.

19.705–2 [Amended]

42. Section 19.705–2 is amended in the first sentence of paragraph (d) introductory text by removing the words ''small business and small disadvantaged'' and inserting in their place, ''small, small disadvantaged and women-owned small''.

43. Section 19.705–4 is amended by revising the last sentence of paragraph (b), the second and last sentences of paragraph (c); the first sentence of paragraphs (d)(1) and (d)(5); and paragraphs (d)(4) and (d)(6) to read as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(b) * * * If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 52.219–

8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the contracting officer may find the bidder nonresponsible.

(c) * * * Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small, small disadvantaged and women-owned small business subcontractors to the maximum practicable extent. * * * An incentive subcontracting clause (see 52.219–10, Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small, small disadvantaged or women-owned small businesses.

(d) * * *

(1) Evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small, small disadvantaged and women-owned small business concerns. * * *

* * * * *

(4) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the products or services to be subcontracted, the known availability of small, small disadvantaged and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(5) Advise the offeror of available sources of information on potential small, small disadvantaged and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. * * *

(6) Obtain advice and recommendations from the SBA procurement center representative (if any) and the agency small business specialist.

19.705–7 [Amended]

44. Section 19.705–7 is amended—

a. In the first sentence of paragraph (a) by removing the word ''and'' the first time it appears and inserting a comma in its place; and adding the phrase ''and women-owned small'' after the word ''disadvantaged'';

b. In the third sentence of paragraph (d) by removing the words ''business and'' and replacing them with a comma; and adding the phrase ''and women-owned small'' after the word ''disadvantaged'';

c. In the fourth sentence of paragraph (d) by removing the phrase ''business or'' and inserting a comma in its place; and adding the phrase ''or woman-owned small'' after the word ''disadvantaged'';

d. In paragraph (f) by removing the words ''Business and'' and replacing them with a comma; and adding the phrase ''and Women-Owned Small'' after the word ''Disadvantaged''.

45. Section 19.706 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

19.706 Responsibilities of the cognizant administrative contracting officer.

(a) * * *

(2) Information on the extent to which the contractor is meeting the plan's goals for subcontracting with eligible small, small disadvantaged and women-owned small business concerns;

(3) Information on whether the contractor's efforts to ensure the participation of small, small disadvantaged and women-owned small business concerns are in accordance with its subcontracting plan;

* * * * *

46. Section 19.708 is amended by revising paragraph (a) introductory text, (b) and (c) to read as follows:

19.708 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, in solicitations and contracts when the contract amount is expected to be over the simplified acquisition threshold in Part 13 unless—

* * * * *

(b)(1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, in solicitations and contracts that

(i) Offer subcontracting possibilities,

(ii) Are expected to exceed $500,000 ($1,000,000 for construction of any public facility), and

(iii) Are required to include the clause at 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, unless the acquisition has been set aside or is to be accomplished under the 8(a) program. When contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(2) The contracting officer shall insert the clause at 52.219–16, Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, or its Alternate I.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at 52.219–10, Incentive Subcontracting Program, when a subcontracting plan is required (see 19.702(a)(1)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small, small disadvantaged and women-owned small business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (c)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in paragraph (c)(2) of this section.

(2) Various approaches may be used in the development of small, small disadvantaged and women-owned small business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria (see paragraph (c)(3) of this section). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in paragraph (c)(2) of this section, the contracting officer may include small, small disadvantaged and women-owned small business subcontracting as one of the factors to be considered in determining the award fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at 52.219–10, Incentive Subcontracting Program.

19.811–3 [Amended]

47. Section 19.811–3(d)(3) is amended by removing the citation ''19.502–2(b)'' and inserting ''19.502–2(c)'' in its place.

Subpart 19.9 [Remove and Reserved]

48. Subpart 19.9, consisting of sections 19.901 and 19.902, is removed and reserved.

PART 20 [REMOVED AND RESERVED]

49. Part 20 is removed and reserved.

PART 25—FOREIGN ACQUISITION

25.105 [Amended]

50. Section 25.105 is amended in paragraph (a)(1) by removing the phrase ''that is not a labor surplus area concern''; and in paragraph (a)(2) by

removing the phrase ''or any labor surplus area concern''.

25.404 [REMOVED AND RESERVED]

51. Section 25.404 is removed and reserved.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

52. The Note to Part 26 is amended by removing ''20,''.

26.104 [Amended]

53. Section 26.104 is amended in paragraphs (a) and (b) by removing ''Business and'' and inserting a comma in its place; and inserting after the word ''Disadvantaged'' the phrase ''and Women-Owned Small''.

PART 42—CONTRACT ADMINISTRATION

54. Section 42.302 is amended by revising paragraphs (a)(52) through (a)(55) to read as follows:

42.302 Contract administration functions.

* * * * *

(a) * * *

(52) Review, evaluate, and approve plant or division-wide small, small disadvantaged and women-owned small business master subcontracting plans.

(53) Obtain the contractor's currently approved company- or division-wide plans for small, small disadvantaged and women-owned small business subcontracting for its commercial products, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.

(54) Assist the contracting officer, upon request, in evaluating an offeror's proposed small, small disadvantaged and women-owned small business subcontracting plans, including documentation of compliance with similar plans under prior contracts.

(55) By periodic surveillance, ensure the contractor's compliance with small, small disadvantaged and women-owned small business subcontracting plans and any labor surplus area contractual requirements; maintain documentation of the contractor's performance under and compliance with these plans and requirements; and provide advice and assistance to the firms involved, as appropriate.

* * * * *

42.501 [Amended]

55. Section 42.501 is amended in paragraph (b) by removing the word ''and'' and inserting a comma in its place; and inserting after the word ''disadvantaged'' the phrase ''and women-owned small''.

56. Section 42.502 is amended by revising paragraphs (i) and (j) to read as follows:

42.502 Selecting contracts for postaward orientation.

* * * * *

(i) Contractor's status, if any, as a small business, small disadvantaged or women-owned small business concern;

(j) Contractor's performance history with small, small disadvantaged and women-owned small business subcontracting programs;

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.202–2 [Amended]

57. Section 44.202–2 is amended in paragraph (a)(4) by removing the phrase ''labor surplus area or''; removing the phrase ''business concerns and'' and inserting a comma in its place; and inserting after the word ''disadvantaged'' the phrase ''and women-owned small''.

44.303 [Amended]

58. Section 44.303 is amended in paragraph (e) by removing the phrase ''labor surplus area concerns and''; and inserting after the word ''disadvantaged'' the phrase ''and women-owned small''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

59. Section 52.204–5 is added to read as follows:

52.204–5 Women-Owned Business.

As prescribed in 4.603, insert the following provision:

Women-Owned Business (Oct 1995)

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(b) *Definition.* ''Women-owned business concern,'' as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(End of provision)

52.216–21 [Amended]

60. Section 52.216–21 is amended by revising the clause date to read (OCT 1995), in Alternates III and IV by revising the dates to read ''(OCT 1995)'' and by removing the phrase ''or labor surplus area'' from the introductory texts.

61. Section 52.219–1 is revised to read as follows:

52.219–1 Small Business Program Representations.

As prescribed in 19.304(a), insert the following provision:

Small Business Program Representations (Oct 1995)

(a)(1) The standard industrial classification (SIC) code for this acquisition is _____ *(insert SIC code).*

(2) The small business size standard is _____ *(insert size standard).*

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a women-owned small business concern.

(c) *Definitions. Small business concern,* as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

Small disadvantaged business concern, as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

Women-owned small business concern, as used in this provision, means a small business concern—

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or

in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small or small disadvantaged business concern in order to obtain a contract to be awarded under the preference programs established pursuant to sections 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

52.219–2 [Removed]

52.220–1 [Redesignated as 52.219]

62. Section 52.219–2 is removed and 52.220–1 is redesignated in its place and is revised to read as follows:

52.219–2 Equal Low Bids.

As prescribed in 19.304(b), insert the following provision:

Equal Low Bids (Oct 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

52.219–3 and 52.219–5 [Removed and reserved]

63. Sections 52.219–3 and 52.219–5 are removed and reserved.

64. Section 52.219–6 is amended by revising Alternate I to read as follows:

52.219–6 Notice of Total Small Business Set-Aside.

* * * * *

Alternate I (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502–2(c), delete paragraph (c).

65. Section 52.219–7 is amended by revising the date of the clause; in paragraph (a) by removing the definitions *Labor surplus area*, *Labor surplus area concern*, and *Perform substantially in labor surplus areas*; and by revising paragraphs (b)(4) and (c) and Alternate I to read as follows:

52.219–7 Notice of Partial Small Business Set-Aside.

* * * * *

Notice of Partial Small Business Set-Aside (Oct 1995)

* * * * *

(b) * * *

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

* * * * *

(c) *Agreement.* For the set-aside portion of the acquisition, a manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

Alternate I (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502–2(c), delete paragraph (c).

66. Section 52.219–8 is amended by revising the section heading; the clause heading and date; paragraph (a); redesignating paragraph (d) as (e) and revising it; and adding a new paragraph (d) to read as follows:

52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.

* * * * *

Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (Oct 1995)

(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

* * * * *

(d) The term ''small business concern owned and controlled by women'' shall mean a small business concern (i) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (ii) whose management and daily business operations are controlled by one or more women; and

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

(End of clause)

67. Section 52.219–9 is amended by revising—

a. The section heading;

b. The clause heading and date;

c. The first two sentences of paragraph (c);

d. Paragraphs (d), (e), (i), and Alternate I to read as follows:

52.219–9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

* * * * *

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Oct 1995)

* * * * *

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns, and women-owned small

business concerns with a separate part for the basic contract and separate parts for each option (if any). * * *

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(iv) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) small disadvantaged business concerns and (iii) women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.,* existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (*e.g.,* outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns, (ii) small disadvantaged business concerns, and (iii) women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled ''Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns'' in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PASS), guides, and other data that identify small, small disadvantaged and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, (C) whether women-owned small business concerns were solicited and if not, why not, and (D) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small, small disadvantaged and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged and women-owned small business concerns in all ''make-or-buy'' decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

* * * * *

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled ''Utilization Of Small, Small Disadvantaged and Women-Owned Small Business Concerns,'' or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

Alternate I (OCT 1995). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

52.219–10 [Amended]

68. Section 52.219–10 is amended in—

(a) The section heading and clause heading by removing ''for Small and Small Disadvantaged Business Concerns'' and revising the clause date to read ''Oct. 1995''.

(b) The introductory text by removing the text following ''19.708(c)(1),'' and

inserting in its place ''insert the following clause:''; and

(c) Paragraph (a) of the clause by removing ''and'', inserting a comma, and removing the period at the end of the sentence and inserting ''and a certain percentage to women-owned small business concerns.''

52.219–13 [Removed and reserved]

69. Section 52.219–13 is removed and reserved.

70. Section 52.219–16 is amended by revising the section heading, clause heading and date; paragraph (a); the first sentence of paragraph (b); and paragraphs (d) and (f) to read as follows:

52.219–16 Liquidated Damages—Subcontracting Plan.

* * * * *

Liquidated Damages—Subcontracting Plan (Oct 1995)

(a) *Failure to make a good faith effort to comply with the subcontracting plan,* as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan,'' or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan,'' the Contractor shall pay the Government liquidated damages in an amount stated. * * *

* * * * *

(d) With respect to commercial product plans; *i.e.,* company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan,'' the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.

* * * * *

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

71. Section 52.219–18 is amended by revising Alternate III to read as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Concerns.

* * * * *

Alternate III (OCT 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502–2(c), delete paragraph (d).

52.219–22 [Removed and reserved]

72. Section 52.219–22 is removed and reserved.

52.220–2, 52.220–3, and 52.220–4 [Removed]

73. Sections 52.220–2, 52.220–3, and 52.220–4 are removed.

PART 53—FORMS

74. Section 53.219 is revised to read as follows:

53.219 Small business programs.

The following standard forms are prescribed for use in reporting small, small disadvantaged and women-owned small business subcontracting data, as specified in Part 19:

(a) *SF 294 (REV OCT 1995), Subcontracting Report for Individual Contracts.* (See 19.704(a)(5).)

(b) *SF 295 (REV OCT 1995), Summary Subcontract Report.* (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

75. Sections 53.301–294 and 53.301–295 are revised to read as follows:

BILLING CODE 6820–EP–P

53.301–294 Subcontracting Report for Individual Contracts.

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE
2. CONTRACTOR'S ESTABLISHMENT CODE

3. DATE SUBMITTED
4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:
☐ MAR 31 ☐ SEPT 30 YEAR
5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ NAVY ☐ AIR FORCE
☐ GSA ☐ DOE ☐ DEFENSE LOGISTICS AGENCY
☐ NASA ☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*
☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER
☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT
a. AGENCY'S OR CONTRACTOR'S NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:
☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*				
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				

13. REMARKS

14a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN
14b. TELEPHONE NUMBER — AREA CODE | NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 10-95)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial products for which a company-wide annual plan (i.e., a Commercial Products Plan) has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: Enter the nine-position Contractor Establishment Code (CEC) that identifies the specific contractor establishment. (The CEC consists of eight digits followed by one letter. It is the responsibility of the contracting activity to obtain the CEC for a company that does not have one. The CEC is to coincide with the address in Block 1.)

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 12. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 12: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, and, WOSB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 13. The amounts entered in Blocks 10a through 12 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 and 12: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in both Block 11 and Block 12 (i.e., SDBs owned by women).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs owned by women).

BLOCK 13: Enter a short narrative explanation if (a) SB, SDB, or WOSB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

DEFINITIONS

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

4. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

STANDARD FORM 294 (REV. 10-95) **BACK**

BILLING CODE 6820–EP–C

53.301–295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 03/31/98

Public reporting burden for this collection of information is estimated to average 13 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE
2. CONTRACTOR'S ESTABLISHMENT CODE

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU
☐ OCT 1 - MAR 31 ☐ OCT 1 - SEPT 30 YEAR

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ DEFENSE LOGISTICS AGENCY ☐ NASA ☐ GSA ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one)*
☐ PRIME CONTRACTOR ☐ BOTH ☐ SUBCONTRACTOR

8. TYPE OF PLAN
☐ INDIVIDUAL ☐ COMMERCIAL PRODUCTS
IF PLAN IS A COMMERCIAL PRODUCT PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY. ▶

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES

a		c	
b		d	

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a. SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI) (Dollar Amount and Percent of 10c.)*		
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)*		

14. REMARKS

15. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM
a. NAME | b. TITLE | c. TELEPHONE NUMBER: AREA CODE | NUMBER

16. CHIEF EXECUTIVE OFFICER
a. NAME | c. SIGNATURE
b. TITLE | d. DATE

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Previous edition is not usable

STANDARD FORM 295 (REV. 10-95)
Prescribed by GSA - FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), and Women-Owned Small Business (WOSB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Products Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

10. See special instructions in right-hand column for Commercial Products Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: Enter the nine-position Contractor Establishment Code (CEC) that identifies the specific contractor establishment. (The CEC consists of eight digits followed by one letter. It is the responsibility of the contracting activity to obtain the CEC for a company that does not have one. The CEC is to coincide with the address in Block 1.)

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period, (i.e., Mar 31 or Sept 30).

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Products Plan" only if this report is under an approved Commercial Products Plan. For a Commercial Products Plan, the contractor must specify the percentage of dollars in Blocks 10a through 13 attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 13: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which the report is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial Products" is checked in Block 8 (see Special instructions for Commercial products Plans in right hand column).

Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.-

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs and WOSBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 and 13: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported on both Block 11 and Block 12 (i.e., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned Small Business firms (including SDBs owned by women).

BLOCK 13 (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall include all subcontracting activity under commercial products plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial products, if any.

3. Enter in Blocks 10a through 13 the total of all subcontract awards under the contractor's Commercial Products Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial products covered by an approved Commercial Products Plan were received.

DEFINITIONS

1. Commercial products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the prime contractor/subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

3. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HC), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

[FR Doc. 95–22780 Filed 9–15–95; 8:45 am]
BILLING CODE 6820–EP–C

48 CFR Part 5

[FAC 90–32; FAR Case 95–606; Item VI]

RIN 9000–AG60

Federal Acquisition Regulation; Publicizing Contract Actions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to a final rule to revise FAR section 5.207(b)(4), Preparation and transmittal of synopses. The revision deletes the requirement for the Federal Information Processing Standard (FIPS) Number in Commerce Business Daily synopses and, in lieu thereof, requests Government Printing Office (GPO) Billing Account Code information.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 95–606, Publicizing Contract Actions.

SUPPLEMENTARY INFORMATION:

A. Background

For approximately 45 years, the Commerce Business Daily (CBD) has provided free printing services to the agencies. During this period, printing expenses were paid with appropriated funds. Beginning October 1, 1995, the CBD will no longer receive appropriated funds for this purpose, and the Department of Commerce will be required to charge agencies a fee for printing services. The cost will be a flat rate of $18 per notice and bills will be sent to the agency that issues the notice. The Government Printing Office (GPO) has agreed to provide billing and collection services and, in order to facilitate this, agencies will need to include their GPO account number in all CBD notices. The proposed changes to the FAR will enable GPO to properly bill and collect from the individual agency that has placed a CBD notice.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite FAR case 95–606 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this final rule imposes no new reporting requirements or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5

Government procurement.

Dated: September 7, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Part 5 is amended as set forth below:

1. The authority citation for 48 CFR Part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.207 is amended by revising paragraph (b)(4), Item 4, and paragraph (b)(6), Item 4, to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(b)(4) * * *

* * * * *

4. GOVERNMENT PRINTING OFFICE (GPO) BILLING ACCOUNT CODE.

(The originating office's account number used by the GPO for billing and collection purposes. The field length is nine alpha-numeric characters. The first three characters entered are ''GPO'' and then the following six characters are the numeric account number. Agencies should contact the GPO's Office of Comptroller for additional information. Enter N/A if an account number has not been assigned.)

* * * * *

(b)(6) * * *

* * * * *

4. GPO123456!!

* * * * *

[FR Doc. 95–22781 Filed 9–15–95; 8:45 am]
BILLING CODE 6820–EP–P

48 CFR Parts 28, 32, and 52

[FAC 90–32; FAR Case 94–762; Item VII]

RIN 9000–AG35

Federal Acquisition Regulation; Subcontractor Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) to implement Sections 2091 and 8105 of the Act which address subcontractor payments, requests for information, and bonds. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John S. Galbraith, Finance/Payment Team Leader, at (703) 697–6710, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–762.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements.

This notice announces revisions developed under FAR case 94–762. The following sections of the Federal Acquisition Streamlining Act are implemented by this final rule:

Section 2091 of the Act changed section 806, subsection (c), of the Fiscal Years 1992 and 1993 Defense Authorization Act by striking the existing subsection (c) and inserting a

new subsection (c). The stricken words had permitted the FAR Council to substitute FAR coverage for coverage otherwise required from the Secretary of Defense. The substituted words require the FAR Council to place in the FAR, for Government-wide applicability, the coverage required of the Secretary of Defense.

Additionally, Section 8105 of the Act changed section 806 of the Fiscal Years 1992 and 1993 Defense Authorization Act by striking the existing subsection (b) and inserting a new subsection (b). The stricken words dealt with deadlines for the implementation in regulations of the statutory requirements, and that coverage is no longer pertinent. The substituted language creates an exemption from the requirements of the statute for the acquisition of commercial items. Therefore, the clause prescription at FAR 28.106–4(b) has been revised to reflect this exemption.

The final rule is, except for minor adjustments, the same language which was previously in the Defense Federal Acquisition Regulation Supplement, at 228.106–4–70, 228.106–6, 232.970, and 252.228–7006 and proposed in the Federal Register on February 2, 1995.

It should be noted that Section 4104(b) of the Act concerning subcontractor payments under smaller construction contracts is being addressed in a separate case. This case, 94–762, addresses only the changes required by Sections 2091 and 8105. It should also be noted that the duplication of responsibilities for furnishing copies of bonds in 28.106–6(d)(3) and the clause in 52.228–12 is intentional. The statute assigns this responsibility to both the Government and contractor. Finally, the language in 32.112–1(c) concerning ''administrative and other remedial action'' deliberately does not go into detail as to what these actions are. The specifics of these areas and especially the regulations and procedures are peculiar to each agency. The wording is derived from the underlying statute.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely requires the contracting officer or the contractor to furnish bonding information to subcontractors upon request, and provides for remedies which only apply to contractors who fail to make payment to subcontractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Subcontractor Payments was submitted to the Office of Management and Budget and approved through March 31, 1998, OMB Control No. 9000–0135. Public comments concerning this request were invited through a Federal Register notice at 60 FR 6526, February 2, 1995.

D. Public Comments

A proposed rule was published in the Federal Register at 60 FR 6602, February 2, 1995. During the public comment period, six comments were received. For the most part, these comments raised editorial and cross-reference points, which have been corrected. One commentor expressed concern about the use of the term ''non-commercial'', and suggested, as an alternative, the term ''other-than-commercial.'' While the suggested term may be logically more accurate, the term ''non-commercial'' has been used throughout all the new Part 32 coverage, and appears to be correctly understood. It was concluded that this change in terminology would not significantly improve the coverage, so the suggestion was not adopted.

List of Subjects in 48 CFR Parts 28, 32, and 52

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 28, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 28, 32, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Section 28.106–4 is amended by designating the existing text as paragraph (a) and adding (b) to read as follows:

28.106–4 Contract clause.

* * * * *

(b) In accordance with Section 806(a)(3) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, the contracting officer shall insert the clause at 52.228–12, Prospective Subcontractor Requests for Bonds, in solicitations and contracts with respect to which a payment bond will be furnished pursuant to the Miller Act (see 28.102–1), except for contracts for the acquisition of commercial items as defined in Subpart 2.1.

3. Section 28.106–6 is amended by adding paragraph (d) to read as follows:

28.106–6 Furnishing information.

* * * * *

(d) Section 806(a)(2) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, requires that the Federal Government provide information to subcontractors on payment bonds under contracts for other than commercial items as defined in Subpart 2.1. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract with respect to which a payment bond has been furnished pursuant to the Miller Act, the contracting officer shall promptly provide to the requester, either orally or in writing, as appropriate, any of the following:

(1) Name and address of the surety or sureties on the payment bond.

(2) Penal amount of the payment bond.

(3) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

PART 32—CONTRACT FINANCING

4. Sections 32.112, 32.112–1 and 32.112–2 are added to read as follows:

32.112 Payment of subcontractors under contracts for non-commercial items.

32.112–1 Subcontractor assertions of nonpayment.

(a) In accordance with Section 806(a)(4) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with Chapter 39 of Title 31, United States Code (Prompt Payment Act); or

(ii) Final payment to the subcontractor or supplier in compliance

with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor; or

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a)(1) and (2) of this section, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in paragraph (a)(3) of this section is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

32.112–2 Subcontractor requests for information.

(a) In accordance with Section 806(a)(1) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the request of a subcontractor or supplier under a Federal contract for a non-commercial item, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments to the Federal Government under the contract; and

(2) Whether final payment under the contract has been made by the Federal Government to the prime contractor.

(b) In accordance with 5 U.S.C. 552(b)(1), this subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept classified in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive order.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.228–12 is added to read as follows:

52.228–12 Prospective Subcontractor Requests for Bonds.

As prescribed in 28.106–4(b), use the following clause:

Prospective Subcontractor Requests For Bonds (Oct 1995)

In accordance with Section 806(a)(3) of Pub. L. 102–190, as amended by Sections 2091 and 8105 of Pub. L. 103–355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

[FR Doc. 95–22782 Filed 9–15–95; 8:45 am]

BILLING CODE 6820–EP–P

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48 CFR Parts 32, 33, and 52

[FAC 90–32; FAR Case 94–731; Item VIII]

RIN 9000–AG52

Federal Acquisition Regulation; Reimbursement of Protest Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council is promulgating this final rule to allow the Government to seek reimbursement for protest costs it has paid a protester where the protest has been sustained based upon the awardee's misrepresentation. In addition to any other remedies available, the Government may collect this debt by offsetting the amount against any payment due the awardee under any Government contract the awardee might have. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Hodge, Protests/Disputes Team Leader at (703) 274–8940 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–32, FAR case 94–731, Reimbursement of Protest Costs.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements.

This case presents FAR amendments developed under FAR Case 94–731, Reimbursement of Protest Costs. Sections 1016, 1403, and 1435 of the Act provide that agencies may be required to pay protest and offer preparation costs to protesters under certain circumstances. Often as the result of discovery during a protest, misrepresentations may be detected that could not have been reasonably known to the agency's evaluators. A protest may be sustained where the award has been induced by a material misrepresentation by the awardee. Such situations often involve proposed ''key personnel.''

The agency is without effective remedy in such cases. Theoretically, the agency could ask the Department of Justice to file a lawsuit against the offeror making the misrepresentations. However, due to the heavy workload of the Justice attorneys, this is not a practical alternative. This FAR change will not adversely affect any substantive right of an offeror. Under the language, the Government remedy is to offset such costs on the same or an unrelated contract. If the offeror believes that the offset is not justified, it may appeal the action to the agency, or under the Contract Disputes Act to either a Board of Contract Appeals or the Court of Federal Claims.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the vast majority of contracts do not involve protests where misrepresentation is detected through discovery.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

A proposed rule was published in the Federal Register at 60 FR 15450, March 23, 1995. During the public comment period, seven comments were received. Some commenters were concerned that the proposed rule might be in conflict with the Debt Collection Act. However, based on *Cecile Ind.* v. *Department of Defense*, 995 F.2d 1052 (Fed. Cir. 1993), we do not believe that the Debt Collection Act applies. If it does, the final rule would comply with the Debt Collection Act. Some commenters felt the clause lacked adequate due process. In response, more procedural guidance has been supplied. In particular, the rule provides for a review by the head of the contracting activity, if requested, before there is any final decision. In addition, actions taken under the clause in this rule may be reviewed by courts or boards under the Contract Disputes Act, like any other contract administration decision.

Several commenters suggested the clause was not necessary because the Government already has adequate remedies for contractor misrepresentation. The drafting team agreed that there are additional remedies. For example, the rule now provides that the contracting officer should consider referring contractor misrepresentations to the agency debarring official. However, these remedies do not always prove adequate in the context of misrepresentations discovered as the result of bid protests.

One commenter recommended clarification of whether the agency head or the contracting officer is responsible for issuing the demand letter. The final rule states that this is the responsibility of the contracting officer.

List of Subjects in 48 CFR Parts 32, 33, and 52

Government procurement.

Dated: September 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 32, 33, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 32, 33, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Section 32.602 is amended by adding paragraph (h) to read as follows:

§ 32.602 General.

* * * * *

(h) Reimbursement of costs, as provided in 33.102(b), 33.104(h)(1), and 33.105(g)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

3. Section 32.603 is revised to read as follows:

§ 32.603 Applicability.

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services, and debts arising from the Government's payment of costs, as provided in 33.102(b), 33.104(h)(1), and 33.105(g)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

4. Section 32.605(b) is amended by inserting the phrase ''including reimbursement of protest costs,'' between the words ''contract debts,'' and ''the contracting officer''.

PART 33—PROTESTS, DISPUTES, AND APPEALS

5. Section 33.102 is amended by adding paragraph (b)(3) to read as follows:

§ 33.102 General.

* * * * *

(b) * * *

(3) Require the awardee to reimburse the Government's costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO or GSBCA under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee's negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee's actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under Subpart 9.4.

* * * * *

6. Section 33.104 is amended by adding paragraph (h)(7) to read as follows:

33.104 Protests to GAO.

* * * * *

(h) * * *

(7) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

7. Section 33.105 is amended by adding paragraph (g)(5) to read as follows:

33.105 Protests to GSBCA.

* * * * *

(g) * * *

(5) If the Government pays costs, as provided in paragraph (g)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.233–3 is amended by adding paragraph (f) to read as follows:

52.233–3 Protest after Award.

* * * * *

Protest After Award (Oct 1995)

* * * * *

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2), 33.104(h)(1), or 33.105(g)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

[FR Doc. 95–22783 Filed 9–15–95; 8:45 am]

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federal register

Monday
September 18, 1995

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Fair Market Rents for Section 8 Housing Assistance Payments Program—Fiscal Year 1996; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. FR–3933–N–02]

Fair Market Rents for Section 8 Housing Assistance Payments Program—Fiscal Year 1996

AGENCY: Office of the Secretary, HUD.

ACTION: Final fiscal year (FY) 1996 fair market rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use.

On March 2, 1995 (60 FR 11870), HUD published a proposed rule to revise 24 CFR part 888 to change the FMR rent standard from the 45th to 40th percentile rent level. That change was published in the **Federal Register** on August 15, 1995 (60 FR 42222), and made effective on September 14, 1995.

HUD also published proposed FY 1996 FMRs on August 15, 1995 (60 FR 42290). Because of the delay in publishing the proposed FMRs, the public comment period will extend beyond the October 1 statutory date for publishing final FMRs. Therefore, there will be two notices of final FMRs. Today's document provides final FY 1996 FMRs at the level of the proposed FMRs, except for the small number of areas with proposed FMR reductions that will have their FMRs held at the FY 1995 40th percentile level pending evaluation of public comments. The second publication of final FY 1996 FMRs, which will announce revised FMRs for the areas that submitted successful public comments, will occur early next year.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing, telephone (202) 708–0477. (TDD: (202) 708–0850). For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0577 (TDD: (202) 708–0770). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by FMRs established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

II. Publication of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment and after evaluating the public comments, publish the final FMRs (see 24 CFR 888.115). The final FY 1996 FMR schedules at the end of this document list the FMR levels for the Rental Certificate program (Schedule B) and for the areas where modifications have been approved for the manufactured home space FMRs (Schedule D).

III. Method Used to Develop FMRs

FMR Standard

The FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of the standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Newly built units less than two years old are excluded, and adjustments have been made to correct for the below market rents of public housing units included in the data base.

Data Sources

HUD uses the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) the 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) the Bureau of the Census' American Housing Surveys (AHSs), which are used to develop between-Census revisions for the largest metropolitan areas and which have accuracy comparable to the decennial Census; and

(3) the Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or HUD regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 102 metropolitan FMR areas. RDD Regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

FY 1996 FMRs

This document makes effective revised FMRs that reflect estimated 40th percentile rent levels trended to April 1, 1996. The FMRs have been calculated separately for each bedroom size category based on 1990 Census data. For most FMR areas, the ratios developed from the Census for that area were applied to the two-bedroom FMR estimate to derive the FMRs for the other bedroom size categories. Exceptions have been made for areas with local bedroom size rent intervals below an acceptable range. For those areas the bedroom size intervals selected were the minimums determined after outliers had been excluded from the distribution of bedroom ratios for all metropolitan areas. Higher ratios continue to be used for three-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units.

FMR Areas With Proposed Reductions

In the August 15, 1995, notice of proposed FMRs, HUD announced that the FMRs for 31 areas were being proposed with reduced FMRs as the result of recent RDD and AHS surveys. Until the affected PHAs have had the opportunity to submit public comments, these areas will continue to use the FY 1995 40th percentile FMRs (included in Schedule B of this notice). The reductions in the FMRs, or any revisions resulting from public comments, for these areas will be made effective in the second publication of final FY 1996 FMRs.

RDD Areas With Proposed FMR Reductions

Atlantic-Cape May, NJ
Bergen-Passaic, NJ
Bridgeport, CT
Dayton-Springfield, OH
Evansville-Henderson, IN–KY
Fitchburg-Leominster, MA
Fort Lauderdale, FL
Hartford, CT
Honolulu, HI
Jackson, MS
Jersey City, NJ
Las Vegas, NV
Miami, FL
Middlesex-Somerset-Hunterdon, NJ
Modesto, CA
Monmouth-Ocean, NJ
Newark, NJ
Omaha, NE–IA
Salinas, CA
Santa Rosa, CA
Stamford, CT
Trenton, NJ
Vallejo-Fairfield-Napa, CA
Ventura, CA
West Palm Beach-Boca Raton, FL

AHS Areas With Proposed FMR Reductions

Boston, MA–NH
Oakland, CA
San Jose, CA
San Francisco, CA
Tampa-St. Petersburg-Clearwater, FL
Washington, DC–MD–VA–WV

FMRs for Puerto Rico

The August 15, notice of proposed FMRs also announced that HUD was in the process of re-benchmarking the FMRs for Puerto Rico. Specially designed RDD surveys have been, or are in the process of being, conducted of each of the metropolitan FMR areas and of the nonmetropolitan area of Puerto Rico. These surveys were modified by adding housing quality questions to account for the high incidence of substandard rental housing in Puerto Rico. Based on the survey results, today's notice makes effective higher FMRs for Mayaguez. The FMRs for the San Juan-Bayamon and the Caguas FMR areas will remain at the FY 1995 40th percentile levels pending evaluation of any public comments received concerning the reductions proposed for FY 1996.

The FMRs for Arecibo, Ponce, and for the nonmetropolitan areas remain at their FY 1995 40th percentile levels. The slight increase proposed in the FMRs for Aguadilla is being made effective in this notice. Results of the RDD surveys now underway for the Aguadilla, Arecibo, and Ponce metropolitan FMR areas and for the nonmetropolitan FMR areas of Puerto Rico will be announced in the **Federal Register** notice of proposed FY 1997 FMRs.

State Minimum FMRs

Today's document implements HUD's new minimum FMR policy, which establishes FMRs at the higher of the local FMR or the State-wide average FMR of nonmetropolitan counties, subject to a ceiling rent cap of $450 on the nonmetropolitan State averages. HUD adopted this procedure in recognition of the difficulty that small PHAs in lightly populated rural areas were having in developing valid FMR surveys and the concern that their FMRs may be affected by small sample sizes and a higher incidence of substandard housing and assisted housing with below market rents. The new policy raises the FMRs for many of the nonmetropolitan counties. HUD also has decided to apply the policy to a small number of metropolitan areas that otherwise would have had FMRs below the State-wide nonmetropolitan county average. The new State minimum policy may be subject to change, based on further analysis and public comment.

Manufactured Home Space FMRs

Manufactured home space FMRs are 30 percent of the applicable Section 8 Rental Certificate program FMR for a two-bedroom unit. HUD accepts public comments requesting modifications of these FMRs where they are thought to be inadequate to run the program. In order to be accepted as a basis for revising the FMRs, such comments must contain statistically valid survey data that show the 40th percentile space rent (excluding the cost of utilities) for the entire FMR area. This program uses the same FMR area definitions as the Section 8 Rental Certificate program. Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the Rental Certificate program FMRs.

New Metropolitan FMR Areas

This publication makes final the definitions of three new metropolitan FMR areas based on the most recent OMB changes. The Grand Junction CO FMR area (Mesa County) is the same as the MSA definition. HUD has decided, however, not to use the Flagstaff, AZ-UT MSA definition as a FMR area because Kane County, UT is not considered to be part of the Flagstaff housing market area. The Flagstaff metropolitan FMR area, therefore, is defined to include only Coconino County, AZ, while Kane County, UT is identified as a separate metropolitan FMR area under the State of Utah listing.

IV. HUD Rental Housing Survey Guides

HUD recommends use of professionally-conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $10,000–$15,000. Areas with 500 or more program units usually meet this criterion, and areas with fewer units may meet it if the actual two-bedroom FMR rent standard is significantly different than that proposed by HUD. In addition, HUD has developed a simplified version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of around $5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped surveys must be approved in advance by HUD. PHAs are cautioned that the resultant FMRs will not be identical within the group; each individual FMR area will have a separate FMR based on its relationship to the combined rent of the group of FMR areas.

PHAs that plan to use the RDD survey technique may obtain a copy of the appropriate survey guide by calling HUD USER on 1–800–245–2691. Larger PHAs should request ''Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments.'' Smaller PHAs should obtain ''Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments.''

HUD prefers but does not mandate the use of RDD telephone surveys or the more traditional method described in

the small PHA survey guide. Other survey methodologies are acceptable as long as they provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. All survey results must be fully documented.

V. FMRs for Federal Disaster Areas

Under the authority granted in 24 CFR part 899, the Secretary finds good cause to waive the regulatory requirements that govern requests for geographic area FMR exceptions for areas that are declared disaster areas by the Federal Emergency Management Agency (FEMA) during FY 1996. HUD is prepared to grant disaster-related exceptions up to 10 percent above the applicable FMRs. HUD field offices are authorized to approve such exceptions for: (1) single-county FMR areas and for individual county parts of multi-county FMR areas that qualify as disaster areas under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; if (2) the PHA certifies that damage to the rental housing stock as a result of the disaster is so substantial that it has increased the prevailing rent levels in the affected area. Such exceptions must be requested in writing by the responsible PHAs. Once approved by HUD, they will remain in effect until superseded by the publication of the final FY 1998 FMRs.

VI. Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this Notice will not have a significant impact on family formation, maintenance, or well-being. The Notice amends Fair Market Rent schedules for various Section 8 assisted housing programs, and does not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this Notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will be codified in 24 CFR Part 888, are amended as follows:

Dated: August 30, 1995.

Henry G. Cisneros,

Secretary.

Fair Market Rents for the Section 8 Housing Assistance Payments Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. The FMRs shown in Schedule B incorporate the Office of Management and Budget's (OMB) most current definitions of metropolitan areas (with the exceptions discussed in paragraph b). HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions. FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition.

b. The exceptions are counties deleted from metropolitan areas whose revised OMB definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the ''Metropolitan FMR Areas'' listing:

Metropolitan Area and Counties Deleted

Atlanta, GA—Carroll, Pickens, and Walton Counties
Chicago, IL—DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN—Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX—Henderson County
Flagstaff, AZ–UT—Kane County, UT
Lafayette, LA—St. Landry and Acadia Parishes
New Orleans, LA—St. James Parish
Washington, DC–MD–VA–WV—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia

c. FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands.

d. FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The complete definitions of these areas including the independent cities are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED

County	Cities
Allegheny	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southhampton	Franklin.
Wise	Norton.

e. FMRs for Section 8 manufactured home spaces are 30 percent of the two-bedroom Section 8 Rental Certificate program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been revised on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that

are updated annually using the same data used to estimate the Rental Certificate program FMRs. The FMR area definitions used for manufactured home spaces are the same as for the Section 8 Certificate program.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210–32–P

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	239	283	353	494	559	Calhoun
Birmingham, AL MSA	340	384	447	605	672	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	322	359	430	563	610	Russell
Decatur, AL MSA	317	320	405	523	625	Lawrence, Morgan
Dothan, AL MSA	287	294	365	503	510	Dale, Houston
Florence, AL MSA	269	310	398	496	556	Colbert, Lauderdale
Gadsden, AL MSA	239	292	338	438	539	Etowah
Huntsville, AL MSA	333	390	481	641	762	Limestone, Madison
Mobile, AL MSA	321	358	411	553	649	Baldwin, Mobile
Montgomery, AL MSA	364	389	459	626	753	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	314	337	448	615	651	Tuscaloosa

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	234	278	332	430	492
Bullock	234	278	332	430	492
Chambers	234	278	332	430	493
Chilton	242	278	332	430	492
Clarke	234	278	332	430	492
Cleburne	234	278	332	430	492
Conecuh	234	278	332	430	492
Covington	234	278	332	430	492
Cullman	234	278	332	440	535
Dekalb	234	278	332	430	492
Fayette	234	278	332	430	492
Geneva	234	278	332	430	492
Hale	234	278	332	430	492
Jackson	253	278	332	430	528
Lee	247	345	442	575	727
Macon	255	287	383	479	536
Marion	234	278	332	430	492
Monroe	234	278	332	430	492
Pickens	234	278	332	430	492
Randolph	234	278	332	430	492
Talladega	234	278	332	430	492
Walker	234	289	340	439	560
Wilcox	234	278	332	430	492

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bibb	234	278	332	447	536
Butler	234	278	332	430	492
Cherokee	234	278	332	430	492
Choctaw	234	278	332	430	492
Clay	234	278	332	430	492
Coffee	234	329	427	594	667
Coosa	234	278	332	430	492
Crenshaw	234	278	332	430	492
Dallas	234	278	332	430	492
Escambia	234	278	332	430	492
Franklin	234	278	332	430	492
Greene	234	278	332	430	492
Henry	234	278	332	430	492
Lamar	234	278	332	430	492
Lowndes	234	278	332	430	492
Marengo	234	278	332	430	492
Marshall	268	278	338	469	555
Perry	234	278	332	430	492
Pike	239	278	332	430	500
Sumter	234	278	332	430	492
Tallapoosa	235	278	332	430	492
Washington	234	278	332	430	492
Winston	234	278	332	430	492

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	473	557	740	1029	1215	Anchorage

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	491	553	623	778	1020
Bethel	633	792	1003	1256	1406
Dillingham	612	622	827	1036	1159
Haines	456	565	644	876	902
Kenai Peninsula	368	469	565	785	927
Kodiak Island	653	717	931	1164	1510
Matanuska-Susitna	357	484	544	739	873
North Slope	732	750	927	1290	1503
Pr.Wales-Outer Ketchikan	342	544	625	868	918
Skagway-Yakutat-Angoon	419	426	552	691	775
Valdez-Cordova	512	627	697	890	1060
Wrangell-Petersburg	373	550	668	851	934

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian West	421	475	533	668	748
Bristol Bay	508	586	660	917	997
Fairbanks North Star	386	525	689	947	1117
Juneau	681	787	1002	1334	1386
Ketchikan Gateway	502	613	821	1143	1201
Lake & Peninsula	392	634	713	890	998
Nome	645	798	896	1247	1407
Northwest Arctic	775	873	980	1363	1608
Sitka	540	641	719	1000	1181
Southeast Fairbanks	430	451	544	680	764
Wade Hampton	366	552	622	777	871
Yukon-Koyukuk	489	551	621	776	899

A R I Z O N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ	401	435	564	757	909	Coconino
Las Vegas, NV-AZ MSA	450	534	636	884	1044	Mohave
Phoenix-Mesa, AZ MSA	370	447	561	780	920	Maricopa, Pinal
Tucson, AZ MSA	347	416	553	770	908	Pima
Yuma, AZ MSA	347	401	534	743	748	Yuma

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Apache	347	364	463	604	718
Gila	347	364	463	604	718
Greenlee	347	364	463	604	718
Navajo	347	364	463	604	718
Yavapai	368	384	512	714	786
Cochise	347	364	463	604	718
Graham	347	364	463	604	718
La Paz	347	364	463	604	718
Santa Cruz	347	384	475	604	718

A R K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	261	327	430	582	602	Benton, Washington
Fort Smith, AR-OK MSA	282	286	376	504	528	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	352	390	464	641	748	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	321	374	440	611	642	Crittenden
Pine Bluff, AR MSA	268	318	419	529	688	Jefferson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

A R K A N S A S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Texarkana, TX-Texarkana, AR MSA	286	350	427	563	597	Miller

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Arkansas	250	270	345	473	513
Baxter	227	290	385	494	602
Bradley	227	270	345	458	513
Carroll	267	292	345	458	547
Clark	250	270	350	458	553
Cleburne	257	270	345	458	520
Columbia	227	270	345	458	513
Craighead	294	320	377	520	549
Dallas	227	270	345	458	513
Drew	227	294	393	543	552
Fulton	235	270	345	458	513
Grant	236	281	345	458	518
Hempstead	227	270	345	458	513
Howard	227	270	345	458	513
Izard	227	270	345	458	513
Johnson	227	270	345	458	513
Lawrence	227	270	345	458	513
Lincoln	246	270	351	470	513
Logan	238	270	345	458	513
Marion	227	270	345	458	513
Monroe	231	270	345	458	513
Nevada	227	270	345	474	513
Ouachita	265	270	345	477	563
Phillips	227	270	345	458	513
Poinsett	227	270	345	458	513
Pope	227	297	376	522	601
Randolph	227	270	345	458	513
Scott	227	270	345	458	513
Sevier	249	270	345	458	513
Stone	227	270	345	458	513
Van Buren	227	270	345	458	566
Woodruff	227	270	345	458	513
Ashley	227	270	345	458	542
Boone	269	274	363	506	597
Calhoun	227	270	345	458	513
Chicot	227	270	345	458	513
Clay	227	270	345	458	513
Cleveland	227	270	345	458	513
Conway	227	281	376	469	526
Cross	236	298	345	465	548
Desha	227	270	345	458	513
Franklin	238	270	345	458	513
Garland	227	290	388	540	638
Greene	244	270	345	458	513
Hot Spring	227	270	345	458	513
Independence	239	277	345	458	513
Jackson	235	270	345	458	513
Lafayette	238	270	345	458	513
Lee	251	270	345	458	513
Little River	227	270	351	487	574
Madison	259	270	351	458	513
Mississippi	258	281	376	495	555
Montgomery	227	270	345	458	513
Newton	227	270	345	458	513
Perry	227	270	345	458	513
Pike	227	270	345	458	513
Polk	227	270	345	458	513
Prairie	227	270	345	458	513
St. Francis	227	276	345	468	550
Searcy	227	270	345	458	513
Sharp	227	270	345	458	513
Union	285	300	361	484	593
White	227	270	345	474	513
Yell	236	270	345	458	513

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C A L I F O R N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	377	425	532	739	819	Kern
Chico-Paradise, CA MSA	314	402	535	734	878	Butte
Fresno, CA MSA	386	432	516	717	826	Fresno, Madera
Los Angeles-Long Beach, CA PMSA	564	676	855	1154	1377	Los Angeles
Merced, CA MSA	374	421	511	706	833	Merced
Modesto, CA MSA	422	455	555	774	911	Stanislaus
Oakland, CA PMSA	530	642	804	1102	1319	Alameda, Contra Costa
Orange County, CA PMSA	637	696	860	1197	1333	Orange
Redding, CA MSA	355	394	493	685	808	Shasta
Riverside-San Bernardino, CA PMSA	455	507	618	859	1014	Riverside, San Bernardino
Sacramento, CA PMSA	444	501	626	870	1025	El Dorado, Placer, Sacramento
Salinas, CA MSA	534	625	754	1048	1099	Monterey
San Diego, CA MSA	473	541	677	940	1109	San Diego
San Francisco, CA PMSA	605	784	991	1358	1437	Marin, San Francisco, San Mateo
San Jose, CA PMSA	674	768	949	1301	1461	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	481	544	690	959	1132	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	585	650	824	1147	1294	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	596	709	948	1317	1544	Santa Cruz
Santa Rosa, CA PMSA	541	613	795	1105	1306	Sonoma
Stockton-Lodi, CA MSA	415	470	602	837	988	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	509	580	707	983	1160	Napa, Solano
Ventura, CA PMSA	609	698	885	1177	1371	Ventura
Visalia-Tulare-Porterville, CA MSA	347	369	480	671	766	Tulare
Yolo, CA PMSA	447	510	630	875	1033	Yolo
Yuba City, CA MSA	309	360	463	646	746	Sutter, Yuba

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alpine	294	441	498	692	746
Calaveras	356	411	548	762	898
Del Norte	301	412	548	763	900
Humboldt	303	420	551	768	908
Inyo	304	411	527	691	746
Lake	331	421	562	708	921
Mariposa	317	403	519	679	802
Modoc	321	360	463	646	746
Nevada	368	503	670	932	1080
San Benito	441	519	650	905	1060
Siskiyou	308	360	463	646	746
Trinity	330	360	463	646	746

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Amador	405	447	596	830	925
Colusa	321	360	463	646	746
Glenn	294	360	463	646	746
Imperial	332	415	511	712	746
Kings	341	395	494	687	810
Lassen	360	364	473	646	746
Mendocino	406	489	601	837	843
Mono	449	538	715	994	1175
Plumas	324	360	463	646	746
Sierra	294	393	485	674	796
Tehama	307	360	463	646	746
Tuolumne	325	444	592	823	971

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C O L O R A D O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	434	520	667	929	1095	Boulder
Colorado Springs, CO MSA	372	398	531	739	874	El Paso
Denver, CO PMSA	365	435	579	804	949	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	384	474	585	812	960	Larimer
Grand Junction, CO MSA	354	367	459	618	736	Mesa
Greeley, CO PMSA	365	403	507	704	833	Weld
Pueblo, CO MSA	372	386	482	649	773	Pueblo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alamosa	354	367	459	618	736
Baca	354	367	459	618	736
Chaffee	354	367	459	618	736
Clear Creek	354	412	467	650	766
Costilla	354	367	459	618	736
Custer	354	367	459	618	736
Dolores	354	367	459	618	736
Elbert	390	434	494	618	811
Garfield	411	440	556	694	910
Grand	420	424	537	672	813
Hinsdale	354	374	459	618	736
Jackson	354	367	459	618	736
Kit Carson	354	367	459	618	736
La Plata	394	435	574	799	943
Lincoln	354	367	459	618	736
Mineral	354	367	459	618	736
Montezuma	354	367	459	618	736
Morgan	354	367	459	618	736
Ouray	354	367	464	618	751
Phillips	354	367	459	618	736
Prowers	354	367	459	618	736
Rio Grande	354	367	459	618	736
Saguache	354	367	459	618	736
San Miguel	651	940	1033	1291	1665
Summit	456	546	699	973	1198
Washington	354	367	459	618	736

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Archuleta	354	388	459	618	736
Bent	354	367	459	618	736
Cheyenne	354	367	459	618	736
Conejos	354	367	459	618	736
Crowley	354	367	459	618	736
Delta	354	367	459	618	736
Eagle	476	518	691	962	1134
Fremont	354	367	459	618	736
Gilpin	354	470	597	788	872
Gunnison	354	367	459	618	736
Huerfano	354	367	459	618	736
Kiowa	354	367	459	618	736
Lake	354	367	459	618	736
Las Animas	354	377	459	618	736
Logan	354	367	459	618	736
Moffat	354	367	459	618	736
Montrose	354	367	464	643	759
Otero	354	367	459	618	736
Park	354	391	510	708	805
Pitkin	531	726	967	1276	1450
Rio Blanco	354	367	459	618	736
Routt	354	428	565	785	925
San Juan	354	367	459	618	736
Sedgwick	354	367	459	618	736
Teller	354	419	559	777	783
Yuma	354	367	459	618	736

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	525	682	821	1027	1282	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	636	761	950	1255	1446	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	438	545	697	873	1061	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	528	648	802	1026	1189	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	476	575	700	877	1002	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	772	905	1103	1479	1633	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	403	545	674	842	942	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	455	551	689	859	963	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	342	552	623	866	1021	Hartland town
Litchfield	397	540	721	901	1025	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	588	666	890	1237	1459	Chester town, Deep River town, Essex town Westbrook town
New London	498	610	693	895	1136	Lyme town, Voluntown town
Tolland	342	552	623	866	872	Union town
Windham	393	481	623	780	979	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

D E L A W A R E

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	415	460	525	681	773	Kent
Wilmington-Newark, DE-MD PMSA	409	541	630	856	1033	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	364	386	493	647	691

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	625	710	834	1135	1368	District of Columbia

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	375	438	561	745	790	Flagler, Volusia
Fort Lauderdale, FL PMSA	483	568	702	977	1152	Broward
Fort Myers-Cape Coral, FL MSA	417	481	580	809	845	Lee
Fort Pierce-Port Lucie, FL MSA	428	470	609	792	854	Martin, St. Lucie
Fort Walton Beach, FL MSA	375	409	463	629	742	Okaloosa
Gainesville, FL MSA	375	409	497	681	804	Alachua
Jacksonville, FL MSA	391	438	528	698	776	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	375	409	463	588	674	Polk
Melbourne-Titusville-Palm Bay, FL MSA	375	445	557	746	870	Brevard
Miami, FL PMSA	474	594	742	1018	1181	Dade
Naples, FL MSA	401	565	679	944	1053	Collier
Ocala, FL MSA	375	409	463	609	715	Marion
Orlando, FL MSA	464	528	629	826	1008	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	375	409	463	592	635	Bay
Pensacola, FL MSA	375	409	463	620	732	Escambia, Santa Rosa
Punta Gorda, FL MSA	375	429	571	793	936	Charlotte
Sarasota-Bradenton, FL MSA	376	477	606	781	849	Manatee, Sarasota
Tallahassee, FL MSA	384	423	559	731	881	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	370	440	545	725	878	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	480	563	696	926	1143	Palm Beach

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	368	402	455	564	614
Calhoun	368	402	455	564	614
Columbia	368	402	455	564	614
Dixie	368	402	455	564	614
Gilchrist	368	402	455	564	614
Gulf	368	402	455	564	614
Hardee	368	402	455	564	614
Highlands	368	402	455	566	633
Indian River	368	460	591	739	827
Jefferson	368	402	455	564	614
Levy	368	402	455	564	614
Madison	368	402	455	564	614
Okeechobee	368	402	455	564	620
Sumter	368	402	455	564	614
Taylor	368	402	455	564	615
Wakulla	368	402	455	564	614
Washington	368	402	455	564	614

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bradford	368	402	455	564	614
Citrus	368	402	455	564	614
Desoto	368	402	455	564	614
Franklin	368	402	455	564	614
Glades	368	402	455	564	614
Hamilton	368	402	455	564	614
Hendry	368	402	469	587	658
Holmes	368	402	455	564	614
Jackson	368	402	455	564	614
Lafayette	368	402	455	564	614
Liberty	368	402	455	564	614
Monroe	527	594	763	1052	1251
Putnam	368	402	455	564	614
Suwannee	368	402	455	564	614
Union	368	402	455	564	614
Walton	368	402	455	585	732

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	279	327	400	546	590	Dougherty, Lee
Athens, GA MSA	345	371	480	654	788	Clarke, Madison, Oconee
Atlanta, GA	465	518	604	803	973	Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale, Spalding
Augusta-Aiken, GA-SC MSA	331	396	466	634	750	Columbia, Mcduffie, Richmond
Carroll County, GA	310	325	419	583	689	Carroll
Chattanooga, TN-GA MSA	318	373	447	577	658	Catoosa, Dade, Walker
Columbus, GA-AL MSA	322	359	430	563	610	Chattahoochee, Harris, Muscogee
Macon, GA MSA	335	374	434	599	616	Bibb, Houston, Jones, Peach, Twiggs
Pickens County, GA	270	325	401	557	585	Pickens
Savannah, GA MSA	337	418	486	655	682	Bryan, Chatham, Effingham
Walton County, GA	344	371	478	664	784	Walton

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Appling	267	322	393	510	579
Bacon	267	322	393	510	579
Baldwin	267	342	417	534	583
Ben Hill	267	322	393	510	587
Bleckley	267	322	393	510	579
Brooks	267	322	393	510	579
Burke	267	322	393	510	579
Calhoun	267	322	393	510	579
Candler	267	322	393	510	579
Chattooga	267	322	393	510	579
Clinch	267	322	393	510	579
Colquitt	267	322	393	510	579
Crawford	267	322	393	510	579
Dawson	267	347	463	578	714
Dodge	267	322	393	510	579
Early	267	322	393	510	579
Elbert	267	322	393	510	579
Evans	267	322	393	510	579
Floyd	267	322	394	521	579
Gilmer	267	322	393	510	579
Glynn	373	417	473	634	777
Grady	272	322	393	510	579
Habersham	287	322	393	510	584
Hancock	267	322	393	510	579
Hart	267	322	393	510	579
Irwin	267	322	393	510	579

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atkinson	267	322	393	510	579
Baker	267	322	393	510	579
Banks	267	322	393	510	579
Berrien	267	322	393	510	579
Brantley	267	322	393	510	579
Bulloch	322	327	420	541	687
Butts	267	353	470	628	658
Camden	374	423	474	658	778
Charlton	267	322	393	510	579
Clay	267	322	393	510	579
Coffee	267	322	393	510	587
Cook	267	322	393	510	579
Crisp	270	322	393	510	579
Decatur	267	322	393	510	579
Dooly	267	322	393	510	579
Echols	267	322	393	510	579
Emanuel	267	322	393	510	579
Fannin	267	322	393	510	579
Franklin	267	322	393	510	579
Glascock	267	322	393	510	579
Gordon	317	322	401	518	661
Greene	267	322	393	510	579
Hall	283	430	505	633	707
Haralson	267	322	393	510	579
Heard	267	322	393	510	579
Jackson	298	322	404	510	665

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

G E O R G I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jasper	267	322	398	541	579
Jefferson	267	322	393	510	587
Johnson	267	322	393	510	579
Lanier	267	322	393	510	579
Liberty	333	371	422	586	591
Long	267	347	393	510	579
Lumpkin	267	360	405	542	665
Macon	267	322	393	510	579
Meriwether	267	322	393	510	579
Mitchell	267	322	393	510	579
Montgomery	267	322	393	510	579
Murray	267	322	393	510	579
Pierce	267	322	393	510	579
Polk	267	322	393	532	579
Putnam	267	322	393	510	587
Rabun	267	322	393	510	579
Schley	267	322	393	510	579
Seminole	267	322	393	510	579
Stewart	267	322	393	510	579
Talbot	267	322	393	510	579
Tattnall	267	322	393	510	579
Telfair	267	322	393	510	579
Thomas	267	332	393	510	579
Toombs	267	322	393	510	579
Treutlen	267	322	393	510	579
Turner	267	322	393	510	579
Upson	276	322	393	510	579
Warren	267	322	393	510	579
Wayne	276	322	393	510	579
Wheeler	267	322	393	510	579
Whitfield	267	350	422	539	636
Wilkes	267	322	393	510	579
Worth	267	322	393	510	579

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jeff Davis	267	322	393	510	579
Jenkins	267	322	393	510	579
Lamar	267	331	393	510	624
Laurens	273	322	393	510	579
Lincoln	267	322	393	510	579
Lowndes	300	362	438	615	679
Mcintosh	267	322	393	510	579
Marion	267	322	393	510	579
Miller	267	322	393	510	579
Monroe	267	322	393	519	579
Morgan	267	322	408	510	579
Oglethorpe	267	322	393	510	579
Pike	310	337	426	593	597
Pulaski	267	322	393	510	579
Quitman	267	322	393	510	579
Randolph	267	322	393	510	579
Screven	267	322	393	510	579
Stephens	267	322	393	510	579
Sumter	267	327	393	510	579
Taliaferro	267	322	393	510	579
Taylor	267	322	393	510	579
Terrell	267	322	393	510	579
Tift	267	322	393	510	579
Towns	267	322	393	510	579
Troup	267	364	410	512	579
Union	267	322	411	515	579
Ware	296	332	393	510	613
Washington	267	322	393	510	579
Webster	267	322	393	510	579
White	267	322	393	510	593
Wilcox	267	322	393	510	579
Wilkinson	267	322	393	510	579

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

H A W A I I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	756	904	1064	1438	1556	Honolulu

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hawaii	459	598	687	914	1126
Maui	741	919	1121	1448	1640
Kauai	586	876	1067	1410	1525

I D A H O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	371	424	515	715	845	Ada, Canyon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	263	305	394	521	617
Bear Lake	263	305	394	521	617
Bingham	280	305	394	521	617
Boise	263	340	394	521	617
Bonneville	268	338	463	623	761
Butte	263	305	394	521	617
Caribou	263	305	394	521	617
Clark	263	305	394	521	617
Custer	263	305	394	521	617
Franklin	263	305	394	521	617
Gem	263	305	394	521	617
Idaho	263	305	394	521	617
Jerome	263	305	394	521	617
Latah	263	305	394	521	625
Lewis	263	305	394	521	617
Madison	263	305	394	521	617
Nez Perce	268	305	394	521	617
Owyhee	263	305	394	521	617
Power	263	305	394	521	617
Teton	287	305	394	533	630
Valley	274	305	394	521	617
Bannock	263	305	394	539	635
Benewah	263	305	394	521	617
Blaine	407	448	597	832	981
Bonner	302	375	463	643	740
Boundary	263	305	394	521	617
Camas	263	305	394	521	617
Cassia	263	305	394	521	617
Clearwater	263	305	394	521	617
Elmore	263	305	394	521	617
Fremont	263	305	394	521	617
Gooding	263	305	394	521	617
Jefferson	271	305	394	521	617
Kootenai	335	394	515	717	847
Lemhi	263	305	394	521	617
Lincoln	263	305	394	521	617
Minidoka	263	305	394	521	617
Oneida	264	305	394	521	617
Payette	263	305	394	521	617
Shoshone	263	305	394	521	617
Twin Falls	263	305	399	525	617
Washington	263	305	394	521	617

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	301	368	493	684	723	Mclean
Champaign-Urbana, IL MSA	324	397	514	705	844	Champaign
Chicago, IL	492	591	704	881	985	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	263	364	450	582	630	Henry, Rock Island
Decatur, IL MSA	252	326	419	566	587	Macon
De Kalb County, IL	381	444	563	781	906	Dekalb
Grundy County, IL	333	384	511	675	717	Grundy
Kankakee, IL PMSA	302	366	488	623	683	Kankakee
Kendall County, Il	460	524	632	880	885	Kendall
Peoria-Pekin, IL MSA	310	343	459	611	750	Peoria, Tazewell, Woodford
Rockford, IL MSA	301	386	470	591	689	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	297	362	471	612	677	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	291	359	479	637	724	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	244	275	353	463	562	Alexander	244	275	353	463	520
Bond	244	275	353	463	520	Brown	244	275	353	463	520
Bureau	244	308	362	463	520	Calhoun	244	275	353	463	520
Carroll	244	275	353	463	520	Cass	245	275	353	463	520
Christian	263	275	355	465	520	Clark	244	275	353	463	520
Clay	244	275	353	463	520	Coles	258	307	409	543	642
Crawford	244	275	353	463	520	Cumberland	244	275	353	463	520
De Witt	248	275	353	467	520	Douglas	261	275	353	463	520
Edgar	244	275	353	463	520	Edwards	244	275	353	463	520
Effingham	244	283	353	463	520	Fayette	244	275	353	463	520
Ford	244	275	353	463	520	Franklin	244	275	353	463	520
Fulton	244	275	353	463	520	Gallatin	244	275	353	463	520
Greene	244	275	353	463	520	Hamilton	244	276	353	463	520
Hancock	244	275	353	463	520	Hardin	244	275	353	463	520
Henderson	244	275	353	463	520	Iroquois	244	275	353	463	520
Jackson	296	297	375	533	596	Jasper	244	277	353	463	520
Jefferson	245	288	360	491	520	Jo Daviess	271	293	353	463	520
Johnson	244	275	353	463	520	Knox	244	275	353	463	537
La Salle	244	286	382	516	579	Lawrence	244	275	353	463	520
Lee	273	281	374	468	526	Livingston	244	301	402	518	565
Logan	274	291	387	485	608	Mcdonough	244	280	353	463	557
Macoupin	244	275	353	463	520	Marion	249	275	353	463	520
Marshall	244	275	353	463	520	Mason	244	275	353	463	527
Massac	245	275	353	463	520	Mercer	244	275	353	463	520
Montgomery	244	275	353	463	520	Morgan	244	309	412	548	578

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Moultrie	244	275	353	476	520
Piatt	244	297	386	527	541
Pope	244	275	353	463	520
Putnam	244	275	353	463	520
Richland	244	275	353	463	520
Schuyler	244	275	353	463	520
Shelby	244	275	353	463	520
Stephenson	258	295	373	467	524
Vermilion	244	311	389	487	544
Warren	258	275	353	463	520
Wayne	244	275	353	463	520
Whiteside	258	294	391	490	551

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Perry	245	275	353	463	520
Pike	244	275	353	463	520
Pulaski	244	275	353	463	520
Randolph	244	275	353	463	520
Saline	244	275	353	463	520
Scott	244	275	353	463	520
Stark	244	275	353	463	520
Union	244	275	353	463	520
Wabash	244	275	353	463	549
Washington	244	293	390	489	634
White	244	275	353	463	520
Williamson	244	275	355	494	520

I N D I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	302	391	521	723	854	Monroe
Cincinnati, OH-KY-IN	289	372	498	667	720	Dearborn
Elkhart-Goshen, IN MSA	346	395	500	640	734	Elkhart
Evansville-Henderson, IN-KY MSA	264	323	420	526	588	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	297	379	470	606	659	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	313	412	513	644	720	Lake, Porter
Indianapolis, IN MSA	339	425	511	640	717	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	278	329	429	552	600	Howard, Tipton
Lafayette, IN MSA	297	376	502	698	824	Clinton, Tippecanoe
Louisville, KY-IN MSA	293	377	461	638	673	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	276	344	407	552	652	Delaware
Ohio County, IN	269	303	387	499	549	Ohio
South Bend, IN MSA	298	396	522	651	730	St. Joseph
Terre Haute, IN MSA	268	314	400	500	558	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	374	403	487	608	800
Blackford	264	297	392	491	549
Carroll	264	297	380	490	538
Crawford	264	297	380	490	538
Decatur	264	322	412	533	580
Fayette	264	297	381	490	577
Franklin	264	297	380	490	602

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	264	297	380	490	538
Brown	264	350	461	641	664
Cass	264	297	380	490	538
Daviess	264	297	380	490	538
Dubois	264	297	380	490	555
Fountain	264	297	380	490	538
Fulton	291	304	380	511	538

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I N D I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Gibson	264	297	380	490	538
Greene	264	297	380	490	538
Jackson	324	339	419	554	595
Jay	264	297	380	490	538
Jennings	276	297	380	490	538
Kosciusko	264	349	421	546	590
La Porte	269	325	435	557	609
Marshall	312	317	421	531	590
Miami	264	297	380	490	538
Newton	276	297	380	490	538
Orange	264	297	380	490	538
Parke	264	297	380	490	562
Pike	264	297	380	490	538
Putnam	287	334	411	551	556
Ripley	264	297	380	498	563
Spencer	264	297	380	490	538
Steuben	323	365	436	544	609
Switzerland	264	297	380	490	538
Wabash	264	297	380	490	538
Washington	264	297	380	490	538
White	264	297	380	490	594

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Grant	279	297	380	492	538
Henry	264	297	380	490	538
Jasper	264	320	380	490	538
Jefferson	264	297	380	490	538
Knox	269	297	385	490	539
Lagrange	269	309	395	513	597
Lawrence	264	297	380	494	538
Martin	264	297	380	490	538
Montgomery	308	324	404	512	567
Noble	304	310	386	499	551
Owen	264	297	380	490	563
Perry	264	297	380	490	538
Pulaski	264	297	380	490	538
Randolph	264	297	380	490	538
Rush	272	297	380	490	563
Starke	264	297	380	490	538
Sullivan	264	297	380	490	538
Union	264	297	380	490	538
Warren	264	297	380	490	538
Wayne	264	297	380	490	538

I O W A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	258	363	466	650	697	Linn
Davenport-Moline-Rock Island, IA-IL MSA	263	364	450	582	630	Scott
Des Moines, IA MSA	350	444	545	707	743	Dallas, Polk, Warren
Dubuque, IA MSA	273	334	430	549	669	Dubuque
Iowa City, IA MSA	311	401	515	715	845	Johnson
Omaha, NE-IA MSA	283	387	490	642	720	Pottawattamie
Sioux City, IA-NE MSA	290	348	434	542	618	Woodbury
Waterloo-Cedar Falls, IA MSA	255	325	406	541	635	Black Hawk

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	250	309	388	492	543
Allamakee	250	309	388	497	569
Audubon	250	309	388	492	543
Boone	250	328	388	497	589
Buchanan	264	309	388	492	543
Butler	266	309	388	492	543
Carroll	250	309	388	492	543
Cedar	250	313	388	492	543
Cherokee	250	309	388	492	543
Clarke	257	309	388	492	543
Clayton	250	309	388	492	543
Crawford	250	309	388	492	543
Decatur	250	309	388	492	543
Des Moines	250	318	410	513	573
Emmet	250	309	388	492	573
Floyd	272	309	388	492	543
Fremont	275	309	388	492	571
Grundy	250	309	388	492	557
Hamilton	285	323	392	492	549
Hardin	250	309	388	492	543
Henry	250	316	402	503	569
Humboldt	250	309	388	492	543
Iowa	250	309	388	492	543
Jasper	250	316	401	501	561
Jones	259	309	388	492	543
Kossuth	250	309	388	492	543
Louisa	250	309	388	492	543
Lyon	250	309	388	492	543
Mahaska	250	309	388	492	543
Marshall	250	309	388	492	543
Mitchell	250	309	388	492	543
Monroe	250	325	388	492	571
Muscatine	250	309	410	545	573
Osceola	250	309	388	492	543
Palo Alto	250	309	388	492	543
Pocahontas	250	309	388	492	543
Ringgold	250	309	388	492	543
Shelby	250	309	388	492	543
Story	325	395	465	646	739
Taylor	250	309	388	492	544

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	250	309	388	492	543
Appanoose	250	309	388	492	546
Benton	257	309	388	492	543
Bremer	250	309	388	492	577
Buena Vista	265	309	388	492	543
Calhoun	250	309	388	492	543
Cass	250	309	388	492	543
Cerro Gordo	250	327	405	540	566
Chickasaw	250	309	388	492	543
Clay	250	309	388	492	543
Clinton	250	309	393	492	550
Davis	250	309	388	492	543
Delaware	250	309	388	492	543
Dickinson	250	309	388	492	543
Fayette	250	309	388	492	543
Franklin	257	309	388	492	543
Greene	250	309	388	492	543
Guthrie	250	309	388	492	570
Hancock	250	309	388	492	543
Harrison	250	309	388	492	543
Howard	250	309	388	492	566
Ida	257	309	388	492	543
Jackson	250	309	390	492	546
Jefferson	250	315	420	547	691
Keokuk	250	309	388	492	543
Lee	250	309	400	500	560
Lucas	250	309	388	492	543
Madison	250	309	403	516	565
Marion	250	342	420	525	589
Mills	250	334	394	494	552
Monona	250	309	388	492	543
Montgomery	275	310	388	492	543
O'Brien	250	309	388	492	543
Page	250	309	388	492	543
Plymouth	250	309	405	506	566
Poweshiek	265	328	420	525	589
Sac	250	309	388	492	543
Sioux	250	309	388	492	543
Tama	250	309	388	492	543
Union	250	309	388	492	571

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Van Buren	250	309	388	492	543
Washington	250	309	388	492	571
Webster	250	309	393	494	551
Winneshiek	250	309	388	492	543
Wright	250	309	388	492	543
Wapello	250	309	391	492	547
Wayne	250	309	388	492	543
Winnebago	250	314	388	492	543
Worth	250	309	388	492	551

K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	319	402	483	668	740	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	332	397	510	710	817	Douglas
Topeka, KS MSA	312	359	466	630	711	Shawnee
Wichita, KS MSA	306	368	493	665	719	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	255	288	370	477	531
Atchison	255	288	370	477	569
Barton	255	288	370	477	531
Brown	255	288	370	477	531
Chautauqua	255	288	370	477	531
Cheyenne	255	288	370	477	531
Clay	255	288	370	477	531
Coffey	264	288	370	477	555
Cowley	272	288	370	489	531
Decatur	255	288	370	477	531
Doniphan	255	288	370	477	531
Elk	255	288	370	477	531
Ellsworth	255	288	370	477	531
Ford	273	322	402	506	570
Geary	313	329	411	531	576
Graham	255	288	370	477	531
Gray	255	288	370	477	531
Greenwood	255	288	370	477	531
Harper	255	288	370	477	531
Hodgeman	255	288	370	477	531
Jefferson	255	288	377	500	531
Kearny	283	288	381	512	562
Kiowa	255	288	370	477	531
Lane	255	288	370	477	531
Linn	255	288	370	477	531
Lyon	255	288	370	477	566
Anderson	255	288	370	477	531
Barber	255	288	370	477	531
Bourbon	255	288	370	477	531
Chase	255	288	370	477	531
Cherokee	255	288	370	477	531
Clark	255	288	370	477	531
Cloud	255	288	370	477	531
Comanche	255	288	370	477	531
Crawford	255	288	377	477	531
Dickinson	255	288	370	477	531
Edwards	255	288	370	477	531
Ellis	255	288	370	477	531
Finney	314	336	430	559	707
Franklin	276	288	373	477	583
Gove	255	288	370	477	531
Grant	255	323	370	507	552
Greeley	255	288	370	477	531
Hamilton	255	288	370	477	531
Haskell	255	295	370	477	531
Jackson	255	288	370	477	531
Jewell	255	288	370	477	531
Kingman	255	288	370	477	531
Labette	255	288	370	477	531
Lincoln	255	288	370	477	531
Logan	255	288	370	477	531
Mcpherson	257	288	370	477	531

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Marion	255	288	370	477	531
Meade	255	288	370	477	531
Montgomery	255	288	370	477	531
Morton	255	310	370	477	531
Neosho	255	288	370	477	531
Norton	255	288	370	477	531
Osborne	255	288	370	477	532
Pawnee	255	288	370	477	531
Pottawatomie	255	288	370	477	544
Rawlins	255	288	370	477	531
Republic	255	288	370	477	531
Riley	315	347	462	578	701
Rush	255	288	370	477	531
Saline	279	288	381	526	533
Seward	286	312	415	520	581
Sherman	255	288	370	477	531
Stafford	255	288	370	477	531
Stevens	255	289	370	477	546
Thomas	255	288	370	477	531
Wabaunsee	255	288	370	477	531
Washington	255	288	370	477	531
Wilson	255	288	370	477	531

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Marshall	255	288	370	477	531
Mitchell	255	288	370	477	531
Morris	255	288	370	477	531
Nemaha	255	288	370	477	531
Ness	255	288	370	477	531
Osage	255	288	370	477	531
Ottawa	255	288	370	477	531
Phillips	255	288	370	477	531
Pratt	255	288	370	487	531
Reno	255	288	370	477	577
Rice	255	288	370	477	531
Rooks	255	288	370	477	531
Russell	255	288	370	477	531
Scott	255	288	370	487	559
Sheridan	255	288	370	477	531
Smith	255	288	370	477	531
Stanton	255	288	370	477	531
Sumner	255	288	370	500	531
Trego	255	288	370	477	531
Wallace	255	288	370	477	531
Wichita	255	288	381	477	593
Woodson	255	288	370	477	531

K E N T U C K Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	289	372	498	667	720	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	313	351	411	561	576	Christian
Evansville-Henderson, IN-KY MSA	264	323	420	526	588	Henderson
Gallatin County, KY	242	330	404	506	662	Gallatin
Grant County, KY	241	287	380	531	627	Grant
Huntington-Ashland, WV-KY-OH MSA	261	306	377	481	529	Boyd, Carter, Greenup
Lexington, KY MSA	309	382	471	642	726	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	293	377	461	638	673	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	276	286	377	506	529	Daviess
Pendleton County, KY	243	281	375	471	527	Pendleton

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	238	291	343	454	498
Anderson	262	277	359	448	503
Barren	238	288	343	443	498
Bell	238	277	346	443	498
Bracken	238	277	343	443	498
Breckinridge	238	277	343	443	498
Caldwell	238	277	343	443	498
Carlisle	238	277	343	443	498
Casey	238	277	343	443	498
Clinton	238	277	343	443	498
Cumberland	238	277	343	443	498
Elliott	238	277	343	443	498
Fleming	238	277	343	443	498
Franklin	238	349	429	554	700
Garrard	238	277	343	443	498
Grayson	238	277	343	443	498
Hancock	238	277	343	447	531
Harlan	238	361	412	537	634
Hart	238	277	343	443	498
Hickman	238	277	343	443	498
Jackson	238	277	343	443	498
Knott	238	277	343	443	498
Larue	238	277	343	443	498
Lawrence	238	277	343	443	498
Leslie	238	277	343	443	498
Lewis	238	277	343	443	498
Livingston	274	277	370	514	518
Lyon	238	277	343	443	498
Mccreary	238	277	343	443	498
Magoffin	238	277	343	443	498
Marshall	238	283	343	443	533
Mason	238	277	343	443	498
Menifee	238	277	343	443	498
Metcalfe	238	277	343	443	498
Montgomery	238	277	343	443	498
Muhlenberg	238	277	343	443	498
Nicholas	238	277	343	443	498
Owen	238	277	343	443	511
Perry	266	277	357	446	500
Powell	238	277	343	443	498

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	238	277	343	443	498
Ballard	238	277	343	443	498
Bath	238	277	343	443	498
Boyle	283	287	383	479	536
Breathitt	238	277	343	443	498
Butler	238	277	343	443	498
Calloway	238	277	343	443	498
Carroll	238	277	343	443	498
Clay	238	277	343	443	498
Crittenden	238	277	343	443	498
Edmonson	238	277	343	443	498
Estill	238	277	343	443	498
Floyd	251	304	343	476	547
Fulton	238	277	343	443	498
Graves	238	277	343	443	498
Green	238	277	343	443	498
Hardin	296	303	380	511	606
Harrison	238	278	351	443	543
Henry	238	277	343	443	498
Hopkins	238	277	343	443	503
Johnson	238	277	343	443	498
Knox	238	329	421	528	647
Laurel	310	350	416	561	581
Lee	238	277	343	443	498
Letcher	238	277	343	443	498
Lincoln	238	277	343	443	498
Logan	238	277	343	452	498
Mccracken	269	290	362	464	595
Mclean	238	277	343	443	498
Marion	238	277	343	443	498
Martin	238	277	343	443	498
Meade	246	305	351	465	578
Mercer	238	277	343	452	498
Monroe	238	277	343	443	498
Morgan	238	277	343	443	498
Nelson	261	277	353	443	498
Ohio	238	277	343	443	498
Owsley	238	277	343	443	498
Pike	255	292	353	443	524
Pulaski	261	277	351	444	498

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Robertson	238	277	343	443	498
Rowan	238	277	343	443	518
Shelby	239	314	351	490	498
Spencer	238	283	343	443	498
Todd	238	277	343	443	498
Trimble	238	277	343	443	498
Warren	238	307	411	513	593
Wayne	238	277	343	443	498
Whitley	238	277	343	443	498
Rockcastle	238	277	343	443	498
Russell	238	277	343	443	498
Simpson	238	298	347	444	498
Taylor	287	339	380	508	574
Trigg	238	277	343	443	498
Union	238	277	343	443	498
Washington	238	281	343	443	498
Webster	238	277	343	443	498
Wolfe	238	277	343	443	498

L O U I S I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	260	325	409	566	576	Rapides
Acadia Parishes, LA	256	284	343	449	501	Acadia
Baton Rouge, LA MSA	282	351	435	604	713	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	256	301	385	535	633	Lafourche, Terrebonne
Lafayette, LA MSA	291	336	401	551	652	Lafayette, St. Martin
Lake Charles, LA MSA	286	333	422	553	692	Calcasieu
Monroe, LA MSA	281	315	420	567	589	Ouachita
New Orleans, LA	337	386	482	656	793	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	256	289	385	481	539	St. James
St. Landry Parish, LA	256	279	343	449	501	St. Landry
Shreveport-Bossier City, LA MSA	317	360	453	606	743	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	256	279	343	449	501
Avoyelles	256	279	343	449	503
Bienville	256	279	343	455	538
Cameron	256	279	343	449	501
Claiborne	256	279	343	449	501
De Soto	256	279	343	449	505
East Feliciana	256	279	343	449	501
Franklin	256	279	343	449	505
Iberia	271	283	350	449	501
Jackson	256	279	343	449	501
La Salle	256	279	343	449	505
Madison	256	279	343	449	501
Natchitoches	274	281	362	502	505
Red River	256	279	343	449	505
Assumption	281	301	357	449	501
Beauregard	312	340	403	527	579
Caldwell	256	279	343	449	501
Catahoula	256	279	343	449	501
Concordia	256	279	343	449	501
East Carroll	256	279	343	449	501
Evangeline	256	279	343	449	501
Grant	256	279	343	449	501
Iberville	256	279	343	449	517
Jefferson Davis	256	279	343	449	509
Lincoln	301	303	379	520	622
Morehouse	256	279	343	449	501
Pointe Coupee	256	279	343	449	544
Richland	256	279	343	449	505

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

L O U I S I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sabine	256	286	343	449	528
St. Mary	281	300	378	515	536
Tensas	256	279	343	449	501
Vermilion	256	279	343	449	501
Washington	256	279	343	449	501
West Feliciana	256	333	446	558	626

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Helena	256	279	343	449	501
Tangipahoa	275	286	367	481	513
Union	256	279	343	449	505
Vernon	294	328	374	483	571
West Carroll	256	279	343	449	501
Winn	256	279	343	449	501

M A I N E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	336	411	526	686	737	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	303	373	480	600	672	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	399	514	676	846	948	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	433	520	668	855	1049	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	303	373	496	621	695	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	303	355	455	580	667	
Cumberland	443	451	601	818	938	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	309	355	455	580	667	
Hancock	326	400	494	623	692	
Kennebec	315	393	473	592	667	
Knox	303	390	506	674	710	
Lincoln	394	438	498	693	818	
Oxford	303	355	455	580	667	

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M A I N E continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Penobscot	303	355	455	580	667	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Piscataquis	303	355	455	580	667	
Sagadahoc	426	488	601	800	987	
Somerset	317	362	455	580	684	
Waldo	303	355	455	580	667	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	303	355	455	580	667	
York	373	428	574	717	802	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	401	491	599	792	906	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	532	715	832	1100	1375	Columbia
Cumberland, MD-WV MSA	314	378	464	617	705	Allegany
Hagerstown, MD PMSA	313	377	463	615	703	Washington
Washington, DC-MD-VA	625	710	834	1135	1368	Calvert, Charles, Frederick, Montgomery, Prince George's

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M A R Y L A N D continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Wilmington-Newark, DE-MD PMSA	409	541	630	856	1033	Cecil

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Caroline	350	377	472	619	703
Garrett	313	420	472	615	775
St. Mary's	478	567	654	911	1042
Talbot	414	438	585	732	959
Worcester	313	377	473	657	703

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Dorchester	313	405	472	615	703
Kent	317	390	520	650	784
Somerset	372	419	472	655	774
Wicomico	352	408	525	668	735

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	450	603	805	1008	1128	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA-NH PMSA	550	619	775	969	1137	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	420	554	679	846	963	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA	364	511	663	855	928	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA	433	522	656	820	1010	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA	425	549	664	831	930	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA	407	498	566	707	793	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA	327	464	573	718	890	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	393	534	642	805	992	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA	386	476	602	752	923	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town
Worcester, MA-CT	455	551	689	859	963	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	426	585	779	974	1090	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	359	436	514	706	845	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Dukes	577	586	780	975	1093	
Franklin	387	480	614	768	927	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	391	532	710	945	1166	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	547	554	741	926	1038	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	692	926	1236	1545	1731	
Worcester	435	454	605	757	847	Athol town, Hardwick town, Hubbardston town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
						New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	434	526	649	851	954	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	351	355	466	583	655	Berrien
Detroit, MI PMSA	340	463	559	699	784	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	328	374	467	598	654	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	368	430	525	658	735	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	277	372	471	589	661	Jackson
Kalamazoo-Battle Creek, MI MSA	327	394	497	622	695	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	349	410	529	691	799	Clinton, Eaton, Ingham
Saginaw-Bay City-Midland, MI MSA	321	354	471	589	661	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcona	273	310	394	511	584	Alger	273	310	394	511	584
Alpena	273	310	394	511	587	Antrim	273	326	394	511	584
Arenac	273	310	394	511	584	Baraga	273	310	394	511	584
Barry	273	336	448	561	628	Benzie	285	310	394	529	584
Branch	315	323	397	542	584	Cass	273	310	396	540	584
Charlevoix	331	335	424	577	597	Cheboygan	287	310	394	511	598
Chippewa	273	310	394	511	584	Clare	283	310	394	511	584
Crawford	298	310	402	549	584	Delta	273	310	394	511	584
Dickinson	273	335	413	516	584	Emmet	304	365	431	565	602
Gladwin	273	310	394	511	584	Gogebic	273	310	394	511	584
Grand Traverse	361	386	515	645	722	Gratiot	285	310	394	511	584
Hillsdale	273	310	394	511	584	Houghton	273	310	394	511	584
Huron	273	310	394	511	584	Ionia	334	338	423	528	593
Iosco	273	310	394	511	617	Iron	273	310	394	511	584
Isabella	304	325	435	587	713	Kalkaska	273	310	395	513	649
Keweenaw	273	310	394	511	584	Lake	276	310	394	511	584
Leelanau	369	400	467	611	766	Luce	273	310	394	511	584
Mackinac	273	310	394	511	584	Manistee	273	310	394	511	584
Marquette	273	310	394	511	584	Mason	273	310	394	511	584
Mecosta	273	310	394	533	632	Menominee	273	310	394	511	584
Missaukee	287	310	394	511	584	Montcalm	277	310	394	511	584
Montmorency	273	310	394	511	584	Newaygo	313	336	395	511	584
Oceana	291	310	394	511	584	Ogemaw	284	311	394	511	584

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

M I C H I G A N continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ontonagon	273	310	394	511	584
Oscoda	273	310	394	511	584
Presque Isle	273	310	394	511	584
St. Joseph	273	317	394	513	584
Schoolcraft	273	310	394	511	584
Tuscola	296	323	431	538	602

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Osceola	273	310	394	511	584
Otsego	280	338	426	592	687
Roscommon	301	310	394	511	584
Sanilac	273	320	394	513	584
Shiawassee	273	342	412	573	614
Wexford	273	314	408	534	632

M I N N E S O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	254	335	431	574	669	St. Louis
Fargo-Moorhead, ND-MN MSA	295	407	491	681	729	Clay
Grand Forks, ND-MN MSA	305	364	478	660	736	Polk
La Crosse, WI-MN MSA	263	340	433	578	701	Houston
Minneapolis-St. Paul, MN-WI MSA	369	474	605	820	928	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	292	408	533	739	829	Olmsted
St. Cloud, MN MSA	317	409	483	612	779	Benton, Stearns

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aitkin	253	328	438	548	613
Beltrami	250	320	428	561	599
Blue Earth	307	371	462	592	752
Carlton	250	304	386	484	553
Chippewa	250	304	386	484	553
Cook	296	304	398	543	565
Crow Wing	250	304	406	508	638
Douglas	250	304	386	484	553
Fillmore	250	304	386	484	553
Goodhue	250	322	430	548	602
Hubbard	255	304	386	484	553
Jackson	250	304	386	484	553
Kandiyohi	250	317	386	484	582
Koochiching	302	308	410	511	671
Lake	250	304	386	484	553
Le Sueur	250	304	386	484	596
Lyon	250	304	386	484	573
Mahnomen	250	304	386	484	553
Martin	250	304	386	484	553
Mille Lacs	266	304	387	539	635
Mower	250	304	386	484	553

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Becker	250	359	403	504	565
Big Stone	250	304	386	484	553
Brown	250	323	386	484	553
Cass	250	304	386	484	553
Clearwater	250	304	386	484	553
Cottonwood	250	304	386	484	553
Dodge	250	304	386	484	553
Faribault	250	304	386	484	553
Freeborn	250	304	394	518	555
Grant	250	304	386	484	553
Itasca	320	324	422	528	591
Kanabec	250	314	408	509	571
Kittson	250	304	386	484	553
Lac qui Parle	250	304	386	484	553
Lake of the Woods	250	304	386	484	553
Lincoln	250	304	386	484	553
Mcleod	250	323	430	535	600
Marshall	250	304	386	484	553
Meeker	259	304	386	484	553
Morrison	278	304	386	484	553
Murray	250	304	386	484	553

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Nicollet	313	335	447	591	626
Norman	250	304	386	484	553
Pennington	250	304	386	516	553
Pipestone	250	304	386	484	553
Red Lake	250	315	386	484	553
Renville	250	304	386	484	553
Rock	250	304	386	484	553
Sibley	250	304	386	484	553
Stevens	285	360	406	508	569
Todd	250	304	386	484	553
Wabasha	250	304	386	484	553
Waseca	277	304	386	484	553
Wilkin	250	304	386	484	553
Yellow Medicine	250	304	386	484	553

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Nobles	250	304	386	484	553
Otter Tail	250	304	386	484	553
Pine	277	304	386	487	553
Pope	250	304	386	484	553
Redwood	250	304	386	484	553
Rice	262	358	477	596	668
Roseau	302	308	404	521	567
Steele	270	312	416	520	583
Swift	250	304	386	484	553
Traverse	250	304	386	484	553
Wadena	250	304	386	484	553
Watonwan	250	304	386	484	553
Winona	255	332	421	526	590

M I S S I S S I P P I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	329	386	445	619	731	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	243	299	365	492	586	Forrest, Lamar
Jackson, MS MSA	347	397	484	644	679	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	321	374	440	611	642	Desoto

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	237	281	349	447	570
Amite	237	281	347	447	503
Benton	237	281	347	447	503
Calhoun	237	281	347	447	503
Chickasaw	237	281	347	447	503
Claiborne	237	281	347	447	503
Clay	237	281	347	447	508
Copiah	237	281	347	447	503
Franklin	240	281	347	447	503
Greene	237	281	347	447	503
Holmes	237	281	347	447	503
Issaquena	249	342	454	568	637
Jasper	237	281	347	447	503
Jefferson Davis	237	281	347	447	503
Kemper	239	281	347	447	503
Lauderdale	237	305	385	498	539

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcorn	237	281	347	447	503
Attala	237	281	347	447	503
Bolivar	269	281	362	452	517
Carroll	237	281	347	447	503
Choctaw	237	281	347	447	503
Clarke	237	281	347	447	503
Coahoma	275	281	371	466	521
Covington	237	281	347	447	503
George	237	281	347	447	503
Grenada	237	282	347	475	503
Humphreys	237	281	347	447	503
Itawamba	237	281	347	447	503
Jefferson	237	281	347	447	503
Jones	237	281	347	447	503
Lafayette	240	329	438	549	614
Lawrence	237	281	347	447	503

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Leake	237	281	347	447	503
Leflore	237	281	347	448	538
Lowndes	293	315	374	469	529
Marshall	237	281	347	447	511
Montgomery	237	281	347	447	503
Newton	237	281	347	447	503
Oktibbeha	291	302	370	514	607
Pearl River	249	281	347	449	503
Pike	241	281	347	447	503
Prentiss	240	281	347	447	503
Scott	237	281	347	447	503
Simpson	240	281	347	447	503
Stone	237	281	347	447	503
Tallahatchie	237	281	347	447	503
Tippah	237	281	347	447	503
Tunica	237	281	347	447	503
Walthall	237	281	347	447	503
Washington	256	304	407	526	578
Webster	239	281	347	447	503
Winston	237	281	347	447	503
Yazoo	241	281	347	447	503

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Lee	297	319	385	481	539
Lincoln	237	281	347	447	503
Marion	237	281	347	447	503
Monroe	237	281	347	447	503
Neshoba	237	281	347	447	503
Noxubee	241	281	347	447	503
Panola	245	281	347	447	503
Perry	237	281	347	447	503
Pontotoc	237	281	347	447	503
Quitman	237	281	347	447	503
Sharkey	241	281	347	447	503
Smith	237	281	347	447	503
Sunflower	262	285	347	447	534
Tate	237	320	370	464	609
Tishomingo	237	281	347	447	503
Union	237	281	347	447	503
Warren	237	309	387	533	639
Wayne	237	281	347	447	503
Wilkinson	237	281	347	447	503
Yalobusha	239	281	347	447	503

M I S S O U R I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	245	344	448	623	735	Boone
Joplin, MO MSA	239	276	367	483	519	Jasper, Newton
Kansas City, MO-KS MSA	319	402	483	668	740	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	229	278	372	468	520	Andrew, Buchanan
St. Louis, MO-IL MSA	297	362	471	612	677	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	251	318	411	567	591	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	225	281	373	469	563
Audrain	240	260	334	451	521
Barton	225	260	334	434	497
Benton	254	260	344	434	497
Butler	225	260	334	434	497
Callaway	266	270	359	456	590

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atchison	225	260	334	434	497
Barry	225	268	334	434	497
Bates	225	260	334	434	507
Bollinger	225	260	334	434	497
Caldwell	225	262	351	440	497
Camden	296	299	400	555	652

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cape Girardeau	232	285	379	505	619
Carter	225	260	334	434	497
Chariton	225	260	334	434	497
Cole	225	297	396	528	554
Crawford	247	297	335	441	497
Dallas	225	260	334	434	497
Dekalb	233	260	334	439	497
Douglas	225	260	334	434	497
Gasconade	225	260	334	434	497
Grundy	225	260	334	434	497
Henry	257	262	348	437	573
Holt	225	260	334	434	497
Howell	225	260	334	434	497
Johnson	271	302	394	522	617
Laclede	225	260	334	437	497
Lewis	225	260	334	434	497
Livingston	225	260	335	434	497
Macon	225	260	334	434	497
Maries	225	260	334	434	497
Mercer	225	260	334	434	497
Mississippi	225	260	334	434	497
Monroe	225	260	334	434	497
Morgan	225	260	334	434	497
Nodaway	237	287	354	450	543
Osage	225	260	334	434	497
Pemiscot	225	260	334	434	497
Pettis	241	283	379	476	570
Pike	225	260	334	434	523
Pulaski	225	315	354	468	523
Ralls	225	260	334	434	497
Reynolds	225	260	334	434	497
St. Clair	225	260	334	434	497
St. Francois	237	299	379	475	623
Schuyler	225	260	334	434	497
Scott	271	273	364	492	566
Shelby	225	260	334	434	497
Stone	262	278	345	441	497
Taney	255	281	368	497	585
Vernon	225	260	334	444	497
Wayne	225	260	334	434	497

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Carroll	225	260	334	434	497
Cedar	225	260	334	434	497
Clark	225	260	334	434	497
Cooper	225	260	334	434	497
Dade	225	260	334	434	497
Daviess	225	260	334	434	497
Dent	225	260	334	434	497
Dunklin	225	260	334	434	497
Gentry	225	260	334	434	497
Harrison	225	260	334	434	497
Hickory	225	260	334	434	497
Howard	225	260	334	434	499
Iron	225	260	334	434	497
Knox	225	260	334	434	497
Lawrence	238	266	334	434	497
Linn	225	260	334	434	497
Mcdonald	225	260	334	434	497
Madison	225	260	334	434	497
Marion	225	260	334	434	497
Miller	247	297	334	437	516
Moniteau	225	260	334	434	497
Montgomery	225	260	334	434	497
New Madrid	225	260	334	434	497
Oregon	225	260	334	434	497
Ozark	225	260	334	434	497
Perry	262	266	355	472	497
Phelps	233	279	358	486	527
Polk	225	261	334	434	521
Putnam	225	260	334	434	497
Randolph	225	260	334	434	497
Ripley	225	260	334	434	497
Ste. Genevieve	225	268	344	441	558
Saline	225	260	342	434	497
Scotland	225	260	334	434	497
Shannon	225	260	334	434	497
Stoddard	225	260	334	434	497
Sullivan	225	260	334	434	497
Texas	225	260	334	434	497
Washington	264	318	357	446	500
Worth	225	260	334	434	497

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wright	225	260	334	434	497

M O N T A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	287	334	447	600	728	Yellowstone
Great Falls, MT MSA	287	332	438	570	679	Cascade

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	273	316	417	542	634
Blaine	273	316	417	542	634
Carbon	273	320	417	542	634
Chouteau	273	316	417	542	634
Daniels	273	336	417	542	634
Deer Lodge	273	316	417	542	634
Fergus	273	316	417	542	634
Gallatin	273	319	428	550	703
Glacier	273	316	417	542	634
Granite	273	316	417	542	634
Jefferson	288	316	417	542	634
Lake	298	316	417	542	634
Liberty	273	316	417	542	634
Mccone	273	334	417	542	634
Meagher	273	336	417	542	634
Missoula	299	351	467	602	765
Park	273	316	417	542	640
Phillips	273	316	417	542	634
Powder River	273	320	417	542	634
Prairie	273	316	417	542	634
Richland	273	342	417	542	634
Rosebud	273	316	417	542	634
Sheridan	281	316	417	542	634
Stillwater	279	316	417	542	634
Teton	273	316	417	542	634
Treasure	273	316	417	542	634
Wheatland	273	316	417	542	634

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	273	316	417	542	634
Broadwater	273	316	417	542	676
Carter	273	336	417	542	634
Custer	273	316	417	542	634
Dawson	273	316	417	542	634
Fallon	273	316	417	542	634
Flathead	273	317	424	590	695
Garfield	273	316	417	542	634
Golden Valley	273	335	417	542	634
Hill	282	316	417	542	634
Judith Basin	273	336	417	542	634
Lewis and Clark	305	357	474	660	781
Lincoln	298	316	417	542	634
Madison	279	316	417	542	634
Mineral	273	316	417	542	647
Musselshell	278	316	417	542	634
Petroleum	273	316	417	542	634
Pondera	273	335	417	542	634
Powell	278	316	417	542	634
Ravalli	273	316	417	542	634
Roosevelt	286	316	417	542	634
Sanders	273	316	417	542	634
Silver Bow	273	316	417	542	634
Sweet Grass	295	316	417	542	634
Toole	279	316	417	542	634
Valley	273	316	417	542	634
Wibaux	273	336	417	542	634

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	277	353	468	621	725	Lancaster
Omaha, NE-IA MSA	283	387	490	642	720	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	290	348	434	542	618	Dakota

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	224	301	398	499	598
Arthur	224	288	368	470	536
Blaine	224	288	368	470	536
Box Butte	243	288	368	471	556
Brown	224	288	368	470	547
Burt	224	288	368	470	536
Cedar	224	288	368	470	536
Cherry	224	303	368	473	557
Clay	224	288	368	470	536
Cuming	224	304	368	470	536
Dawes	239	288	368	474	559
Deuel	224	288	368	470	536
Dodge	224	288	380	500	536
Fillmore	224	288	368	470	536
Frontier	252	288	368	470	536
Gage	224	289	375	477	536
Garfield	224	288	368	470	536
Grant	224	288	368	470	536
Hall	224	295	393	517	580
Harlan	224	288	368	471	536
Hitchcock	224	288	368	470	536
Hooker	224	302	368	471	536
Jefferson	224	288	368	470	536
Kearney	224	288	368	470	559
Keya Paha	224	288	368	470	536
Knox	224	299	368	470	536
Logan	224	288	368	470	560
Mcpherson	224	288	368	471	536
Merrick	224	288	368	470	536
Nance	224	288	368	470	536
Nuckolls	224	288	368	470	536
Pawnee	224	288	368	474	536
Phelps	251	288	368	471	559
Platte	224	288	368	514	536
Red Willow	224	288	368	470	545

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Antelope	224	303	368	473	536
Banner	224	288	368	471	536
Boone	224	288	368	470	557
Boyd	224	301	368	470	536
Buffalo	228	330	414	517	624
Butler	224	288	368	470	536
Chase	224	304	368	470	561
Cheyenne	251	288	368	470	536
Colfax	244	300	368	470	536
Custer	251	290	368	470	556
Dawson	246	300	368	474	536
Dixon	250	288	368	470	536
Dundy	224	288	368	470	536
Franklin	224	288	368	475	536
Furnas	224	288	368	470	557
Garden	224	300	368	473	559
Gosper	224	288	368	470	543
Greeley	224	288	368	470	545
Hamilton	224	288	368	474	536
Hayes	224	302	368	470	557
Holt	224	288	368	470	536
Howard	224	288	368	470	536
Johnson	224	292	368	470	536
Keith	224	288	368	470	536
Kimball	224	288	368	471	559
Lincoln	230	300	368	470	536
Loup	224	288	368	470	558
Madison	230	302	400	517	631
Morrill	224	290	368	470	557
Nemaha	224	288	368	470	536
Otoe	224	288	368	470	560
Perkins	224	288	368	470	536
Pierce	224	288	368	470	536
Polk	224	288	368	470	536
Richardson	224	288	368	470	536

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Rock	224	295	368	470	536
Saunders	224	288	368	470	536
Seward	278	288	376	470	536
Sherman	224	290	368	470	560
Stanton	224	288	368	470	536
Thomas	224	288	368	470	536
Valley	224	288	368	470	536
Webster	224	288	368	470	536
York	224	288	373	470	536

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Saline	224	301	368	470	536
Scotts Bluff	228	299	380	470	557
Sheridan	224	288	368	470	537
Sioux	224	288	368	470	559
Thayer	224	303	368	470	536
Thurston	224	288	368	470	536
Wayne	257	288	368	470	557
Wheeler	224	288	368	471	536

N E V A D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	450	534	636	884	1044	Clark, Nye
Reno, NV MSA	448	520	667	928	1097	Washoe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Churchill	422	428	572	789	937
Elko	384	438	584	771	959
Eureka	311	507	571	711	796
Lander	314	486	571	714	936
Lyon	372	445	571	795	937
Pershing	432	438	584	731	835
White Pine	312	429	571	771	810

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Douglas	379	553	692	961	1071
Esmeralda	406	507	571	712	799
Humboldt	457	479	578	758	811
Lincoln	312	468	571	715	800
Mineral	315	431	574	752	942
Storey	438	444	584	813	959
Carson City	328	449	599	833	984

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	550	619	775	969	1137	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	433	522	656	820	1010	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	425	549	664	831	930	Hillsborough county towns of Pelham town
Manchester, NH PMSA	342	488	609	761	853	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	403	562	697	948	1128	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	433	520	668	855	1049	Rockingham nty towns of Brentwood town East Kings town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	407	470	618	834	1014	
Carroll	340	466	621	777	970	
Cheshire	421	500	640	833	987	
Coos	290	355	455	593	703	
Grafton	373	451	601	777	982	
Hillsborough	399	498	665	879	1057	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	419	501	625	801	895	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	435	510	682	946	1092	Deerfield town, Northwood town, Nottingham town
Strafford	385	523	698	875	980	Middleton town, New Durham town, Strafford town
Sullivan	406	412	534	702	749	

N E W J E R S E Y

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	500	568	758	948	1084	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	621	756	888	1183	1459	Bergen, Passaic
Jersey City, NJ PMSA	580	684	796	1011	1114	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	681	746	931	1266	1462	Hunterdon, Middlesex, Somerset

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 34

NEW JERSEY continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Monmouth-Ocean, NJ PMSA	566	677	859	1141	1339	Monmouth, Ocean
Newark, NJ PMSA	538	687	828	1043	1317	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	446	549	678	848	1063	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	453	631	769	1040	1256	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	442	538	649	810	909	Cumberland

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	365	435	544	750	885	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	272	342	407	557	657	Dona Ana
Santa Fe, NM MSA	393	558	690	925	1048	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	259	303	377	506	571
Cibola	270	295	377	506	571
Curry	259	301	395	506	571
Eddy	266	294	377	506	588
Guadalupe	259	294	377	506	574
Hidalgo	259	294	377	506	571
Lincoln	294	301	398	524	655
Mckinley	259	326	414	517	578
Otero	259	294	377	525	571
Rio Arriba	303	310	382	506	571
San Juan	293	314	392	544	644
Sierra	259	294	377	506	571
Taos	355	360	480	600	789
Union	259	316	377	506	571

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Chaves	259	295	390	535	571
Colfax	259	301	377	506	571
Debaca	259	295	377	506	571
Grant	259	294	377	506	571
Harding	259	294	377	506	571
Lea	259	294	377	506	571
Luna	268	294	377	506	571
Mora	259	294	377	506	571
Quay	259	376	423	529	592
Roosevelt	259	294	377	506	571
San Miguel	288	294	389	506	571
Socorro	259	294	377	506	586
Torrance	285	307	377	506	571

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	386	473	584	731	818	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	343	387	483	615	687	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	340	415	499	624	698	Erie, Niagara
Dutchess County, NY PMSA	513	651	804	1045	1222	Dutchess
Elmira, NY MSA	343	387	475	600	718	Chemung
Glens Falls, NY MSA	343	450	548	686	768	Warren, Washington
Jamestown, NY MSA	343	387	463	600	687	Chautauqua

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

N E W Y O R K continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Nassau-Suffolk, NY PMSA	690	831	1014	1410	1511	Nassau, Suffolk
New York, NY PMSA	645	719	817	1022	1144	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	620	807	983	1280	1526	Westchester
Newburgh, NY-PA PMSA	505	657	803	1019	1163	Orange
Rochester, NY MSA	372	483	589	754	824	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	370	446	552	705	783	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	343	387	474	600	687	Herkimer, Oneida

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allegany	338	381	456	591	676
Chenango	360	381	456	591	676
Columbia	423	444	570	747	799
Delaware	338	381	456	591	726
Franklin	338	381	456	591	676
Greene	338	438	526	680	828
Jefferson	364	430	506	634	708
Otsego	338	400	460	595	756
Schuyler	366	391	463	645	760
Steuben	350	398	456	598	676
Tompkins	441	476	611	852	1005
Wyoming	338	381	456	591	676

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	338	381	456	591	676
Clinton	338	381	492	615	689
Cortland	338	404	507	634	749
Essex	338	386	483	605	676
Fulton	338	381	456	591	676
Hamilton	338	407	468	591	676
Lewis	338	381	456	591	676
St. Lawrence	338	381	456	591	676
Seneca	361	389	469	606	676
Sullivan	438	492	600	828	840
Ulster	416	577	695	904	1140
Yates	338	381	456	591	676

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	284	344	448	583	629	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	403	454	511	674	807	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	348	394	442	611	727	Cumberland
Goldsboro, NC MSA	284	327	398	512	598	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	357	407	485	669	680	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	343	347	451	606	742	Pitt
Hickory-Morganton, NC MSA	358	390	453	570	678	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	323	378	426	592	700	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	407	457	542	756	887	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	383	465	546	732	863	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	303	327	398	527	581	Edgecombe, Nash
Wilmington, NC MSA	369	406	497	680	811	Brunswick, New Hanover

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	279	327	391	503	596
Ashe	279	322	391	503	571
Beaufort	279	322	391	503	571
Bladen	279	322	391	503	571
Carteret	316	346	422	586	652
Cherokee	279	322	391	503	571
Clay	279	322	391	503	571
Columbus	279	322	391	503	571
Dare	290	459	529	724	740
Gates	279	322	391	503	571
Granville	295	322	391	518	585
Halifax	279	322	391	503	571
Haywood	283	322	391	525	571
Hertford	279	322	391	503	571
Hyde	279	322	391	503	571
Jackson	279	322	391	547	715
Lee	279	356	422	547	592
Mcdowell	279	340	408	558	660
Martin	279	322	391	503	571
Montgomery	279	322	391	503	571
Northampton	279	322	391	503	571
Pasquotank	322	344	429	596	602
Perquimans	279	322	391	503	571
Polk	279	353	396	503	571
Robeson	279	329	391	503	571
Rutherford	282	322	391	503	571
Scotland	279	322	391	503	571
Surry	279	322	391	503	571
Transylvania	309	330	418	555	593
Vance	296	335	391	503	571
Washington	279	322	391	503	571
Wilkes	317	357	402	557	625
Yancey	279	328	391	503	589

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anson	279	322	391	503	571
Avery	311	350	427	535	598
Bertie	279	322	391	503	571
Camden	279	356	475	594	667
Caswell	279	322	391	503	571
Chowan	279	322	391	503	571
Cleveland	279	328	391	518	571
Craven	279	348	420	550	588
Duplin	279	322	391	503	571
Graham	279	322	391	503	571
Greene	279	322	391	503	571
Harnett	279	322	391	505	571
Henderson	324	334	413	550	634
Hoke	279	322	391	503	571
Iredell	336	345	455	568	637
Jones	279	322	391	503	571
Lenoir	279	322	391	503	571
Macon	279	334	391	503	571
Mitchell	279	365	419	572	598
Moore	279	337	401	549	658
Pamlico	279	322	391	503	571
Pender	279	338	391	503	616
Person	279	322	419	547	640
Richmond	279	322	391	503	571
Rockingham	279	322	391	503	571
Sampson	279	322	391	503	571
Stanly	279	322	396	535	571
Swain	279	322	391	503	571
Tyrrell	279	322	391	503	571
Warren	279	322	391	503	571
Watauga	364	437	553	752	906
Wilson	292	322	395	503	571

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	301	337	449	625	738	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	295	407	491	681	729	Cass
Grand Forks, ND-MN MSA	305	364	478	660	736	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	211	263	341	443	517
Benson	239	263	341	443	517
Bottineau	211	263	341	443	517
Burke	229	263	341	443	517
Dickey	229	263	341	443	517
Dunn	211	263	341	443	517
Emmons	211	263	341	443	517
Golden Valley	211	270	361	450	517
Griggs	211	263	341	443	517
Kidder	211	263	341	443	517
Logan	211	263	341	443	517
Mcintosh	211	263	341	443	517
Mclean	223	263	341	443	517
Mountrail	233	263	341	443	517
Oliver	211	263	341	443	517
Pierce	211	263	341	457	517
Ransom	214	263	341	443	517
Richland	221	263	348	443	517
Sargent	211	263	341	443	517
Sioux	211	263	341	443	517
Stark	211	263	341	443	517
Stutsman	253	263	345	481	566
Traill	221	281	341	443	517
Ward	211	289	386	522	622
Williams	211	263	341	443	517

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barnes	211	265	353	461	517
Billings	229	263	341	443	517
Bowman	211	263	341	443	517
Cavalier	211	271	362	451	557
Divide	211	263	341	443	517
Eddy	211	263	341	443	517
Foster	211	263	343	443	517
Grant	211	263	341	443	517
Hettinger	211	263	341	443	517
Lamoure	229	263	341	443	517
Mchenry	211	263	341	443	517
Mckenzie	211	263	341	443	517
Mercer	211	263	341	443	517
Nelson	211	263	341	443	517
Pembina	211	263	341	449	535
Ramsey	216	289	386	484	632
Renville	244	263	341	446	527
Rolette	228	290	351	443	517
Sheridan	211	263	341	443	517
Slope	211	263	341	443	517
Steele	211	263	341	443	517
Towner	241	270	361	450	592
Walsh	280	300	372	466	521
Wells	224	263	341	443	517

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	326	397	509	636	713	Portage, Summit
Brown County, OH	268	315	395	510	563	Brown
Canton-Massillon, OH MSA	266	346	443	554	621	Carroll, Stark
Cincinnati, OH-KY-IN	289	372	498	667	720	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	327	412	510	648	731	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	318	377	483	614	706	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O H I O continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dayton-Springfield, OH MSA	346	387	495	638	717	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	291	414	531	664	744	Butler
Huntington-Ashland, WV-KY-OH MSA	261	306	377	481	529	Lawrence
Lima, OH MSA	266	319	420	535	588	Allen, Auglaize
Mansfield, OH MSA	266	319	406	507	568	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	287	342	392	508	523	Washington
Steubenville-Weirton, OH-WV MSA	266	314	393	502	560	Jefferson
Toledo, OH MSA	333	405	495	638	692	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	292	318	393	502	560	Belmont
Youngstown-Warren, OH MSA	279	329	411	518	589	Columbiana, Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	262	310	387	495	553
Athens	309	350	412	539	663
Clinton	262	336	404	562	567
Darke	288	310	390	495	553
Erie	262	349	436	588	713
Gallia	262	310	387	495	553
Hancock	332	336	425	543	594
Harrison	262	310	387	495	553
Highland	262	310	387	495	553
Holmes	262	310	387	495	553
Jackson	262	310	387	495	553
Logan	307	311	402	541	563
Meigs	262	310	387	495	553
Monroe	262	310	387	495	553
Morrow	262	310	387	495	553
Noble	262	310	387	495	561
Paulding	262	310	387	495	553
Pike	262	310	387	495	553
Putnam	272	310	387	495	553
Sandusky	262	340	436	549	608
Seneca	263	310	387	499	553
Tuscarawas	262	310	406	508	569
Van Wert	262	314	387	495	553
Wayne	262	347	426	541	596
Wyandot	262	310	387	495	553

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	262	310	409	510	572
Champaign	262	319	415	518	581
Coshocton	262	310	387	495	553
Defiance	274	310	410	516	574
Fayette	285	310	387	495	553
Guernsey	262	310	387	495	553
Hardin	262	310	387	495	553
Henry	283	313	391	504	574
Hocking	262	310	387	495	553
Huron	303	330	412	543	578
Knox	287	315	404	522	578
Marion	262	310	387	495	553
Mercer	262	310	387	495	569
Morgan	262	315	387	495	553
Muskingum	262	310	387	495	553
Ottawa	262	387	446	606	647
Perry	262	310	387	495	553
Preble	278	310	387	495	553
Ross	303	316	387	495	553
Scioto	262	310	387	495	553
Shelby	262	319	426	532	596
Union	262	363	478	598	693
Vinton	262	310	387	495	553
Williams	279	310	387	495	553

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O K L A H O M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	276	280	371	517	590	Garfield
Fort Smith, AR-OK MSA	282	286	376	504	528	Sequoyah
Lawton, OK MSA	341	343	437	607	664	Comanche
Oklahoma City, OK MSA	293	319	414	577	645	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	309	370	484	675	796	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	237	272	339	451	518
Atoka	237	272	339	451	518
Beckham	241	272	339	451	518
Bryan	237	272	339	451	518
Carter	237	274	342	476	518
Choctaw	237	272	339	451	518
Coal	237	272	339	451	518
Craig	237	272	339	463	547
Delaware	237	272	339	451	527
Ellis	237	272	339	451	518
Grady	259	272	351	478	576
Greer	237	272	339	451	518
Harper	237	272	339	451	518
Hughes	237	272	339	451	518
Jefferson	237	272	339	451	518
Kay	262	278	365	509	596
Kiowa	237	272	339	451	518
Le Flore	237	272	339	451	518
Love	237	272	343	451	518
Mcintosh	237	272	339	451	518
Marshall	237	272	339	451	518
Murray	237	272	339	451	518
Noble	237	272	339	451	518
Okfuskee	237	272	339	451	518
Ottawa	255	272	339	451	518
Payne	274	323	413	571	640
Pontotoc	237	272	339	451	518
Roger Mills	237	272	339	451	518
Stephens	241	272	339	451	538
Tillman	237	272	339	451	518
Washita	237	272	339	451	518
Woodward	237	272	339	451	518

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	237	272	339	451	518
Beaver	237	276	339	451	518
Blaine	237	272	339	451	518
Caddo	237	272	339	451	518
Cherokee	249	281	339	451	525
Cimarron	237	272	339	451	518
Cotton	237	272	339	451	518
Custer	237	272	347	483	558
Dewey	237	272	339	451	518
Garvin	237	272	339	451	522
Grant	237	272	339	451	518
Harmon	237	272	339	451	518
Haskell	237	272	339	451	518
Jackson	237	307	375	492	555
Johnston	237	272	339	451	518
Kingfisher	237	280	346	454	518
Latimer	237	272	339	451	518
Lincoln	254	272	339	451	518
Mccurtain	237	272	339	451	518
Major	237	285	339	471	518
Mayes	237	276	367	463	518
Muskogee	256	289	339	469	518
Nowata	237	272	339	451	518
Okmulgee	241	272	339	451	518
Pawnee	267	272	351	452	518
Pittsburg	237	272	339	451	518
Pushmataha	237	272	339	451	518
Seminole	237	272	339	451	518
Texas	237	282	339	452	518
Washington	237	325	396	525	614
Woods	237	272	339	451	518

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 40

O R E G O N

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	318	436	569	794	918	Lane
Medford-Ashland, OR MSA	327	429	572	796	888	Jackson
Portland-Vancouver, OR-WA PMSA	387	476	587	817	887	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	357	420	538	741	777	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	294	348	452	622	693
Clatsop	294	348	456	622	698
Crook	294	348	452	622	693
Deschutes	363	418	559	778	901
Gilliam	294	371	452	622	693
Harney	294	348	452	622	693
Jefferson	294	348	452	622	693
Klamath	294	348	452	622	736
Lincoln	357	362	483	672	730
Malheur	294	348	452	622	693
Sherman	294	348	452	622	693
Umatilla	294	348	452	622	693
Wallowa	294	348	452	622	693
Wheeler	294	348	452	622	693

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	310	402	510	768	815
Coos	294	359	476	664	693
Curry	294	400	531	679	836
Douglas	294	348	452	622	741
Grant	294	348	452	622	693
Hood River	324	364	496	644	761
Josephine	294	357	459	622	725
Lake	294	348	452	622	693
Linn	294	348	452	622	693
Morrow	294	348	452	622	693
Tillamook	294	348	452	622	693
Union	294	348	452	622	693
Wasco	358	443	497	676	759

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	390	528	629	819	920	Carbon, Lehigh, Northampton
Altoona, PA MSA	271	342	412	535	599	Blair
Erie, PA MSA	270	351	414	535	599	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	330	422	541	683	759	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	270	342	412	535	599	Cambria, Somerset
Lancaster, PA MSA	354	435	542	707	761	Lancaster
Newburgh, NY-PA PMSA	505	657	803	1019	1163	Pike
Philadelphia, PA-NJ PMSA	446	549	678	848	1063	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	315	387	467	585	653	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	281	414	511	639	721	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	270	377	451	563	681	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	295	342	412	535	599	Mercer
State College, PA MSA	388	474	587	769	823	Centre
Williamsport, PA MSA	270	344	414	535	599	Lycoming
York, PA MSA	300	412	511	638	714	York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	269	361	480	621	787
Bedford	269	341	410	534	597
Cameron	269	341	410	534	597
Clearfield	269	341	410	534	597
Crawford	269	341	410	534	597
Forest	269	341	410	534	597
Fulton	269	341	410	534	597
Huntingdon	269	341	410	534	597
Jefferson	269	341	410	534	597
Lawrence	269	341	410	534	597
Mifflin	298	341	410	534	597
Montour	318	341	429	597	705
Potter	269	341	410	534	597
Snyder	324	341	411	534	597
Susquehanna	322	341	410	534	633
Union	325	430	538	673	752
Warren	269	341	410	534	597

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Armstrong	273	360	410	534	672
Bradford	269	341	417	544	597
Clarion	269	341	410	534	597
Clinton	269	341	410	534	597
Elk	269	341	410	534	597
Franklin	269	341	415	571	597
Greene	269	341	410	534	597
Indiana	308	343	410	534	597
Juniata	269	341	410	534	597
Mc Kean	269	343	410	534	597
Monroe	429	512	632	865	966
Northumberland	284	359	438	583	648
Schuylkill	269	341	425	534	597
Sullivan	269	341	410	534	597
Tioga	269	341	410	534	597
Venango	269	341	410	534	597
Wayne	270	417	491	625	803

R H O D E I S L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	476	575	700	877	1002	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	393	534	642	805	992	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	526	613	787	984	1101	Middletown town, Newport city, Portsmouth town
Washington	622	699	786	1014	1117	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	331	396	466	634	750	Aiken, Edgefield
Charleston-North Charleston, SC MSA	372	431	495	658	767	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	403	454	511	674	807	York
Columbia, SC MSA	399	439	505	667	767	Lexington, Richland
Florence, SC MSA	302	336	436	545	610	Florence
Greenville-Spartanburg-Anderson, SC MSA	328	397	449	565	664	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	391	398	509	637	714	Horry
Sumter, SC MSA	318	353	402	550	652	Sumter

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Abbeville	274	320	389	499	571	Allendale	274	320	389	499	571
Bamberg	274	320	389	499	571	Barnwell	289	320	391	499	571
Beaufort	392	481	554	691	774	Calhoun	274	320	389	499	571
Chester	274	320	389	499	571	Chesterfield	274	320	389	499	571
Clarendon	274	320	389	499	571	Colleton	274	320	389	499	571
Darlington	274	320	389	499	571	Dillon	274	320	389	499	571
Fairfield	274	368	419	523	585	Georgetown	274	348	392	499	595
Greenwood	275	320	389	499	571	Hampton	274	320	389	499	571
Jasper	274	320	389	499	571	Kershaw	274	320	389	499	571
Lancaster	288	321	389	499	571	Laurens	274	320	389	499	571
Lee	274	320	389	499	571	Mccormick	274	320	389	499	609
Marion	274	320	389	499	571	Marlboro	274	320	389	499	571
Newberry	274	320	389	499	571	Oconee	274	320	389	499	571
Orangeburg	274	320	389	499	571	Saluda	274	320	389	499	571
Union	274	320	389	499	571	Williamsburg	274	320	389	499	571

S O U T H D A K O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	311	370	493	670	810	Pennington
Sioux Falls, SD MSA	301	416	527	667	766	Lincoln, Minnehaha

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aurora	234	312	388	514	595
Bennett	234	310	388	514	595
Brookings	251	396	439	593	700
Brule	234	310	388	514	595
Butte	268	367	488	637	752
Charles Mix	234	310	388	514	595
Clay	234	310	388	514	638
Corson	234	310	388	514	595
Davison	245	310	388	521	595
Deuel	234	310	388	514	595
Douglas	260	310	388	514	595
Fall River	265	310	388	514	595
Grant	234	310	388	514	595
Haakon	234	317	388	514	595
Hand	234	310	388	514	595
Harding	234	317	388	514	595
Hutchinson	234	310	388	514	595
Jackson	234	314	388	514	595
Jones	234	310	388	514	595
Lake	234	314	388	514	595
Lyman	234	310	388	514	595
Mcpherson	234	310	388	514	595
Meade	328	370	493	646	763
Miner	234	314	388	514	595
Perkins	234	310	388	514	595
Roberts	234	310	388	514	595
Shannon	234	314	388	514	595
Stanley	234	317	388	514	595
Todd	259	310	388	514	595
Turner	234	310	388	514	595
Walworth	234	317	388	514	595
Ziebach	234	310	388	514	595

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beadle	234	310	388	514	595
Bon Homme	260	310	388	514	595
Brown	234	310	388	514	595
Buffalo	234	310	388	514	601
Campbell	234	310	388	514	595
Clark	234	310	388	514	595
Codington	234	310	388	514	595
Custer	234	310	388	514	595
Day	261	310	388	514	595
Dewey	234	310	388	514	595
Edmunds	234	310	388	514	595
Faulk	234	310	410	514	595
Gregory	235	310	388	514	595
Hamlin	234	310	388	514	595
Hanson	237	324	433	543	608
Hughes	258	310	410	540	638
Hyde	234	315	388	514	595
Jerauld	234	312	388	514	595
Kingsbury	256	310	388	514	595
Lawrence	266	385	485	664	751
Mccook	234	310	388	514	595
Marshall	275	310	388	514	595
Mellette	278	314	388	514	595
Moody	234	310	388	514	595
Potter	234	310	388	514	595
Sanborn	234	310	388	514	595
Spink	255	310	395	514	595
Sully	234	310	388	514	595
Tripp	234	310	388	514	595
Union	246	310	388	514	595
Yankton	234	310	388	514	595

T E N N E S S E E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	318	373	447	577	658	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	313	351	411	561	576	Montgomery
Jackson, TN MSA	243	319	428	593	597	Madison

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

T E N N E S S E E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	248	287	366	475	540	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	281	347	434	579	696	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	321	374	440	611	642	Fayette, Shelby, Tipton
Nashville, TN MSA	357	426	526	717	806	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bedford	227	293	357	450	500	Benton	245	279	337	442	495
Bledsoe	227	266	337	442	495	Bradley	227	287	383	518	629
Campbell	229	266	337	442	495	Cannon	227	266	337	442	495
Carroll	227	276	337	442	495	Chester	227	266	337	442	495
Claiborne	227	266	337	442	495	Clay	231	266	337	442	495
Cocke	227	266	337	442	495	Coffee	227	317	356	495	564
Crockett	227	266	337	442	495	Cumberland	240	266	348	486	495
Decatur	227	266	337	442	495	Dekalb	227	266	337	442	495
Dyer	284	288	384	480	598	Fentress	227	266	337	442	495
Franklin	238	266	337	463	544	Gibson	227	266	337	442	495
Giles	227	290	358	448	501	Grainger	231	266	337	442	495
Greene	227	266	337	442	495	Grundy	227	266	337	442	495
Hamblen	227	267	350	467	495	Hancock	227	266	337	442	495
Hardeman	227	266	337	442	495	Hardin	227	266	337	442	495
Haywood	239	277	370	463	518	Henderson	227	266	337	442	495
Henry	227	266	337	442	495	Hickman	268	272	361	476	505
Houston	227	266	337	442	495	Humphreys	227	277	337	442	495
Jackson	227	266	337	442	495	Jefferson	248	266	345	442	549
Johnson	227	266	337	442	495	Lake	227	266	337	442	495
Lauderdale	227	266	339	442	495	Lawrence	227	266	337	442	495
Lewis	227	266	337	442	495	Lincoln	227	266	340	442	495
Mcminn	227	266	337	444	495	Mcnairy	227	266	337	442	495
Macon	227	266	337	442	495	Marshall	267	292	380	480	533
Maury	326	333	442	555	619	Meigs	227	266	337	442	495
Monroe	227	266	337	442	495	Moore	227	266	337	442	495
Morgan	227	266	337	442	495	Obion	263	267	342	453	495
Overton	227	266	337	442	495	Perry	227	268	337	442	495
Pickett	227	266	337	442	495	Polk	227	266	337	442	495
Putnam	276	279	358	492	531	Rhea	227	284	337	447	495
Roane	245	266	337	452	544	Scott	227	266	337	442	495
Sequatchie	227	266	337	442	495	Smith	227	266	337	442	495
Stewart	227	266	337	442	495	Trousdale	227	279	371	466	610
Van Buren	227	266	337	442	495	Warren	253	266	344	442	495

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wayne	227	266	337	442	495
White	231	266	337	442	495
Weakley	246	266	337	442	495

T E X A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	273	304	393	530	644	Taylor
Amarillo, TX MSA	263	332	413	577	680	Potter, Randall
Austin-San Marcos, TX MSA	395	477	636	883	1043	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	300	362	442	585	620	Hardin, Jefferson, Orange
Brazoria, TX PMSA	419	467	584	814	958	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	315	397	496	621	774	Cameron
Bryan-College Station, TX MSA	351	408	516	719	847	Brazos
Corpus Christi, TX MSA	328	403	515	700	828	Nueces, San Patricio
Dallas, TX	397	456	586	811	959	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	370	414	491	681	805	El Paso
Fort Worth-Arlington, TX PMSA	380	413	537	747	882	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	412	423	531	738	870	Galveston
Henderson County, TX	272	323	395	540	648	Henderson
Houston, TX PMSA	390	437	567	788	929	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	369	384	486	677	743	Bell, Coryell
Laredo, TX MSA	299	344	452	565	635	Webb
Longview-Marshall, TX MSA	296	334	410	558	610	Gregg, Harrison, Upshur
Lubbock, TX MSA	283	358	466	648	718	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	263	359	411	514	577	Hidalgo
Odessa-Midland, TX MSA	283	327	437	608	704	Ector, Midland
San Angelo, TX MSA	263	336	408	559	660	Tom Green
San Antonio, TX MSA	346	399	517	719	849	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	263	359	434	554	663	Grayson
Texarkana, TX-Texarkana, AR MSA	286	350	427	563	597	Bowie
Tyler, TX MSA	329	363	444	616	651	Smith
Victoria, TX MSA	325	329	415	578	651	Victoria
Waco, TX MSA	286	351	462	615	647	Mclennan
Wichita Falls, TX MSA	315	353	425	566	667	Archer, Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	316	356	400	556	562
Angelina	288	333	375	522	615
Armstrong	263	304	398	499	562
Austin	263	304	367	503	562
Bandera	283	304	367	499	562
Bee	263	304	367	492	562
Borden	263	304	367	492	562
Brewster	263	304	367	496	594
Brooks	263	304	367	492	562
Burleson	263	304	385	522	635
Calhoun	282	304	367	508	601
Camp	356	361	451	565	631
Cass	263	304	367	492	562
Cherokee	294	305	374	492	562
Clay	263	310	367	492	573
Coke	263	304	367	492	562
Collingsworth	263	304	367	492	562
Comanche	263	304	367	492	562
Cooke	286	304	387	525	582
Crane	263	304	367	492	562
Crosby	263	304	367	492	562
Dallam	263	304	367	492	562
Deaf Smith	263	304	367	492	571
Dewitt	263	304	367	492	562
Dimmit	263	304	367	492	562
Duval	263	304	367	492	562
Edwards	263	304	367	492	562
Falls	263	304	367	492	562
Fayette	263	304	367	492	562
Floyd	263	304	367	492	562
Franklin	263	304	367	508	562
Frio	263	304	367	492	562
Garza	263	304	367	492	562
Glasscock	263	304	367	492	562
Gonzales	263	304	367	492	562
Grimes	263	304	367	496	585
Hall	263	304	367	492	562
Hansford	263	304	367	492	576
Hartley	263	304	367	492	562
Hemphill	263	339	380	529	562

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Andrews	263	304	367	492	562
Aransas	263	324	432	601	605
Atascosa	263	304	367	492	562
Bailey	263	304	367	492	562
Baylor	263	304	367	492	562
Blanco	263	304	389	541	570
Bosque	263	304	367	492	562
Briscoe	263	304	367	492	562
Brown	263	304	368	494	604
Burnet	263	304	375	521	609
Callahan	263	304	367	492	562
Carson	263	304	367	492	562
Castro	265	304	367	492	562
Childress	263	304	367	492	562
Cochran	263	304	367	492	562
Coleman	263	304	367	492	562
Colorado	263	304	367	492	562
Concho	263	304	367	492	562
Cottle	263	304	367	492	562
Crockett	263	304	367	492	562
Culberson	263	304	367	492	562
Dawson	263	304	367	492	562
Delta	263	315	367	492	562
Dickens	263	304	367	492	562
Donley	263	304	367	492	562
Eastland	263	304	367	492	562
Erath	273	309	400	518	562
Fannin	267	304	367	494	562
Fisher	263	304	367	492	562
Foard	263	304	367	492	562
Freestone	263	304	367	492	562
Gaines	269	304	367	492	562
Gillespie	263	331	430	591	603
Goliad	263	304	367	492	562
Gray	289	304	391	492	580
Hale	263	304	367	492	562
Hamilton	263	304	367	492	562
Hardeman	263	304	367	492	562
Haskell	263	304	367	492	562
Hill	263	304	367	492	562

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hockley	269	314	367	497	562
Houston	263	304	367	492	562
Hudspeth	317	358	400	502	659
Irion	263	304	367	492	562
Jackson	263	305	367	492	562
Jeff Davis	263	304	367	492	562
Jim Wells	263	304	367	492	569
Karnes	263	304	367	492	562
Kenedy	263	304	367	492	562
Kerr	263	341	426	593	699
King	263	304	367	492	562
Kleberg	320	331	404	565	665
Lamar	263	327	385	537	635
Lampasas	263	304	367	499	589
Lavaca	263	304	367	492	562
Leon	263	338	379	492	623
Lipscomb	263	304	367	492	562
Llano	263	339	451	566	742
Lynn	263	304	367	492	562
Mcmullen	263	304	367	492	562
Marion	263	304	367	492	582
Mason	263	304	367	492	562
Maverick	263	304	367	492	562
Menard	263	304	367	492	562
Mills	263	304	367	492	562
Montague	263	304	367	492	562
Morris	263	304	367	492	562
Nacogdoches	278	335	435	543	641
Newton	263	304	367	492	562
Ochiltree	263	304	367	492	562
Palo Pinto	263	304	367	492	584
Parmer	263	304	367	492	562
Polk	294	321	374	503	611
Rains	263	341	412	572	576
Real	263	304	367	492	562
Reeves	263	304	367	492	562
Roberts	263	307	367	492	562
Runnels	263	304	367	492	562
Sabine	263	304	367	492	562
San Jacinto	276	311	367	492	574

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hopkins	307	330	389	541	582
Howard	281	304	367	496	562
Hutchinson	263	304	380	529	625
Jack	263	304	367	492	562
Jasper	263	304	375	499	613
Jim Hogg	263	304	367	492	562
Jones	263	304	367	492	562
Kendall	263	385	432	601	710
Kent	263	304	367	492	562
Kimble	263	304	400	501	562
Kinney	263	304	367	492	562
Knox	263	304	367	492	562
Lamb	263	304	367	492	562
La Salle	263	304	367	492	562
Lee	298	335	377	526	590
Limestone	263	304	367	492	562
Live Oak	263	304	367	492	562
Loving	263	304	367	492	562
Mcculloch	271	304	367	492	562
Madison	263	313	367	492	578
Martin	263	304	367	492	562
Matagorda	304	332	412	572	576
Medina	263	304	367	492	562
Milam	263	304	367	492	562
Mitchell	263	304	367	492	562
Moore	263	309	367	492	571
Motley	263	304	367	492	562
Navarro	315	331	399	506	562
Nolan	271	304	367	492	562
Oldham	263	304	398	499	583
Panola	263	310	367	492	562
Pecos	263	304	367	496	585
Presidio	263	304	367	492	562
Reagan	335	341	453	569	745
Red River	263	339	380	492	562
Refugio	263	304	367	492	562
Robertson	263	348	390	492	562
Rusk	275	304	367	492	562
San Augustine	263	304	367	492	562
San Saba	263	304	367	492	562

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Schleicher	263	304	367	492	562
Shackelford	263	304	367	492	562
Sherman	263	304	367	492	562
Starr	263	304	367	492	562
Sterling	263	304	367	492	562
Sutton	263	304	367	492	562
Terrell	263	304	367	492	562
Throckmorton	263	304	367	492	562
Trinity	274	309	367	492	562
Upton	263	304	367	492	562
Val Verde	263	349	411	514	606
Walker	355	378	462	614	647
Washington	327	333	445	556	731
Wheeler	263	304	367	492	562
Willacy	263	304	367	492	562
Wise	263	307	369	515	562
Yoakum	263	346	426	532	699
Zapata	263	304	367	492	562

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scurry	263	304	381	531	627
Shelby	263	304	367	492	562
Somervell	301	339	380	522	562
Stephens	263	304	367	492	562
Stonewall	263	304	367	492	562
Swisher	263	304	367	492	562
Terry	263	304	367	492	562
Titus	280	347	394	544	562
Tyler	263	304	392	492	645
Uvalde	263	304	367	492	562
Van Zandt	282	304	381	520	627
Ward	263	304	367	492	562
Wharton	263	304	367	492	562
Wilbarger	263	304	367	492	579
Winkler	263	304	367	492	562
Wood	263	304	380	529	625
Young	263	304	367	492	569
Zavala	263	304	367	492	562

U T A H

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County, UT	273	336	420	562	677	Kane
Provo-Orem, UT MSA	377	398	493	684	808	Utah
Salt Lake City-Ogden, UT MSA	328	380	482	670	786	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaver	273	336	420	562	677
Cache	273	336	420	562	677
Daggett	298	407	541	678	760
Emery	273	336	420	562	677
Grand	273	336	420	562	677
Juab	273	336	420	562	677
Morgan	273	336	420	562	677
Rich	273	336	420	562	677
Sanpete	273	336	420	562	677
Summit	405	499	624	841	1023
Uintah	273	336	420	562	677
Washington	337	415	551	736	902

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Box Elder	303	336	420	562	677
Carbon	294	336	420	562	677
Duchesne	273	336	420	562	677
Garfield	273	336	420	562	677
Iron	273	372	464	580	682
Millard	273	336	420	562	677
Piute	273	336	420	562	677
San Juan	273	336	420	562	677
Sevier	277	336	420	562	677
Tooele	273	349	420	562	677
Wasatch	273	349	420	562	677
Wayne	273	336	420	562	677

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

V E R M O N T

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	390	478	637	869	1047	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	369	447	520	724	812	
Bennington	344	432	557	708	824	
Caledonia	312	372	455	575	659	
Chittenden	319	517	582	808	952	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	306	366	455	575	659	
Franklin	328	370	455	579	665	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	306	366	455	575	659	Alburg town, Isle La Motte town, North Hero town
Lamoille	306	423	505	694	795	
Orange	306	401	493	651	730	
Orleans	306	366	455	575	659	
Rutland	343	447	545	684	765	
Washington	328	410	549	687	770	
Windham	368	427	567	719	792	
Windsor	395	446	558	715	849	

V I R G I N I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	387	457	585	778	873	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	290	407	528	724	740	Clarke
Culpeper County, VA	356	520	605	799	956	Culpeper
Danville, VA MSA	274	344	405	544	655	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	248	287	366	475	540	Scott, Washington, Bristol city
King George County, VA	351	465	523	727	732	King George
Lynchburg, VA MSA	326	358	413	544	655	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	407	457	542	756	887	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	409	463	538	749	884	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	276	344	447	573	715	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	283	387	516	676	845	Warren
Washington, DC-MD-VA	625	710	834	1135	1368	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Accomack	324	349	409	542	653
Amelia	273	343	404	542	653
Augusta	273	353	428	564	687
Bland	273	343	404	542	653
Buchanan	273	343	404	542	653
Caroline	386	391	522	694	731
Charlotte	273	343	404	542	653
Cumberland	273	373	433	542	653
Essex	273	383	453	629	743
Franklin	273	343	404	542	653
Giles	273	343	404	542	653
Greensville	273	353	404	542	653
Henry	273	343	404	542	653
King and Queen	273	391	440	550	653
Lancaster	340	382	431	575	700
Louisa	273	355	437	608	653
Madison	274	407	457	573	750
Middlesex	273	345	404	542	653
Nelson	273	343	404	542	653
Northumberland	273	343	404	542	653
Orange	302	412	550	765	897
Patrick	273	343	404	542	653
Pulaski	273	343	404	542	653
Richmond	273	363	408	542	670
Rockingham	273	377	478	655	767
Shenandoah	359	368	454	628	713
Southampton	273	343	404	542	653
Sussex	273	343	404	542	653

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	284	343	404	542	653
Appomattox	273	343	404	542	653
Bath	273	343	404	542	653
Brunswick	273	343	404	542	653
Buckingham	273	343	404	542	653
Carroll	273	343	404	542	653
Craig	273	343	404	542	653
Dickenson	273	343	404	542	653
Floyd	273	343	404	542	653
Frederick	369	426	513	703	842
Grayson	273	343	404	542	653
Halifax	273	343	404	542	653
Highland	273	343	404	542	653
King William	273	373	419	542	653
Lee	273	343	404	542	653
Lunenburg	273	343	404	542	653
Mecklenburg	273	343	404	542	653
Montgomery	281	368	432	601	710
Northampton	273	343	404	542	653
Nottoway	273	343	404	542	653
Page	317	357	404	542	653
Prince Edward	305	345	404	542	653
Rappahannock	277	448	503	699	824
Rockbridge	273	343	404	542	653
Russell	273	343	404	542	653
Smyth	273	343	404	542	653
Surry	283	343	404	542	653
Tazewell	273	343	404	542	653

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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V I R G I N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Westmoreland	273	368	490	615	797
Wythe	285	343	404	542	653
Wise	273	343	404	542	653

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	376	488	650	897	1065	Whatcom
Bremerton, WA PMSA	383	441	572	772	939	Kitsap
Olympia, WA PMSA	393	483	603	831	979	Thurston
Portland-Vancouver, OR-WA PMSA	387	476	587	817	887	Clark
Richland-Kennewick-Pasco, WA MSA	469	538	643	896	1052	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	440	535	678	942	1113	Island, King, Snohomish
Spokane, WA MSA	316	436	526	715	800	Spokane
Tacoma, WA PMSA	356	424	565	786	887	Pierce
Yakima, WA MSA	340	418	517	694	725	Yakima

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	298	357	463	613	679
Chelan	298	357	463	613	679
Columbia	298	357	463	613	679
Douglas	348	368	463	613	679
Garfield	298	357	463	613	679
Grays Harbor	304	357	468	632	729
Kittitas	298	357	463	613	679
Lewis	298	357	463	613	679
Mason	339	420	516	678	729
Pacific	298	357	463	613	679
San Juan	368	503	670	883	1051
Skamania	298	357	463	613	679
Wahkiakum	298	357	463	613	679
Whitman	321	365	487	676	800
Asotin	298	357	463	613	679
Clallam	347	430	547	703	769
Cowlitz	335	374	482	669	679
Ferry	298	357	463	613	679
Grant	320	357	463	613	679
Jefferson	298	385	473	642	679
Klickitat	298	357	463	613	679
Lincoln	298	357	463	613	679
Okanogan	298	357	463	613	679
Pend Oreille	298	357	463	613	816
Skagit	406	497	585	731	818
Stevens	298	357	463	613	679
Walla Walla	298	357	463	621	734

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	348	370	441	551	617	Berkeley
Charleston, WV MSA	241	328	415	570	624	Kanawha, Putnam
Cumberland, MD-WV MSA	314	378	464	617	705	Mineral
Huntington-Ashland, WV-KY-OH MSA	261	306	377	481	529	Cabell, Wayne
Jefferson County, WV	352	389	481	625	708	Jefferson

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	287	342	392	508	523	Wood
Steubenville-Weirton, OH-WV MSA	266	314	393	502	560	Brooke, Hancock
Wheeling, WV-OH MSA	292	318	393	502	560	Marshall, Ohio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	241	307	343	442	514
Braxton	241	295	343	442	514
Clay	241	295	343	442	514
Fayette	241	295	343	442	514
Grant	241	295	343	442	514
Hampshire	241	295	345	455	514
Harrison	266	327	377	471	565
Lewis	241	324	343	442	514
Logan	247	295	343	445	526
Marion	241	305	376	483	556
Mercer	241	295	343	442	514
Monongalia	304	336	411	565	669
Morgan	298	335	377	473	528
Pendleton	241	295	343	442	514
Pocahontas	241	295	343	442	514
Raleigh	250	295	343	442	518
Ritchie	241	295	343	442	514
Summers	241	295	343	442	514
Tucker	241	295	343	442	514
Upshur	241	295	345	442	514
Wetzel	274	295	370	463	585
Wyoming	241	295	343	442	514

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Boone	241	295	343	442	514
Calhoun	241	295	343	442	514
Doddridge	250	295	343	442	514
Gilmer	266	295	343	442	514
Greenbrier	241	333	356	444	514
Hardy	241	295	343	442	514
Jackson	241	302	343	470	514
Lincoln	241	295	343	442	514
Mcdowell	241	295	343	442	514
Mason	241	295	343	442	528
Mingo	241	295	343	442	520
Monroe	241	295	343	442	514
Nicholas	241	295	343	442	514
Pleasants	249	295	343	442	527
Preston	241	310	343	442	514
Randolph	241	295	343	442	514
Roane	241	295	343	442	514
Taylor	296	320	349	442	514
Tyler	241	295	361	453	514
Webster	241	295	343	442	514
Wirt	241	295	343	442	514

W I S C O N S I N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	297	366	464	586	675	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	259	335	431	574	669	Douglas
Eau Claire, WI MSA	320	348	457	587	662	Chippewa, Eau Claire
Green Bay, WI MSA	325	358	459	638	642	Brown
Janesville-Beloit, WI MSA	327	412	511	640	717	Rock
Kenosha, WI PMSA	339	420	517	710	798	Kenosha
La Crosse, WI-MN MSA	263	340	433	578	701	La Crosse
Madison, WI MSA	406	511	617	857	1011	Dane

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	343	449	564	706	789	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	369	474	605	820	928	Pierce, St. Croix
Racine, WI PMSA	305	378	499	644	705	Racine
Sheboygan, WI MSA	284	365	446	557	690	Sheboygan
Wausau, WI MSA	347	360	450	613	680	Marathon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	259	302	385	492	554
Barron	259	302	385	492	554
Buffalo	259	302	385	492	554
Clark	259	302	385	492	554
Crawford	259	302	385	492	554
Door	259	321	399	512	622
Florence	259	302	385	492	554
Forest	259	302	385	492	554
Green	264	302	385	518	554
Iowa	269	302	385	506	554
Jackson	259	302	385	492	554
Juneau	265	302	385	492	554
Lafayette	264	302	385	492	554
Lincoln	259	302	385	492	554
Marinette	259	302	385	492	554
Menominee	259	302	385	492	554
Oconto	259	302	385	492	554
Pepin	259	302	385	492	554
Portage	315	333	432	539	668
Richland	259	302	385	492	554
Sauk	303	313	418	521	585
Shawano	264	302	385	492	554
Trempealeau	259	302	385	492	554
Vilas	259	302	385	492	554
Washburn	259	302	385	492	554
Waushara	259	302	385	492	554

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	283	313	385	492	554
Bayfield	259	302	385	492	554
Burnett	259	302	385	492	554
Columbia	259	308	405	531	595
Dodge	328	333	438	548	613
Dunn	259	302	396	529	653
Fond du Lac	262	355	421	571	590
Grant	263	302	385	492	554
Green Lake	259	302	385	492	554
Iron	259	302	385	492	554
Jefferson	259	344	447	577	630
Kewaunee	259	302	385	492	554
Langlade	259	302	385	492	554
Manitowoc	262	302	385	492	554
Marquette	259	302	385	492	554
Monroe	259	302	385	513	554
Oneida	259	303	385	496	593
Polk	259	302	392	492	554
Price	259	302	385	492	554
Rusk	259	302	385	492	554
Sawyer	259	302	385	492	554
Taylor	259	302	385	492	554
Vernon	259	302	385	492	554
Walworth	271	380	495	644	722
Waupaca	259	302	385	492	583
Wood	282	322	400	501	562

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

W Y O M I N G

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	282	327	418	573	677	Natrona
Cheyenne, WY MSA	319	399	533	682	828	Laramie

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Albany	283	355	473	658	777
Campbell	291	310	397	529	624
Converse	268	310	397	527	606
Fremont	268	310	397	527	606
Hot Springs	268	310	397	527	606
Lincoln	268	310	397	527	606
Park	268	310	397	527	611
Sheridan	268	310	397	527	611
Sweetwater	280	310	397	529	624
Uinta	282	310	397	528	637
Weston	268	310	397	527	606

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	268	310	397	527	606
Carbon	268	310	397	527	606
Crook	268	310	397	527	606
Goshen	268	310	397	527	606
Johnson	268	310	397	527	606
Niobrara	268	310	397	527	606
Platte	268	310	397	527	606
Sublette	300	337	397	527	606
Teton	360	458	608	817	891
Washakie	268	310	397	527	606

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	655	787	932	1168	1314

P U E R T O R I C O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	225	274	325	404	455	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	320	387	455	572	640	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	266	320	378	475	528	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	232	282	335	416	468	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	310	378	446	557	625	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	310	378	446	557	625	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091195

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

P U E R T O R I C O continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio.....	208	257	300	378	421
Arroyo Municipio.....	208	257	300	378	421
Ciales Municipio.....	208	257	300	378	421
Culebra Municipio.....	208	257	300	378	421
Guayama Municipio.....	208	257	300	378	421
Jayuya Municipio.....	208	257	300	378	421
Lares Municipio.....	208	257	300	378	421
Maricao Municipio.....	208	257	300	378	421
Orocovis Municipio.....	208	257	300	378	421
Quebradillas Municipio..	320	387	455	572	640
Salinas Municipio.....	208	257	300	378	421
Santa Isabel Municipio..	208	257	300	378	421
Vieques Municipio.....	208	257	300	378	421

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aibonito Municipio.....	208	257	300	378	421
Barranquitas Municipio..	208	257	300	378	421
Coamo Municipio.....	208	257	300	378	421
Guanica Municipio.....	208	257	300	378	421
Isabela Municipio.....	218	266	315	392	441
Lajas Municipio.....	208	257	300	378	421
Las Marias Municipio....	208	257	300	378	421
Maunabo Municipio.....	208	257	300	378	421
Patillas Municipio.....	208	257	300	378	421
Rincon Municipio.....	208	257	300	378	421
San Sebastian Municipio.	208	257	300	378	421
Utuado Municipio.....	208	257	300	378	421

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Virgin Islands.....	528	642	755	943	1055

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091195

SCHEDULE D - FY 1996 40th PERCENTILE FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES

STATE/FMR AREA	SPACE RENT
CALIFORNIA	
Orange County, CA PMSA	$449
San Diego, CA MSA	388
COLORADO	
Boulder-Longmont, CO PMSA	282
Denver, CO PMSA	268
DELAWARE	
Dover, DE MSA	163
Sussex County	115
MARYLAND	
Hagerstown, MD MSA	204
St. Marys County	251
MINNESOTA	
Minneapolis-St. Paul, MN-WI MSA	243
NEW YORK	
Dutchess, NY PMSA	329
Jamestown, NY MSA	172
Newburgh, NY MSA	309
Tompkins County, NY	196
OREGON	
Salem, OR PMSA	205
VERMONT	
Washington County	196
WEST VIRGINIA	
Berkeley County	132
Jefferson County	135
Morgan County	133

[FR Doc. 95–23050 Filed 9–15–95; 8:45 am]
BILLING CODE 4210–32–C

federal register

Monday
September 18, 1995

Part IV

Department of Housing and Urban Development

Office of the Secretary

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–3956–N–01]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document provides revised designations of ''Difficult Development Areas'' for purposes of the Low-Income Housing Tax Credit (''LIHTC'') under section 42 of the Internal Revenue Code of 1986, and provides the methodology used by the United States Department of Housing and Urban Development (''HUD''). The new Difficult Development Areas are based on FY 1995 Fair Market Rents (''FMRs''), FY 1995 income limits and 1990 census population counts as explained below. The corrected designations of ''Qualified Census Tracts'' under section 42 of the Internal Revenue Code published May 1, 1995, at 60 FR 21246 remain in effect.

FOR FURTHER INFORMATION CONTACT: Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–3260, or Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–0426, e-mail Kurt—G.—Usowski@hud.gov. A telecommunications device for deaf persons (TDD) is available at (202) 708–9300. (These are not toll-free telephone numbers.)

Additional copies of this notice are available through HUDUSER at (800) 245–2691 for a small fee to cover duplication and mailing costs. This notice is available electronically on the Internet (World Wide Web) at: gopher://huduser.aspensys.com:73/11/2/d in both downloadable and screen-readable formats.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Treasury Department and the Internal Revenue Service are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the ''Code''), including the Low-Income Housing Tax Credit (''LIHTC'') found at section 42 of the Code, as enacted by the Tax Reform Act of 1986 [Pub. L. 99–514], as amended by the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647]; the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239]; the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508]; the Tax Extension Act of 1991 [Pub. L. 102–227]; and as amended and made permanent by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66]. The Secretary of HUD is required to designate Difficult Development Areas by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the ''credit ceiling'') is limited by population. Each state is allocated credit based on $1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low income housing buildings whose owners have applied for the credit.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (''AMGI''), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the acquisition of existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,900 at the 39.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or professional service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the ''applicable fraction'' of the building and the ''eligible basis'' of the building. The applicable fraction is based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space in the building. The eligible basis is the adjusted basis attributable to acquisition rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in

which at least 50 percent of households have an income less than 60 percent of the AMGI. There is a limit on the Qualified Census Tracts in any Metropolitan Statistical Area (''MSA'') or Primary Metropolitan Statistical Area (''PMSA'') that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area. This Notice does not redesignate Qualified Census Tracts. The corrected designation of Qualified Census Tracts published May 1, 1995, at 60 FR 21246 remains in effect. Qualified Census Tracts will not be redesignated until year 2000 census data become available.

Section 42 defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. Again, limits apply. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 1990 Census data and the MSA/PMSA definitions as published by the Office of Management and Budget (''OMB'') in OMB Bulletin No. 94–07 on July 5, 1994, *with the exceptions described in section C., below.* The basis for these comparisons was the fiscal year (''FY'') 1995 HUD income limits for Very Low Income households (''VLILs'') and Fair Market Rents (''FMRs'') used for the section 8 Housing Assistance Payments Program. The procedure used in making these calculations follows (Note that while the description of HUD's selection methodology differs from previous designations of Difficult Development Areas, the methodology is mathematically equivalent):

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 1995 two-bedroom FMR and the FY 1995 four-person VLIL. The numerator of the ratio was the area's FY 1995 FMR. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 1990 population of all metropolitan areas and of all non-metropolitan counties.

B. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to three decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and non-metropolitan Difficult Development Areas there are minimal overruns of the caps. HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 94–07 defining metropolitan areas: OMB establishes and maintains the definitions of the [Metropolitan Areas] MAs solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas. In addition, HUD is required by statute to calculate a separate FMR and VLIL for Westchester County, New York, which OMB includes as part of the New York, NY PMSA. Thus the following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Atlanta, GA—Carrol, Pickens, and Walton Counties.
Chicago, IL—DeKalb, Grundy, and Kendall Counties.
Cincinnati-Hamilton, OH-KY-IN—Brown County, Ohio; Gallatin, Grant, and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX—Henderson County.
Lafayette, LA—St. Landry and Acadia Parishes.
New York, NY—Westchester County.
New Orleans, LA—St. James Parish.
Washington, DC-MD-VA-WV—Clarke, Culpeper, King George, and Warren Counties in Virginia; and Berkeley and Jefferson Counties in West Virginia.
Affected MSAs/PMSAs are assigned the indicator ''(part)'' in the list of Metropolitan Difficult Development Areas.

Finally, in the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions (''MCDs'') rather than county boundaries. Thus, when a

New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Geographic definitions of the nonmetropolitan parts of New England counties can be found in HUD's Rule establishing FY 1995 FMRs at 60 FR 42230 or 24 CFR Part 888. Affected counties are assigned the indicator ''(part)'' in the list of Nonmetropolitan Difficult Development Areas.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until year 2000 census data become available.

Effective Date

The list of Difficult Development Areas is effective for allocations of credit made after December 31, 1995. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1995. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246 remain in effect.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 of the HUD regulations, the policies and actions in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore further environmental review under the National Environmental Policy Act is not necessary.

Regulatory Flexibility Act

In accordance with 5 U.S.C. § 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of ''Difficult Development Areas'' for use by political subdivisions of the States in allocating the LIHTC as required by section 42 of the Code, as amended. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates ''Difficult Development Areas'' for use by political subdivisions of the States in allocating the LIHTC as required by section 42 of the Code, as amended. The notice also details the technical methodology used in making such designations.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The notice involves the designation of ''Difficult Development Areas'' for use by political subdivisions of the States in allocating the LIHTC as required by section 42 of the Code, as amended. The notice also details the technical methodology used in making such designations.

Dated: September 11, 1995.

Henry G. Cisneros,

Secretary.

IRS SECTION 42(D)(5)(C) DIFFICULT DEVELOPMENT AREAS—METROPOLITAN AREAS

State	Metropolitan area	Metropolitan area	Metropolitan area	Metropolitan area
AZ	Yuma, AZ.			
CA	Chico-Paradise, CA.	Los Angeles Long Beach, CA	Salinas, CA	San Francisco, CA.
	San Luis Obispo-Atascadero-Paso Robles, CA.	Santa Barbara-Santa Maria Lompoc, CA.	Santa Cruz-Watsonville, CA	Santa Rosa, CA
	Ventura, CA.			
CT	Bridgeport, CT	New Haven-Meriden, CT	Stamford-Norwalk, CT	
FL	Daytona Beach, FL	Fort Lauderdale, FL	Fort Myers-Cape Coral, FL	Fort Pierce-Port Lucie, FL.
	Miami, FL	Punta Gorda, FL	Sarasota-Bradenton, FL	West Palm Beach-Boca Raton, FL.
HI	Honolulu, HI.			
MA	Barnstable-Yarmouth, MA	Fitchburg-Leominster, MA	Worcester, MA–CT	
ME	Portland, ME.			
NH	Portsmouth-Rochester, NH–ME.			
NJ	Atlantic-Cape May, NJ	Jersey City, NJ	Monmouth-Ocean, NJ	Vineland-Millville-Bridgeton, NJ.
NY	Nassau-Suffolk, NY	New York, NY (part)	Newburgh, NY–PA	
OR	Eugene-Springfield, OR.			
PR	Aguadilla, PR	Arecibo, PR	Caguas, PR	Mayaguez, PR.
	Ponce, PR	San Juan-Bayamon, PR.		
RI	Providence-Fall River-Warwick, RI–MA..			
SC	Myrtle Beach, SC.			
TX	Brownsville-Harlingen-San Benito, TX.	El Paso, TX	Laredo, TX	
WA	Bellingham, WA	Yakima, WA.		

IRS SECTION 42(D)(5)(C) DIFFICULT DEVELOPMENT AREAS—NONMETROPOLITAN AREAS

State	County	County	County	County
	Pacific Islands.			
AK	Bethel Census Area	Dillingham Census Area	Fairbanks North Star Borough	Haines Borough.
	Juneau Borough	Ketchikan Gateway Borough	Kodiak Island Borough	Lake And Peninsula Borough.
	Nome Census Area	North Slope Borough	Northwest Arctic Borough	
AL	Coffee County	Macon County		
AR	Baxter County	Conway County	Garland County	Madison County.
	Mississippi County.			
AZ	Cochise County	Coconino County	Gila County	Santa Cruz County.
	Yavapai County			
CA	Alpine County	Amador County	Calaveras County	Del Norte County.
	Humboldt County	Imperial County	Inyo County	Kings County.
	Lake County	Mariposa County	Mendocino County	Mono County.
	Nevada County	Plumas County	San Benito County	Sierra County.
	Siskiyou County	Tuolumne. County		
CO	Eagle County	Garfield County	Gilpin County	Grand County.
	La Plata County	Lake County	Ouray County	Pitkin County.
	Routt County	San Miguel County.		
CT	Litchfield County (part)	Middlesex County (part)	New London County (part)	Windham County (part).
DE	Sussex County.			
FL	Citrus County	Desoto County	Franklin County	Glades County.
	Hardee County	Hendry County	Highlands County	Indian River County.
	Monroe County	Okeechobee County	Taylor County.	
GA	Bulloch County	Butts County	Camden County	Dawson County.
	Liberty County	Union County.		
HI	Hawaii County	Kauai County	Maui County	
ID	Bonner County	Kootenai County		
KS	Riley County.			
KY	Adair County	Bell County	Estill County	Floyd County.
	Johnson County	Lincoln County	Morgan County	Nicholas County.
	Perry County	Pike County	Pulaski County.	
LA	Morehouse Parish.	Natchitoches Parish	Tangipahoa Parish	Vernon Parish.
	West Feliciana Parish.			
MA	Barnstable County (part)	Dukes County	Franklin County (part)	Hampden County (part).
	Hampshire County (part)	Nantucket County	Worcester County (part).	
MD	St. Mary's County	Wicomico County.		
ME	Androscoggin County (part)	Aroostook County	Cumberland County	Franklin County.
	Hancock County	Kennebec County	Knox County	Lincoln County.
	Oxford County	Penobscot County (part)	Piscataquis County	Sagadahoc County
	Somerset County	Waldo County (part)	Washington County	York County (part).
MO	Camden County.			
MS	Adams County	Bolivar County	Claiborne County	Coahoma County.
	Copiah County	George County	Issaquena County	Lafayette County.
	Lauderdale County	Leflore County	Sunflower County	Tate County.
	Washington County	Yazoo County.		
MT	Missoula County.			
NC	Camden County	Dare County	Pasquotank County	Watauga County.
NH	Belknap County	Carroll County	Cheshire County	Grafton County.
	Hillsborough County (part)	Merrimack County (part)	Rockingham County (part)	Strafford County.
	Sullivan County.			
NM	Chaves County	Curry County	Lincoln County	Mckinley County.
	Quay County	Rio Arriba County	San Miguel County	Taos County.
NV	Douglas County	Mineral County	Pershing County.	
NY	Clinton County	Columbia County	Cortland County	Essex County.
	Greene County	Hamilton County	Jefferson County	Otsego County.
	Schuyler County	Sullivan County	Tompkins County	Ulster County.
OR	Clatsop County	Coos County	Curry County	Deschutes County.
	Hood River County	Jefferson County	Josephine County	Klamath County.
	Lincoln County.			
PA	Monroe County	Northumberland County	Schuylkill County	Wayne County.
PR	All.			
RI	Newport County (part)	Washington County (part)		
SC	Beaufort County	Fairfield County.		
SD	Faulk County	Spink County.		
TN	Haywood County	Trousdale County.		
TX	Aransas County	Burleson County	Camp County	Gillespie County.
	Hopkins County	Hudspeth County	Jasper County	Kerr County.
	Kimble County	Kleberg County	Llano County	Nacogdoches County.
	Polk County	Rains County	Red River County	Robertson County.
	Tyler County	Val Verde County	Van Zandt County	Walker County.
	Washington County.			
UT	Daggett County	Iron County	Washington County	
VA	Caroline County	Cumberland County	Frederick County	King And Queen County.

IRS SECTION 42(D)(5)(C) DIFFICULT DEVELOPMENT AREAS—NONMETROPOLITAN AREAS—Continued

State	County	County	County	County
	Madison County	Orange County	Shenandoah County	Westmoreland County.
VI	Virgin Islands.			
VT	Addison County	Bennington County	Lamoille County	Orange County.
	Rutland County	Washington County	Windham County	Windsor County.
WA	Clallam County	Douglas County	Grays Harbor County	Jefferson County.
	San Juan County	Skagit County.		
WV	Greenbrier County	Harrison County	Taylor County	Upshur County.
WY	Teton County.			

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federal register

Monday
September 18, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

Power Rate Adjustment; Mission Valley Power Utility, Montana; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Power Rate Adjustment: Mission Valley Power Utility, Montana

ACTION: Notice of Proposed Rate Increase.

SUMMARY: The Bureau of Indian Affairs is proposing to increase the cost of electric power (energy) to customers of Mission Valley Power (MVP), the entity operating the power facility of the Flathead Indian Irrigation Project of the Flathead Reservation. The Bureau of Indian Affairs (BIA) has been informed that the Montana Power Company (MPC), which sells electric power to MVP, has raised its wholesale power rates by approximately 2.0 percent. The MPC increase went into effect on September 5, 1995, and is based on adjustments in the Consumer Price index pursuant to the Federal Energy Regulatory Commission license for MPC's Kerr Dam Hydroelectric Facility. Accordingly, the BIA is proposing to adjust the local retail power rates charged by MVP to reflect the increased cost of purchased power.

DATES: Comments must be submitted on or before October 18, 1995.

ADDRESSES: Written comments on rate changes should be sent to: Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, Attn: Branch of Irrigation and Power, MS#4559–MIB, 1849 ''C'' Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702; or, General Manager, Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890. Telephone (406) 883–5361 or 1–800–823–3758 (in-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8. 1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices. The approximate 2.0 percent MPC increase causes the BIA to raise its retail rates to recover $28,000 which is the approximate annual financial impact of that increase. This proposed adjustment is the result of an increase in the electric power rates charged by MPC, one of three sources of electric power marketed by MVP. The MPC increase, which went into effect on September 5, 1995, is based on adjustments in the Consumer Price index pursuant to the Federal Energy Regulatory Commission license for MPC's Kerr Dam Hydroelectric Facility. The following table illustrates the financial impact of the new retail rates on each rate class:

Rate class	Present rate	New rate
Residential:		
Basic Charge	$11.00/mo. (includes 125kwh)	No Change
Energy Charge	0.04817/kwh (over 122 kwh)	$0.04828
#2 General:		
Basic Charge	11.00/mo. (includes 107 kwh)	No Change
Energy Charge	0.05604/kwh (over 107 kwh)	0.05615
Irrigation:		
Horsepower Charge	11.25/HP	11.30/HP
Energy Charge	0.03638/kwh	0.03642
Minimum Seasonal Charge	132.00 or $6.00/HP, whichever is greater	No Change
Small and Large Commercial:		
Basic Charge	None	No Change
Monthly Minimum	38.00	No Change
Demand Rate	4.50/KW of billing demand	4.51/KW
Energy Rate	0.04305/kwh—First 18,000 kwh	0.04345
	0.03588/kwh—Over 18,000 kwh	0.03592
Area Lights:		
Area light installed on existing pole or structure:		
7,000 lumen unit, M.V.*	7.00	7.00
20,000 lumen unit, M.V.*	10.00	10.00
9,000 lumen unit, H.P.S.	6.50	6.50
22,000 lumen unit, H.P.S.	8.75	8.75
Area light installed with new pole:		
7,000 lumen unit, M.V.*	8.75	8.75
20,000 lumen unit, M.V.*	11.50	11.50
9,000 lumen unit, M.V.*	8.25	8.25
22,000 lumen unit, H.P.S*	10.50	10.50
Street Lighting (metered):		
Basic Charge	11.00/mo (includes 107kwh)	11.00
Energy Charge	0.0560/kwh (over 107 kwh)	0.05615
Street Lighting (Unmetered)	This rate class applies to municipalities or communities where there are ten or more lighting units billed in a group. This rate schedule is subject to a negotiated contract with MVP.	No Change

*Continuing service only.

Dated: September 12, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–23058 Filed 9–15–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
September 18, 1995

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Alteration of the Salt Lake City Class B Airspace; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–11]

RIN 2120–AF56

Alteration of the Salt Lake City Class B Airspace Area, Salt Lake City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Salt Lake City Class B airspace area, Salt Lake City, Utah. This rule will maintain the ceiling of the Salt Lake City Class B airspace area at 10,000 feet mean sea level (MSL); subdivide and redefine existing subareas by altering its floors and boundaries except for Area B; and create additional Areas E, F, G, H, I, J, K, L, and M. This rule will improve the flow of aviation traffic and enhance safety in the Salt Lake City area, while accommodating the concerns of the airspace users.

EFFECTIVE DATE: 0701 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Background

Airspace reclassification, effective September 16, 1993, discontinued the use of the term ''Terminal Control Area'' (TCA) and replaced it with the designation ''Class B Airspace.'' This change in terminology is reflected in this rule. On May 21, 1970, the FAA published Amendment No. 91–78 to part 91 of Title 14 Code of Federal Aviation Regulations (CFR) that provided for the establishment of Class B airspace areas (35 FR 7782). The Class B airspace area program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). Class B airspace areas provides a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by providing air traffic control (ATC) increased capability to provide aircraft separation service, this minimizes the mix of controlled and uncontrolled aircraft. To date, the FAA has established a total of 29 Class B airspace areas.

On June 21, 1988, the FAA published a final rule which required aircraft to have Mode C equipment when operating within 30 nautical miles of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL, excluding those aircraft not certificated with an engine-driven electrical system, balloons, or gliders (53 FR 23356).

Discussions of Comments

The proposed changes to the SLC Class B airspace area were published in a Notice of Proposed Rulemaking (NPRM) on August 4, 1995 (60 FR 40020). The FAA did not receive any written comments regarding the proposed alteration of the SLC Class B airspace area. However, the FAA placed two documents in the docket to memorialize communication between the FAA and one user group that occurred during the comment period.

The FAA has determined that alterations to the SLC Class B airspace area, as contained herein, will promote the safe and efficient use of the airspace and will meet users' concerns.

The Rule

This amendment to 14 CFR part 71 modifies Class B airspace area around Salt Lake City International Airport. The Class B airspace area utilizes the Runway 17 ILS/DME antenna, latitude and longitude points, and landmarks. The upper limits of the Salt Lake City Class B airspace area remain at 10,000 feet mean sea level (MSL); however, the subareas within the area are modified. Area A is reduced to the west and northeast of the Salt Lake City International Airport. Modifying Area A enhances the utilization of the airspace for northeast-bound and west-bound VFR traffic transiting over the Skypark Airport. Area C is revised to provide more transition routes for VFR operations, particularly for aircraft not equipped with the required flotation equipment to fly over the Greater Salt Lake. Additionally, this area will relieve the potential for traffic congestion around the Tooele Valley Airport. Areas D and E are subdivided and retain the original floor altitudes of 6,000 and 7,000 feet MSL respectively. The floor of Area F is raised from 6,000 to 7,000 feet MSL to provide more airspace for the VFR aircraft transiting the area of Point of the Mountain. The floor of Area G is raised from 7,000 to 8,000 feet MSL. Area H is altered to provide controlled airspace for the new instrument approach procedures to the new parallel instrument runway 16R/34L at the Salt Lake City International Airport. A new area, Area M, is established north of the Salt Lake City International airport to include the airspace from 9,000 to 10,000 feet MSL to provide controlled airspace for the new instrument approach procedures to the new parallel instrument runway 16R/34L at the Salt Lake City International Airport. All alterations of the Salt Lake City Class B airspace area are depicted on the chart found in the attached appendix.

Class B airspace designations are published in Paragraph 3000 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR part 71.1. The Class B airspace area listed in this airspace alteration will be published subsequently in the Order. The coordinates for this airspace docket are based on North American Datum 83.

Regulatory Evaluation

This section summarized the regulatory evaluation prepared by the FAA on the amendment to 14 CFR part 71 to alter the SLC Class B airspace. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, and Federal, State, and local governments as well as anticipated benefits.

The FAA has determined that this rulemaking is not ''a significant rulemaking action,'' as defined by Executive Order (EO) 12866, Regulatory Planning and Review, and therefore, no Regulatory Impact Analysis is required. Nevertheless, in accordance with the Department of Transportation policies and procedures, the FAA has evaluated the anticipated costs and benefits associated with this final rule and are summarized below. A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this final rule.

Benefit-Cost Analysis

This regulatory evaluation analyzes the potential costs and benefits of the modifications to the Salt Lake City International Airport, Utah, Class B airspace area. These modifications will raise the floor of the Class B airspace in Areas A, C, and D and reduce the lateral boundaries east of the airport in Area E to enhance safe and efficient VFR traffic operations. The new floor altitudes will be raised by as much as 500 to 6,000 feet MSL in areas A, C, and D without changing the original lateral boundaries. The original areas of the Class B airspace will be subdivided and renamed as A, K, and L (from A); C, D, and F (from C); E and G (from D); H (from F); and I (from E). These modifications will provide additional airspace for VFR traffic operations. Also, an area of controlled airspace (Area M) will be added to the north, and the lateral boundaries of Area H will be expanded to the south with floor and ceiling altitudes of 9,000 and 10,000 feet MSL respectively. These two modifications are designed to provide additional controlled airspace for new IFR procedures to the new parallel instrument runway that is scheduled to open in the latter part of 1995. The Salt Lake City Tower/Tracon (SLC ATCT) has determined that the above modifications will not adversely impact their ability to monitor and control IFR and VFR traffic in the Class B airspace.

The rule will enhance aviation safety and operational efficiency by lowering the risk of midair collisions, while accommodating the legitimate concerns of system users. The modifications to the Salt Lake City Class B airspace will provide VFR traffic with more operating room, aid controllers vectoring IFR traffic to and from the new parallel instrument runway, and improve the SLC ATCT's ability to separate controlled and uncontrolled aircraft near the floor and lateral boundaries of the airspace.

Cost

The FAA has determined that the implementation of the rule will not impose any additional cost of either the agency or aircraft operators for the reasons discussed below.

In terms of the FAA, the rule will not impose any additional administrative costs for personnel, facilities, or equipment. This assessment is based on the fact that the modification will not increase the volume of air traffic using the Salt Lake City Class B airspace. The simultaneous contraction and expansion of the Class B airspace will not dramatically change the overall size of the airspace and will not impose additional workloads on current personnel and equipment resources. Required revisions to aeronautical charts will be accomplished during normal charting cycles. Therefore, no additional costs beyond routine operating expenses will be imposed.

Costs to Aircraft Operators

The modifications should impose little, if any, additional cost for items such as required avionics equipment, installation, or circumnavigation. Many affected GA aircraft operators are assumed to already have the types of avionic equipment (such as an operable two-way radio and very high frequency omni-directional range receiver) required for entering a Class B airspace area. The only aircraft without Mode C transponders would be aircraft not originally certified with an engine-driven electrical system or not subsequently certified with such a system installed. These potential costs to aircraft operators without Mode C transponders have already been accounted for by the Mode C rule.

Similarly, the modifications should not adversely impact aircraft operators who routinely operate under IFR, primarily large air carriers, business jets, commuters and air taxis, nor should the proposed modifications impose substantial cost to VFR users as most are assumed to have the required avionics equipment.

Benefits

The modifications are expected to generate benefits primarily in the form of safety enhancements to the aviation community and the flying public. Such benefits include reduced aviation fatalities and property damages as a result of a lowered risk of midair collisions. The changes to the airspace will enable VFR aircraft to circumnavigate the Salt Lake City Class B airspace area operations, thereby enhancing operational efficiency.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a rule will have ''a significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. A substantial number of small entities is defined as a number that is 11 or more and which is more than one-third of the small entities subject to the NPRM. The only potentially affected small entities will be unscheduled air taxis owning nine or fewer aircraft and flight training schools around the Oquirrh Mountains and none meet the applicable definition. The rule will maintain aviation safety and operational efficiency for VFR traffic while imposing negligible additional costs or requirements. Therefore, the regulation will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor the sale of United States' products or services in foreign countries. The regulation will impose negligible costs on aircraft operators or aircraft manufacturers (United States or foreign).

Federalism Implications

This rule will not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41695; October 30, 1987), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations (JAR)

The FAA has determined that this regulation will not conflict with any international agreements of the United States.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not a ''significant regulatory action'' under Executive Order 12866. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis and Review of Regulations. A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis has been placed in the docket.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 3000—Subpart B–Class B Airspace

* * * * *

ANM UT B Salt Lake City, UT [Revised]

Salt Lake City International Airport (Primary Airport)
(Lat. 40°47′12″N, long. 111°58′08″W).

Salt Lake City International Airport Runway 17 ILS (I–BNT) ILS/DME Antenna
(Lat. 40°46′10″N, long. 111°57′44″W).

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at a point where the 13-mile arc of the Salt Lake City International Airport Runway 17 ILS (I–BNT) instrument landing system/distance measuring equipment (ILS/DME) antenna intercepts Interstate 15 (I–15), extending south on I–15 until intercepting a 4.3-mile arc from the Salt Lake City International Airport, extending south along the 4.3-mile arc from the Salt Lake City International Airport until intercepting I–15, extending south on I–15 until intercepting 11-mile arc of the I–BNT ILS/DME antenna clockwise until intercepting the Union Pacific railroad tracks, extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT ILS/DME antenna clockwise until the point of beginning, excluding Areas C, D, K, and L described hereinafter.

Area B. That airspace extending upward from 7,600 feet MSL to and including 10,000 feet MSL between the 13-mile radius and the 25-mile radius of the I–BNT ILS/DME antenna, excluding that airspace south of the Union Pacific railroad tracks and that airspace east of where the 25-mile arc intercepts the Ogden-Hinckley Airport, UT, Class D airspace area and the Ogden, Hill AFB, UT, Class D airspace area until intercepting U.S. Highway 89, extending south on U.S. Highway 89 until intercepting the 11-mile arc of the I–BNT ILS/DME antenna.

Area C. That airspace extending upward from 6,500 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT ILS/DME antenna intercepts the Union Pacific railroad tracks extending southwest on the Union Pacific railroad tracks until intercepting the 13-mile arc of the I–BNT ILS/DME antenna clockwise until a point at lat. 40°46′30″N, long. 112°14′50″W, extending east to a bend on interstate 80 (I–80) at lat. 40°46′30″N, long. 112°08′48″W, then southeast to the drive-in theater north of the city of Magna at lat. 40°43′00″N, long. 112°04′48″W, then southeast to the water tank at lat. 40°40′00″N, long. 112°03′33″W, extending southeast to a point at lat. 40°39′20″N, long. 112°02′33″W, extending south along long. 112°02′33″W, until intercepting the 11-mile arc of the I–BNT ILS/DME antenna then northwest on the 11-mile arc of the I–BNT ILS/DME antenna clockwise to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point at lat. 40°39′20″N, long. 112°02′33″W, extending east to a point at lat. 40°39′20″N, long. 111°58′13″W, extending south along long. 111°58′13″W, until intercepting the 11-mile arc of the I–BNT ILS/DME antenna, then counterclockwise until intercepting I–15, extending south on I–15 until intercepting a line at lat. 40°31′05″N, extending west on lat. 40°31′05″N, until a point at lat. 40°31′05″N, long. 112°00′33″W, then north along long. 112°00′33″W, to intercept the 11-mile arc of the I–BNT ILS/DME antenna at lat. 40°35′22″N, long. 112°00′33″W, then clockwise on the 11-mile arc of I–BNT ILS/DME antenna to long. 112°02′33″N, then to the point of beginning.

Area E. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where the 11-mile arc of the I–BNT ILS/DME antenna intercepts a line at long. 112°09′03″W, bounded on the west by long. 112°09′03″W, on the south by a line at lat. 40°31′05″N, to a point at lat. 40°31′05″N, long. 112°00′33″W, extending north to lat. 40°35′22″N, long. 112°00′33″W, then clockwise on the 11-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area F. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at lat. 40°31′05″N, intercepts I–15 extending west on lat. 40°31′05″N, to long. 112°00′33″W, then south on long. 112°00′33″W, to lat. 40°27′30″N, then east along lat. 40°27′30″N, to I–15, then north to the point of beginning.

Area G. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at the Bingham Copper Mine at lat. 40°31′05″N, long. 112°09′03″W, extending south to lat. 40°27′30″N, long. 112°09′03″W, then east to lat. 40°27′30″N, long. 112°00′33″W, then north to lat. 40°31′05″N, extending west to the point of beginning.

Area H. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at lat. 40°27′30″N intercepts the I–15 freeway, extending south along I–15 to lat. 40°23′30″N, extending west along lat. 40°23′30″N to long. 111°54′00″W thence south along long. 111°54′00″W, until intercepting the 30-mile arc of the I–BNT ILS/DME, then clockwise along the 30-mile arc until intercepting long. 112°06′00″W then north along long. 112°06′00″W until intercepting lat. 40°23′30″N, extending west along lat. 40°23′30″N, until along long. 112°09′06″W, then north along long. 112°09′06″W until intercepting lat. 40°27′30″N extending east to the point of beginning, excluding that airspace contained in Restricted Areas R–6412A and R–6412B when active.

Area I. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at a point where a line at long. 111°45′03″W, intercepts Interstate 84 (I–84), extending south on long. 111°45′03″W, until intercepting lat. 40°31′05″N, extending west until intercepting I–15, then north along I–15 until intercepting the Salt Lake City International Airport 4.3-mile arc, extending north along the Salt Lake City International Airport 4.3-mile arc until intercepting I–15, then north along I–15 until intercepting U.S. Highway 89, extending north along U.S. Highway 89 until intercepting the Ogden, Hill AFB, UT, Class D airspace area, then north along the Ogden, Hill AFB, UT, Class D airspace area until intercepting I–84, extending east along I–84 until the point of beginning, excluding that block of airspace east of Salt Lake City International Airport between lat. 40°52′16″N, and lat. 40°42′00″N.

Area J. That airspace extending upward from 7,800 feet MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT ILS/DME antenna intercepts the Ogden-Hinckley Airport, UT, Class D airspace area counterclockwise along the Ogden-Hinckley Airport, UT, Class D airspace area and the Ogden, Hill AFB, UT, Class D airspace area until intercepting the 25-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area K. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at a point on the 13-mile arc of the I–BNT ILS/DME antenna at lat. 40°46′30″N, long. 111°14′50″W, extending east to the bend on I–80 at lat. 40°46′30″N, long. 112°08′48″W, then north along long. 112°08′48″W, until intercepting the 13-mile arc of the I–BNT ILS/DME antenna, then counterclockwise along the 13-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area L. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL west of I–15 bounded on the south by Cudahy Lane, on the west by Redwood Road until intercepting the Utah Power Transmission lines, extending northeast

along the power transmission lines until intercepting the 13-mile arc of the I–BNT ILS/DME antenna to the point of beginning.

Area M. That airspace extending upward from 9,000 MSL to and including 10,000 feet MSL beginning at a point where the 25-mile arc of the I–BNT ILS/DME intersects the I–15 freeway south of the Ogden Municipal Airport extending north along the I–15 freeway to the 30-mile arc of the I–BNT ILS/DME, thence counterclockwise along the 30-mile arc to long. 112°10′00″W, then south along long. 112°10′00″W to the 25-mile arc of the I–BNT ILS/DME, then clockwise along the 25-mile arc to the point of beginning.

* * * * *

Lane Speck,

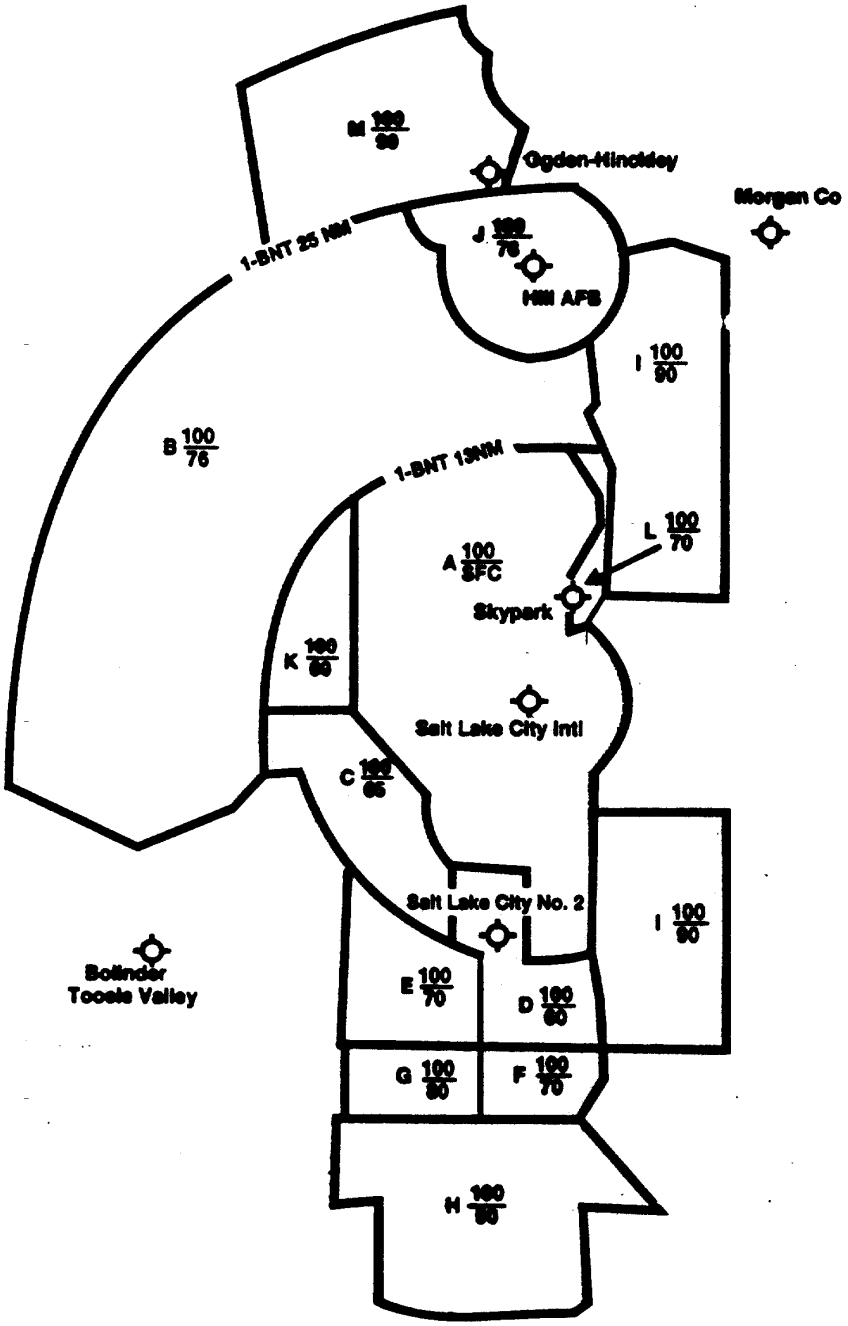
Program Director for Air Traffic Rules and Procedures.

Appendix—Salt Lake City International Airport Class B Airspace Areas

Note: This appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910–13–M

SALT LAKE CITY INTERNATIONAL AIRPORT
CLASS B AIRSPACE AREA
Field Elevation - 4227 feet
(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Publications Branch
ATP-210

ATP-210

[FR Doc. 95–23102 Filed 9–14–95; 8:45 am]
BILLING CODE 4910–13–C

federal register

Monday
September 18, 1995

Part VII

The President

Proclamation 6823—National Hispanic Heritage Month, 1995

Executive Order 12970—Further Amendment to Executive Order No. 12864

Federal Register
Vol. 60, No. 180
Monday, September 18, 1995

Presidential Documents

Title 3—

The President

Proclamation 6823 of September 14, 1995

National Hispanic Heritage Month, 1995

By the President of the United States of America

A Proclamation

America has always drawn strength from the extraordinary diversity of its people. The earliest settlers came to this great land seeking opportunity, bringing with them an abundant wealth of traditions from countries the world over. Thus the vibrant Hispanic culture has long been entwined with our Nation's heritage, and people of Latin American and Spanish ancestry have infused our national life with energy and vision. In the arts, the sciences, the business world, academia, and government, Hispanic Americans have added immeasurably to our progress.

Later this month, I will proudly bestow on the late Willie Velasquez our Nation's highest civilian honor, the Presidential Medal of Freedom. His landmark work to register Hispanic voters helped to bring these Americans into the mainstream of American public life, and the Southwest Voter Registration Education Project that he founded continues to thrive today.

Last year, I was pleased to sign an Executive order creating the President's Advisory Commission and White House Initiative on Educational Excellence for Hispanic Americans. Recognizing the vital importance of providing every one of our children with fundamental knowledge and skills, the Commission was charged with creating an agenda to increase educational opportunities for Hispanic Americans.

Today, as we stand on the threshold of a new century, we look to the outstanding contributions of Hispanic Americans for inspiration and leadership. Let us join in support of Hispanic children and families as they strive to fulfill the American Dream.

To pay tribute to the achievements of Hispanic citizens and to honor the importance of Latin American and Spanish traditions in our national culture, the Congress, by Public Law 100–402, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 15 through October 15, 1995, as National Hispanic Heritage Month. I call upon government officials, educators, and all the people of the United States to honor this observance with appropriate programs, ceremonies, and activities, and encourage all Americans to rededicate themselves to the pursuit of equality.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

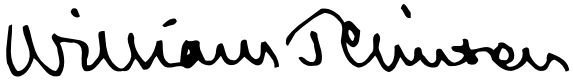
[FR Doc. 95–23291
Filed 9–15–95; 10:59 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 12970 of September 14, 1995

Further Amendment to Executive Order No. 12864

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the United States Advisory Council on the National Information Infrastructure, it is hereby ordered that section 4(b) of Executive Order No. 12864, as amended, is further amended by deleting ''for a period of two years from the date of this order, unless the Council's charter is subsequently extended prior to the aforementioned date'' and inserting in lieu thereof ''until June 1, 1996, unless otherwise extended.''



THE WHITE HOUSE,
September 14, 1995.

[FR Doc. 95–23338
Filed 9–15–95; 2:03 pm]
Billing code 3195–01–P

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Federal Register

Vol. 60, No. 180

Monday, September 18, 1995

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1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[8] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–022–00107–8)	21.00	July 1, 1994
100–499	(869–022–00108–6)	9.50	July 1, 1994
500–899	(869–022–00109–4)	35.00	July 1, 1994
900–1899	(869–026–00113–8)	17.00	July 1, 1995
1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
1911–1925	(869–022–00113–2)	26.00	July 1, 1994
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–022–00116–7)	27.00	July 1, 1994
200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
0–199	(869–026–00122–7)	15.00	July 1, 1995
200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–022–00121–3)	31.00	July 1, 1994
191–399	(869–022–00122–1)	36.00	July 1, 1994
400–629	(869–022–00123–0)	26.00	July 1, 1994
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–022–00125–6)	21.00	July 1, 1994
*800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
*1–299	(869–026–00133–2)	25.00	July 1, 1995
*300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–022–00132–9)	40.00	July 1, 1994
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts:			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–022–00135–3)	37.00	July 1, 1994
37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
***39**	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–022–00140–0)	39.00	July 1, 1994
52	(869–022–00141–8)	39.00	July 1, 1994
53–59	(869–022–00142–6)	11.00	July 1, 1994
60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–022–00144–2)	41.00	July 1, 1994
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–022–00146–9)	41.00	July 1, 1994
100–149	(869–022–00147–7)	39.00	July 1, 1994
150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–022–00153–1)	30.00	July 1, 1994
700–789	(869–022–00154–0)	28.00	July 1, 1994
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–022–00156–6)	9.50	July 1, 1994
101	(869–022–00157–4)	29.00	July 1, 1994
102–200	(869–022–00158–2)	15.00	July 1, 1994
201–End	(869–022–00159–1)	13.00	July 1, 1994
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
40–69	(869–022–00182–5)	14.00	Oct. 1, 1994
70–79	(869–022–00183–3)	24.00	Oct. 1, 1994
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48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
3–6	(869–022–00189–2)	23.00	Oct. 1, 1994
7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
15–28	(869–022–00191–4)	32.00	Oct. 1, 1994
29–End	(869–022–00192–2)	17.00	Oct. 1, 1994
49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–022–00198–1)	19.00	Oct. 1, 1994
1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
200–599	(869–022–00201–5)	22.00	Oct. 1, 1994
600–End	(869–022–00202–3)	27.00	Oct. 1, 1994

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.