Executive Order 12866

It has been determined that this document is not a major regulation as defined in Executive Order 12866 and a regulatory impact analysis is not required because it will not have any annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because no requirement to collect information is contemplated.

Drafting Information

The principal author of this document is Rodolfo Roberts, Office of Management Services, Bureau of Engraving and Printing.

List of Subjects in 31 CFR Part 601

Currency, Securities, Printing.

Authority and Issuance

31 CFR part 601 is revised to read as follows:

PART 601—DISTINCTIVE PAPER FOR UNITED STATES CURRENCY AND OTHER SECURITIES

Sec.

601.1 Notice to the public.
601.2 Description of paper.
601.3 Use of paper.
601.4 Use of paper; interest-bearing securities of the United States.
601.5 Penalty for unauthorized control or possession.

Authority: 5 U.S.C. 301; 18 U.S.C. 474; 31 U.S.C. 321.

§ 601.1 Notice to the public.

The Secretary of the Treasury, by authority of law, has adopted a new distinctive paper for use in printing United States currency in addition to the existing distinctive paper for use in printing United States currency and other securities.

§ 601.2 Description of paper.

The paper utilized in the printing of United States currency and public debt issues is cream-white bank note paper which must contain security features prescribed by the Secretary of the Treasury. All currency paper shall contain distinctive fibers, colored red and blue, incorporated in the body of the paper while in the process of manufacture and evenly distributed throughout. In addition to distinctive red and blue fibers, currency paper shall contain, for denominations prescribed by the Secretary of the Treasury, security threads embedded beneath the surface of the paper during the manufacturing process. Security threads shall contain graphics consisting of the designation "USA" and the denomination of the currency, expressed in alphabetic or numeric characters.

§ 601.3 Use of paper.

The new distinctive paper shall be used for printing Federal Reserve Notes of the denominations prescribed by the Secretary of the Treasury. The use of the existing distinctive paper, the distinctive feature of which consists of distinctive fibers, colored red and blue, incorporated in the body of the paper while in the process of manufacture and evenly distributed throughout, will be continued for printing of any currency denomination prescribed by the Secretary of the Treasury.

§ 601.4 Use of paper; interest-bearing securities of the United States.

The existing distinctive paper shall be used for the printing of interest-bearing securities of the United States, and for any other printing where the use of distinctive paper is indicated.

§ 601.5 Penalty for unauthorized control or possession.

The Secretary of the Treasury hereby gives notice that the new distinctive paper, together with any other distinctive paper heretofore adopted for the printing of paper currency or other obligations or securities of the United States, is and will be subject to the provisions of 18 U.S.C. 474 which provides, in part, that it is against the law to possess any paper, or facsimile thereof, designated by the Secretary of the Treasury for the printing of U.S. currency or any other security of the United States, except with the permission of the Secretary or other authorized official. This crime is punishable by a fine not to exceed five thousand dollars or imprisonment for not more than fifteen years, or both.

Peter H. Daly,
Director.
George Muñoz,
Assistance Secretary Management.
Lawrence F. Zenker,
Certifying Officer, Bureau of Engraving and Printing.

[FR Doc. 94–10711 Filed 5–3–94; 8:45 am]
BILLING CODE 4840–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH–10–1–5677; FRL–48764]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).
ACTION: Final rule.

SUMMARY: USEPA is approving and disapproving specific portions of a revision to the Ohio State Implementation Plan (SIP) for ozone.

On April 9, 1986, the State of Ohio Environmental Protection Agency (OEPA), submitted amendments to the Ohio Administrative Code (OAC) Chapter 3745–21 to USEPA as proposed revisions to the SIP for Ozone. OAC Chapter 3745–21 consists of emission limitations and control requirements for sources of volatile organic compounds (VOC). The amendments to OAC Chapter 3745–21 involve certain compliance deadlines and source specific exemptions from otherwise applicable emission limitations.

EFFECTIVE DATE: This final rule becomes effective on June 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for inspection at (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air Enforcement Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision to the Ohio SIP is available for inspection at: U.S. Environmental Protection Agency, Air Docket, 6102, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–3849.

SUPPLEMENTARY INFORMATION: On April 9, 1986, the OEPA submitted

amendments to OAC Chapter 3745–21 and supporting data to USEPA as a proposed revision to the ozone portion of its SIP. OEPA adopted these rules in final form on March 21, 1986. OAC Chapter 3745–21, entitled, "Carbon Monoxide, Photochemically Reactive Materials, Hydrocarbons, and Related Materials Standards," includes Ohio's VOC Reasonably Available Control Technology (RACT I and II) regulations.

Ohio's submittal included new VOC regulations for additional source categories not specifically covered by Ohio's existing rules and a site-specific revision for the Huffy Corporation. These other elements of the April 9, 1986, submittal are not covered in this document. Today's **Federal Register** document also does not address those amendments to the ozone SIP that were previously submitted on March 28, 1983, to USEPA, and were addressed in a March 6, 1985 **Federal Register** notice of proposed rulemaking (50 FR 9052) and in a January 18, 1989, **Federal Register** final rulemaking (54 FR 1934).

The regulations subject to this rulemaking are embodied in OAC Chapter 3745–21–01, Definitions; OAC Chapter 3745–21–04, Attainment dates and compliance time schedules; OAC Chapter 3745–21–09, Control of emissions of volatile organic compounds from stationary sources; and OAC Chapter 3745–21–10, Compliance test methods and procedures.

USEPA is taking final action to approve these revisions, with the following exceptions:

1. USEPA is disapproving the proposed relaxation for food can end sealing compounds in 3745–21–09 (D)(1)(e) and (D)(2)(e) from 3.7 to 4.4 lbs VOC/gal.

2. USEPA is disapproving the proposed revision to the exemption, as well as the entire exemption in 3745–21–09(N)(3)(e) for the application by hand of any cutback asphalt or emulsified asphalt for patching or crack sealing.

Ohio's high ratio of emulsified to cutback asphalt used in 1987 is not a valid basis for exempting the hand application of cutback asphalt. This exemption is inconsistent with USEPA guidance, and Ohio has provided no data on the amount of additional cutback asphalt that would be used in the ozone season as a result of the exemption.

In addition, USEPA is disapproving the recordkeeping requirements in 3745–21–09 (N)(4) because they are inadequate with respect to the time period during which records are required because paragraph 3745–21–09 (N)(4) only deals with recordkeeping requirements and not when cutback asphalt is allowed to be used. Ohio's SIP does not allow cutback asphalt to be used from April 15 through October 15. Unless and until the exemption period is changed (in 3745–21–09 (N)(3)), the recordkeeping requirements must reflect the SIP requirements.

3. USEPA is disapproving the relaxation from 3.5 to 6.2 lbs. VOC/gal for high performance architectural aluminum coatings in 3745–21–09 (U)(1)(a)(viii) because Ohio did not document the infeasibility of add-on controls and powder coatings in support of its proposed relaxation. USEPA will evaluate the merits of a compliance date extension if submitted and supported by OEPA.

In addition, USEPA will repropose rulemaking on the relaxation for miscellaneous metal parts, in 3745–21–09 (U)(1)(vii), and USEPA will propose rulemaking on the exemption for new sources, in 3745–21–09 (U)(2)(f), in separate **Federal Register** documents.

Comments on the proposed SIP revisions contained in the May 30, 1989, rulemaking notice (54 FR 22915) are discussed below:

1. Can Regulations-Rules 3745–21–09(D)(1)(e) and (D)(2)(e)

A. Proposed Action

OEPA proposed a relaxation from 3.7 pounds of VOC per gallon of coating (lbs VOC/gallon of coating, excluding water) to 4.4 lbs/gal for food can end sealing compounds. OEPA's basis includes a September 13, 1985, letter and testimony to OEPA from Heekin Can; an April 13, 1984, submittal from the Can Manufacturers Institute (CMI) to USEPA; and testimony presented by Campbell Soup Company before the OEPA on September 12, 1985. The basis of the can industry's requests for a relaxation is the purported unavailability of complying end sealing compounds for food can ends, as well as the infeasibility of add-on control.

USEPA proposed disapproval of this relaxation because data from a San Diego source (Van Camp) indicates the possible feasibility of both add-on control equipment and low solvent coatings, and Ohio had not considered this information.

B. Comments on Proposed Disapproval

Heekin Can, Campbell Soup, Central States Company, OEPA, and the Can Manufacturers Institute commented on the proposed disapproval. Their comments, and USEPA's response to these comments are enumerated below.

1. Campbell Soup Company Submitted the Following Comments on July 27, 1989

Comment 1: The Amendment should now be approved by USEPA in total: The data cited by USEPA in the notice of proposed rulemaking is, on its face, not an appropriate basis for rejection.

USEPA Response: The data cited by USEPA in its notice of proposed rulemaking (NPR) provided a strong indication that use of add-on control equipment may be feasible for controlling end seal compound VOC emissions. However, after reviewing the comments, USEPA agrees that use of add-on control equipment doesn't appear feasible. In addition, Van Camp has switched over to a solventless, waterborne end sealing compound for its pet food cans. However, USEPA has considered other relevant information, as discussed in this notice, including comments received, in conjunction with the data cited in the NPR, in its final evaluation of the proposed relaxation. Therefore, any shortcomings, or limitations, in the data cited in the NPR, have been taken into consideration.

Comment 2: If the Amendment cannot now be approved in total, it should at least be approved in part, by allowing relaxation of VOC standards for the period when compliance would otherwise have been technically and commercially impracticable, i.e., at least until May 1989.

"Only with Campbell's May 1989 conversion to a compliant end-sealing compound, following extensive research and development efforts funded by Campbell to develop and apply such a compound, is there evidence that a 3.7 pound standard became technically and commercially feasible for Campbell's Ohio facility."

USEPA Response: USEPA can only act on a proposed revision that has been submitted to it. Therefore, USEPA's only option is to approve or disapprove a permanent relaxation of the food can end sealing compound limit. It should be emphasized that as of May 1989 Campbell came into compliance with the 3.7 pounds VOC per gallon food can end seal compound limit. Therefore, USEPA does not believe approval of the permanent relaxation is appropriate.

Comment 3: If relaxation of the VOC standard to 4.4 pounds for the period ending May 1989, cannot now be approved for the entire food can end sealing compound category, it should at least be allowed for such period for the human food can end sealing compound category.

USEPA Response: As stated in the response to comment 2, USEPA can

only act on a proposed revision that has been submitted to it. The submitted rule provides for a relaxation for the entire category and cannot be approved.

Comment 4: In any case, if the Amendment cannot now be approved in whole or in part, it should not now be rejected with prejudice. Rather, OEPA should be given a chance to modify or supplement the Amendment.

"USEPA's proposed rulemaking notes that OEPA did not consider certain Van Camp data, i.e., the Lake paper which, in fact, was only publicly presented after the date the Amendment was submitted to USEPA. Accordingly, if the Amendment cannot now be approved in whole or part, and if such data is still deemed relevant by USEPA, these proceedings should be remanded without prejudice to OEPA so that the data can be considered, findings made, and, if deemed appropriate by OEPA, the Amendment resubmitted to USEPA in the same or modified form after the new data has been fully considered."

USEPA Response: USEPA has an obligation to act on any pending SIP revision request and does not have the authority to "remand" such a submittal to the State. However, the State has the ability to withdraw or amend a pending SIP revision request at any time prior to final USEPA action. After USEPA takes final action on a SIP submittal, the State still may submit revisions to the existing SIP. USEPA will act on any proposed SIP revision submitted by Ohio in the future including additional relaxation requests for end sealing compounds. Any relaxation would need to be consistent with section 193 of the amended CAA. Moreover, it should be noted that USEPA has considered comments from OEPA on the Van Camp data in its final evaluation.

2. Heekin Can Submitted Comments on July 27, 1989

These comments include background information, comments on the infeasibility of add-on controls, and comments on the unavailability of low solvent compounds.

Comment 1: Before reviewing the infeasibility and unavailability issues it should be recognized that the level of VOCs that was emitted at the Heekin facility in 1987 as a result of following the food can end seal regulation (4.4 pounds of VOC per gallon) instead of the general VOC content end seal limitation (3.7 pounds of VOC per gallon) amounted to only 27.89 tons of VOC. Total VOC emissions from the entire end seal operation at the facility were 219.27 tons for 1987, while plant-wide emissions (base coaters, litho presses, side seam strippers, and end seal liner machines) were 652 tons per year after controls. Thus, the level of emissions sought to be restricted by disapproving the food can end seal VOC limit is only 4.2 percent of the emissions from the facility.

USEPA Response: The level of control technology that constitutes RACT is a function of technical and economical feasibility, and not emission impacts. Furthermore, excess emissions of 27.89 tons of VOC per year is not a negligible quantity.

Comment 2—Infeasibility of Add-on Controls: As a result of USEPA's reliance on the Lake article and the Van Camp study, Heekin commissioned a RACT study by Camp, Dresser, and McKee (CDM). CDM focused on collecting VOCs from the application, conveying, and bagging stages of the end seal lining process. Warehousing areas were disregarded by Lake and CDM as being infeasible to control.

CDM performed a complete RACT analysis tailored specifically for Heekin's Hamilton County, Ohio can manufacturing facility. A total of five end seal lining processes (10 applicators) were considered for control. Before discussing the results of CDM's RACT study, it should be noted that CDM disregarded the carbon adsorption control option because of the difficulties encountered with regeneration. Steam regeneration of spent carbon creates a hazardous waste requiring costly disposal. Hot air regeneration requires an incinerator which duplicates the incinerator control technology option. Also, it is believed that hexane, the major solvent in the end seal lining compounds, has a poor adsorption efficiency. Thus, Lake's reporting of a cost effectiveness figure for a carbon adsorption collection system is not supported by CDM.

CDM focused on thermal and catalytic incineration as preferable control options and determined that the capital cost for a catalytic incinerator system was $1,854,600, approximately $320,000 higher than the capital cost of a thermal incineration system. The annual operating expense for the catalytic incineration system was estimated to be $1,608,719 per year, $2,008,719 per year for thermal incineration.

Dividing the annual cost to operate the control system by the quantity of VOC reduced yields the "cost effectiveness" of the control system. CDM's analysis utilized three figures for the quantity of VOC removed per year: (1) The quantity of VOC removed to reach equivalence with the general end seal compound limit of 3.7 pounds of VOC per gallon (i.e., 27.89 tons per year); (2) the quantity of VOC removed assuming a 40 percent capture efficiency (i.e., 87.70 tons per year); and (3) the quantity of VOC removed assuming that Perlis' 80 percent capture efficiency is correct (i.e., 175.4 tons per year). Heekin does not believe that an 80 percent collection efficiency on the system is possible but has calculated the "cost effectiveness" for comparison purposes.

CDM determined the following "cost effectiveness" figures. For scenario one, removal of sufficient VOCs to reach equivalence with the 3.7 pounds per gallon emission rate limitation, the "cost effectiveness" is $71,597 per ton of VOC removed for thermal incineration and $57,681 per ton of VOC removed for catalytic incineration. For scenario two, removal of VOCs with a 40 percent capture efficiency, the "cost effectiveness" is $23,235 per ton of VOC removed for thermal incineration and $19,310 per ton of VOC removed for catalytic incineration. For scenario three, removal of VOCs with an 80 percent capture efficiency, the "cost effectiveness" is $10,853 per ton of VOC removed for thermal incineration and $9,020 per ton of VOC removed for catalytic incineration.

It should be noted that the above detailed "cost effectiveness" figures were calculated based on can end residence times through the collection system reported by Lake. However, Heekin's actual residence times are much shorter. Lake reported a total residence time for Van Camp of 1.5 minutes. During the Perlis test, a residence time of 3.0 minutes was contrived to gain an 87 percent capture efficiency. Heekin's process lines have a total residence time from lining to stacking/bagging of only 20 to 65 seconds. The discrepancy between Heekin's residence time and the Van Camp/Perlis residence times means that the collection efficiencies for the capture system if it were to be installed at Heekin would be much lower than the collection efficiencies reported by Lake. Thus, the cost effectiveness figures estimated by CDM are on the low side compared to what Heekin could actually attain because the amount of VOCs removed would be much lower.

USEPA Response: Add-on control is not used on any end seal compound coating lines. USEPA agrees that add-on control is not feasible for this application.

Comment 3—Unavailability of Low Solvent Compounds: USEPA stated in its proposed disapproval of Ohio's Food Can End Regulation that the Lake article and the Van Camp data indicated "possible feasibility" of low solvent

coatings. According to the article, Van Camp was successful at replacing "9101" compound with a water-based end sealing compound, "480T". The replacement compound was used by Van Camp to manufacture ends to be used for pet food cans. Van Camp continued to use the "9101" compound for its human consumption product line, tuna fish cans. Thus, Van Camp came into compliance with the 3.7 pounds of VOC per gallon limitation by averaging noncompliant VOC emissions from "9101" usage with water-based emissions from "480T" usage. The Van Camp facility continues to operate in this fashion.

Before addressing the viability of the low solvent coating option, one must understand the distinction between a "captive" and a "merchant" can manufacturer. A "captive" can manufacturer supplies cans only for one customer, itself. Conversely, a "merchant" can manufacturer supplies cans for several customers according to the customer's varied requirements and individualized specifications. Thus, a "merchant" manufacturer has little control over the coatings it must use to fabricate the cans.

Heekin is a "merchant" manufacturer. Van Camp was a "captive" manufacturer at the time of the Lake article. Thus, the feasibility of a lower solvent coating for Heekin is complicated by additional determining factors that Van Camp does not have (i.e., Heekin must satisfy the customer's manufacturing requirements and Heekin has no leverage or internal pressure by which to force a customer to make a change).

Since the first promulgation of the RACT regulations, Heekin has made a concerted effort at advising and steering its customers to specifying coatings and compounds with low solvent formulations. With regard to end seal liner compounds, however, Heekin is serving several customers that have refused to accept a low solvent formulation as a replacement to the end seal liner compound with VOC contents exceeding 3.7 pounds per gallon. The major customer in this category is Ross Laboratories in Columbus, Ohio. Ross Laboratories is the nation's largest producer of milk and soy protein infant formulas. They also manufacture medical nutritional products for hospital and home use. Ross has made the determination that "1105" compound is the only suitable compound for fabricating cans for these highly sensitive products. Other national food processing customers specifying "1105" and "9101" end seal compounds include: Quaker Oats Company, American Home Foods, and Beatrice/Hunt-Wesson.

Disallowing the food can end seal regulation will put Heekin at a disadvantage in the "merchant" can manufacturer's market. When approached by Heekin representatives regarding the possibility that Heekin may no longer be able to use "1105", the manager of the purchasing department stated that an option for Ross Laboratories, if the regulation is disapproved and Heekin no longer can supply "1105" ends, is to move its business to another "merchant" can manufacturer that is not restricted by the end seal liner RACT regulation. Thus, since low solvent end seal compounds are not an option for Heekin's customers, Heekin must have the ability to continue to use the "9101" and "1105" compounds for food can ends.

USEPA Response: Heekin has not adequately demonstrated that 4.4 lbs VOC per gallon is RACT for food can end sealing compounds for the following reasons.

1. Other State regulations have a 3.7 lbs/gallon limit for end sealing compounds.

2. The South Coast Air Quality Management District (SCAQMD) amended its can coating rules (in early 1990). These regulations specify 3.7 lbs/gallon for end sealing compounds for food cans.

3. Campbell Soup stated, in its comments, that in May 1989, Campbell converted to a compliant end sealing compound, following extensive research and development efforts funded by Campbell to develop and apply such a compound. This is "evidence that a 3.7 pound standard became technically and commercially feasible for Campbell's Ohio facility."

4. There is no indication that 3.7 lbs/gallon end sealing compounds are unavailable for certain type food cans, e.g., pet food cans and fruit and vegetable cans.

5. Heekin has not demonstrated that it made a substantial effort to develop and/or locate complying end seal compounds.

6. In its June 27, 1989, letter, Ross Laboratories states that there are no qualified replacements, to Dewey and Almy's "1105" end seal compound, available. The letter falls short of saying that they would refuse to use any other suitable product, if it exists.

7. The fact that Heekin is a "merchant" manufacturer is not a sufficient reason for it to have a less stringent limit. Job shops are common in the coating industry and have not in the past been given special consideration because they have to deal with a number of customers. The feasibility of compliant end seal compounds for Heekin's customers' cans is more relevant than its status as a "merchant" manufacturer.

However, USEPA does agree that 3.7 lbs/gallon end seal compounds for certain applications may not be available. A July 12, 1989, letter from Neil Moyer, (then) Director of Rule Development for the SCAQMD, states that compliant end seal compounds are a problem for cans used for tuna and other oily products.

Heekin may, in fact, have a problem with end seal compounds for certain products. However, USEPA does not have the ability to create exemptions for Heekin. The State has not submitted such a rule. The State submitted relaxation (to 4.4 lbs/gallon) for all end seal compounds is overly broad and cannot be approved. Furthermore, Heekin has not adequately demonstrated the lowest VOC content feasible for its end seal compounds for specified applications.

3. Central States Can Company Submitted Comments on July 26, 1989

Comment 1: We would be interested to know if there are any end lines running with off-line controls that can maintain a reduction efficiency of 76 percent (80% capture, 95% control) over a long period of time. The type of control systems that could be used on end lining systems would require a residence time of several hours and seem to be totally impractical considering the size required and the operational cost.

USEPA Response: USEPA is not aware of add-on control being used on any end seal compound coating lines. USEPA agrees that add-on control is not feasible for this application.

Comment 2: We note that the "480T" compound has been used on pet food. OEPA (presumably commenter means USEPA) seems to be proposing its use on all foods on the basis of tests with pet food. It should be pointed out that many other products besides pet food (including infant formula) are packed and should be considered before such a change is made. The USEPA cannot ignore food safety in its proposed action.

USEPA Response: USEPA agrees that there appear to be some products which cannot use 3.7 lbs/gallon end seal compounds. However, there appear to be some food cans (e.g., pet food cans) which can use compliant end seal compounds. It is the State's responsibility to demonstrate that the requirements it submits are RACT. The

burden is on the State to show for which cans another limit (above 3.7) is RACT and what is that appropriate limit. For example, an adequate demonstration has not been made of the lowest VOC content feasible for end seal compounds used for products such as infant formula. Because the State has submitted a general relaxation of the end seal limit and has not demonstrated that the relaxed limit is RACT for all end seal compounds, USEPA cannot approve the relaxation.

Comment 3: While we are confident that other foods can successfully use an alternate compound, it is important that these products be tested prior to making such a change. It is not unreasonable that this testing for all products may require as much as 5 years. It is, therefore, requested that the Ohio proposed relaxation be approved.

USEPA Response: The need for testing does not, in itself, justify a permanent relaxation. Central States Can has provided no specifics about food safety testing, and it is therefore not possible to evaluate the effects it would have. The nature and length of the testing is also not specified. Furthermore, there are no details or support for the Central States comment that "It is not unreasonable that this testing for all products may require as much as 5 years."

4. The Can Manufacturers Institute (CMI) Submitted Comments on July 28, 1989

The CMI supports OEPA's action to raise the VOC end seal compound limits. CMI's specific comments are as follows:

CMI's Position

CMI opposes the basis of USEPA's proposed denial of Ohio's revision of end seal compound VOC limits. We believe USEPA's reliance on the study of Van Camp's efforts in San Diego is misguided.

Additionally, CMI is concerned that the Agency is willing to risk endangering the food supply or forcing Ohio-based can makers to surrender business to obtain minuscule gains in the National Ambient Air Quality Standards (NAAQS).

The Van Camp Study by Michael Lake

In 1986, Michael Lake of the San Diego County Air Pollution Control District, San Diego, California, presented a paper entitled "VOC Emission Control for Can End Sealing Compounds: A Case History." This study outlines the Van Camp Company's experience in testing, qualifying and running water-based end seal compound. It also broached the possibility of using add-on equipment around end seal application operations. USEPA cites Van Camp's narrow experience with add-on control equipment and water-based end seal compound as the rationale for denying Ohio's proposed rules 3745–21–09 (D)(1)(e) and (D)(2)(e).

Add-On Controls

The add-on control equipment referred to in the Lake study was not installed on a permanent basis. The Van Camp plant managers in 1987 told CMI that initial tests of mock-up add-on equipment showed the system was impractical from an engineering and production standpoint. The Lake study cites three very serious concerns of Van Camp concerning add-on control equipment:

1. The prototype VOC containment/capture system had not been tested under rigorous, extended-production conditions;

2. The system might not allow sufficient visual and physical access by line operators; and

3. Carbon adsorption was and still is an unproven technology for control of VOC emissions from can end sealing lines.

CMI asserts that a theoretical system which did not prove practical, safe or efficacious should not be used as a basis for USEPA to deny a reasonable regulatory action by Ohio's environmental authority.

Water-Based End Seal Compound

The use of the Van Camp Study on water-based end seal compound to deny relaxation of the Ohio VOC limits wrongly assumes these test conditions are acceptable to qualify end seal compound for other types of packs and containers. The process required to safely qualify a new end seal compound is linked to different packing and food conditions. As a general rule, more testing is required for materials which are used on a broad basis.

The successful use of a water-based end seal compound by Van Camp, a division of the Ralston Purina Company, is limited to a very specific, narrow category of food products—tuna and pet food. The Ohio can manufacturers who would be subject to this rule produce containers for a wide variety of products, including baby food, soups and vegetables.

For USEPA to assume that uniformity exists between the processes which Van Camp and Ohio can makers use to qualify end seal compounds is to short change the factors which are necessary to ensure food safety and shows a considerable lack of understanding of the delicate nature under which food is processed and packaged. CMI is concerned that USEPA is willing to risk the safety of the American food supply in order to obtain minimal gains toward attainment of the NAAQS in Ohio.

Conclusion

In 1984 and 1985, CMI and its Ohio-based members asked OEPA to relax the VOC end seal limits because they could not use lower solvent end seal compound with the complete certainty that food safety would be assured. If a catastrophic failure were to occur in a single canned product which resulted in the illness or death of a consumer, the integrity of all canned foods would be suspect.

USEPA Response: USEPA's position on these issues has been previously stated in the response to Heekin's and Central States Can's comments. In summary, it is agreed that add-on control has not been demonstrated to be feasible for end seal compound application operations. However, it has not been documented that 4.4 lbs/gallon is the most stringent limit that is feasible for food can end seal compounds in general. Furthermore, the CMI has not documented the effect that food safety concerns have on using 3.7 lbs/gallon end seal compounds. For example, if CMI's position is that 3.7 lbs/gallon end seal compound cannot be used with canned vegetables (for example) due to safety reasons, it has not supported its position.

5. OEPA Submitted Comments on July 31, 1989

Comment: The Michael Lake report (paper) was not provided to OEPA during OEPA's public hearing on the eventual 1986 rulemaking. Therefore, OEPA could not consider such information. Since USEPA has added that report to the docket, USEPA must show that the report, which pertains to a specific plant in a specific food industry, is applicable to all food industries or at least the food industries in Ohio.

If complying end sealing compounds (at the "3.7" level) are or will be available, OEPA asks that USEPA provide some guidance on the proper date for compliance. The original RACT regulations, as envisioned by USEPA, were to require compliance by the end of 1982 with a time extension up through the end of 1985 for some can plants where adequately justified. The Michael Lake paper shows that "it may be feasible and cost effective to control VOC emissions at the line with carbon adsorption or incineration" according to

USEPA. At what level of cost-effectiveness? Does that transfer to plants in Ohio?

USEPA Response: It is OEPA's responsibility to demonstrate that 4.4 lbs/gallon is the most stringent limit that is feasible for food can end seal compounds. OEPA provides no basis for its statement that "U.S. EPA must show that the report, which pertains to a specific plant in a specific food industry, is applicable to all food industries or at least the food industries in Ohio." It would be appropriate for Ohio to provide adequate support for a relaxation that would make its limit the least stringent in the country. Similarly, additional time to achieve compliance with Ohio's end seal limit will only be considered by USEPA if it is proposed and submitted by OEPA. As stated previously, USEPA agrees that add-on control is not feasible for this operation. Therefore, the cost-effectiveness issue is moot.

2. Cutback and Emulsified Asphalt-Rule 3745–21–09(N)(4)

A. Proposed Action

Ohio added paragraph 3745–21–09(N)(4) to establish recordkeeping requirements for those persons using or applying cutback asphalt or emulsified asphalt during the period from May 15 through September 15.

USEPA proposed disapproval because these recordkeeping requirements are inadequate in that they do not apply to the appropriate SIP period of April 15 through October 15. Although in its State regulations, Ohio currently has an exemption period of September 15 through May 15, USEPA disapproved that extended exemption period when it was submitted as a SIP revision. 54 FR 1934. The applicable SIP exemption period is October 15 through April 15.

Under the current USEPA approved regulations, the use or application of cutback asphalt or emulsified asphalt during October 15 through April 15 is exempt from limitations. Thus, the recordkeeping requirements are necessary for the remaining period: April 15 through October 15.

B. Comments

OEPA's July 31, 1989 Comment: The recordkeeping requirements and the September 15 through May 15 exemption period are considered adequate in light of the USEPA Region VI's proposed approval of the Texas regulation which had a September 15 through April 15 exemption period in a much warmer spring-fall period.

USEPA Response: Paragraph 3745–21–09(N)(4) only deals with recordkeeping requirements and not when cutback asphalt is allowed to be used. Ohio's Federally approved SIP does not allow cutback asphalt to be used from April 15 through October 15. Unless and until the exemption period is changed (in 3745–21–09(N)(3)), the recording requirements must reflect the SIP requirements. Therefore, Paragraph 3745–21–09(N)(4) should be finally disapproved.

3. Cutback and Emulsified Asphalt-Rule 3745–21–09(N)(3)(e)

A. Proposed Action

This paragraph states that the control requirements of (N)(1) and (N)(2) shall not apply:

To the use or application by hand of any cutback asphalt or emulsified asphalt for patching or crack sealing, provided the maximum daily usage is less than one thousand gallons *for any work crew.*

USEPA proposed to disapprove this exemption (without the underlined words) on March 6, 1985 (and finally disapproved this exemption on January 18, 1989 (54 FR 1934)), and proposed to disapprove the rule as revised in the May 30, 1989 **Federal Register**. This exemption is supported by a November 3, 1982, letter from the Ohio Department of Transportation which states that "Our attempts at using emulsified asphalt as crack sealers have not generally been satisfactory." The County Engineers Association of Ohio, in a June 22, 1982, letter, requested OEPA to "Permit use of cutback asphalt for patching up to a usage not to exceed 2,000 gallons per day at any time of the year". The County Engineers stated that this requested change "would improve the efficiency and economy of road paving and maintenance work."

The language added to the end of (N)(3)(e) clarifies the exemption. However, this clarifying language could result in substantially increased VOC emissions because it clarifies that the one thousand gallons per day refers to each work crew. Therefore, this clarifying language, and the supporting documentation, does not change USEPA's position on this exemption, for which an adequate basis has not been provided. USEPA informed OEPA of this in its September 17, 1985, comment letter.

B. Comments

OEPA's July 31, 1989 Comment: The hand application exemption for crack sealers and road patching conforms to the best judgement of the engineering staff at the Ohio Department of Transportation and the County Engineers Association of Ohio. Ohio's record in the conversion to acceptable emulsified asphalts is above the median level of the 35 regulated States. This exemption is certainly minor when considering this fact.

USEPA Response: Ohio's ratio of emulsified to cutback asphalt used in 1987 is not a valid basis for exempting the hand application of cutback asphalt. This exemption is inconsistent with USEPA guidance and its previous determination of RACT. Ohio has not adequately demonstrated that this revised language causes this exemption to constitute RACT and it has provided no data on the amount of additional cutback asphalt that is used in the ozone season as a result of the exemption.

4. Miscellaneous Metals-Rule 3745–21–09(U)(1)(a)(vii)

A. Proposed Action

This paragraph establishes a limitation of 4.8 lbs VOC/gallon of coating, excluding water, for a heat resistant, anti-corrosion coating applied to the interior of a motor vehicle directly above the catalytic converter. This revision was proposed for disapproval because it is a relaxation of approved VOC emission limits in Ohio's ozone SIP and Ohio has not made a demonstration that this relaxation will not interfere with attainment and/or maintenance of the ozone NAAQS. Furthermore, the July 29, 1983, memorandum titled "Source Specific SIP Revisions" by Sheldon Meyers, former Director of Air Quality Planning and Standards, addresses the issue of VOC SIP relaxations. This memorandum states that approval of such a relaxation would require a data base and modeling demonstration consistent with that applied in extension areas. The sources subject to this relaxation are located in Lordstown and Dayton, Ohio. There have not been any revised attainment demonstrations, consistent with those done for extension areas, submitted for these areas.

B. Comments

OEPA's July 31, 1989 Comment: The required demonstration will be made as part of the upcoming post-1987 ozone SIP submissions. USEPA is asked to accept such commitment on the part of OEPA. Region VI has accepted such commitment for a future SIP impact assessment at 54 FR 23672 on June 2, 1989 (regarding Vulcan Materials Company, Geismar Chemicals Plant).

USEPA Response: This requested rule relaxation is being reproposed in a separate **Federal Register** notice which deals with corrections to Ohio's VOC

rules (as required by the Clean Air Act, as amended in 1990). The reason for this reproposal is that the revelant policy has changed with the Amended Act.

5. Architectural Aluminum Coating-Rule 3745-21-09 (U)(1)(a)(viii)

A. Proposed Action

The VOC requirement in this paragraph establishes a limitation of 6.2 lbs VOC/gallon of coating excluding water for high performance architectural aluminum coatings. OEPA considers this limitation to constitute RACT. This relaxation is supported by a September 6, 1985, letter from Reynolds Aluminum, to OEPA. This letter states that "We have been unable to convert our High Performance Architectural Aluminum Coatings to a low solvent formulation." Reynolds attached a December 6, 1984, letter from PPG which states that its efforts to develop compliant coatings for the architectural and recreational vehicle markets have been unsuccessful. USEPA proposed to disapprove this relaxation because OEPA has neither documented the infeasibility of add-on control nor the potential use of powder coatings. Three of these suppliers, Armstrong Products, Fuller O'Brien, and Polymer Corporation, expect their coatings to pass the 5 year exposure test. Some of these are currently in the third or fourth year of their 5-year testing period. Therefore, a permanent relaxation for high performance architectural aluminum coatings is not approvable.

B. Comments

OEPA's July 31, 1989 Comment: The USEPA purported availability of compliant coatings for high performance architectural aluminum coatings at 3.5 lbs VOC per gallon from Armstrong Products, Fuller O'Brien, and Polymer Corporation should be documented in the docket. If a permanent relaxation is not appropriate, does USEPA recommend a relaxation for a specific year (e.g., up to 1989 or 1990)?

USEPA Response: Documentation of USEPA's conversations with powder coating suppliers is in the Docket. The CTGs and Ohio SIP establish the presumptive RACT for this source category. Ohio's comments provide no support for its proposed relaxation. USEPA is only able to take actions on proposed SIP revisions that are submitted to it. USEPA will evaluate the merits of a compliance date extension if submitted and supported by OEPA. Therefore, USEPA is disapproving this relaxation.

Final Action

OEPA had proposed a number of revisions to its RACT I, RACT II, and general VOC rules. These are contained in OAC Chapter 3745-21-01, Definitions; OAC Chapter 3745-21-04, Compliance and Schedules; OAC Chapter 3745-21-09, Emission Limits; and OAC Chapter 3745-21-10, Test Methods. A listing and short description of all of these revisions are in USEPA's technical support documents, dated July 14, 1986, September 23, 1986, and July 27, 1988. Many of these revisions are minor.

Ohio submitted these regulations in 1986 in order to meet the RACT requirement of the pre-amended Act and USEPA reviewed this submittal against the general RACT requirement of the preamended Act, 1977 Act § 172.54 FR 22915 (May 30, 1989). Since USEPA did not issue a SIP call with respect to the elements of this submittal, these revisions are not required under the section 182(a)(2)(A) RACT fix-up requirement of the Act. However, amended section 172 retains a general requirement that States must adopt RACT for nonattainment areas. Therefore, USEPA is taking final partial approval action as proposed under Section 110 and Part D of the Amended Act, with the exception of the following:

1. USEPA is disapproving the proposed relaxation for food can end sealing compounds in 3745-21-09(D)(1)(e) (from 3.7 to 4.4 lbs VOC/gal).

2. USEPA is disapproving the proposed revision to the exemption, as well as the entire exemption in 3745-21-09(N)(3)(e) for the application by hand of any cutback asphalt or emulsified asphalt for patching or crack sealing. In addition, USEPA is disapproving the recordkeeping requirements in 3745-21-09(N)(4) because they are inadequate with respect to the time period during which records are required.

3. USEPA is disapproving the relaxation (from 3.5 to 6.2 lbs VOC/gal) for high performance architectural aluminum coatings in 3745-21-09 (U)(1)(a)(viii).

4. In the proposed rulemaking for this revision published at 54 FR 22915 (May 30, 1989), USEPA proposed to take no action on the exemption for new sources in 3745-21-09(U)(2)(f). USEPA believes that the Amended Clean Air Act affects this element and will repropose action on it consistent with the amended Act in a separate **Federal Register** document.

5. In the May 30, 1989, proposed rulemaking for this revision, USEPA proposed to disapprove the relaxation for miscellaneous metals in 3745-21-09 (U)(1)(a)(vii). This requested rule relaxation will be reproposed in a separate **Federal Register** notice because the relevant policy has changed with the Amended Act.

As stated earlier, Ohio's April 9, 1986, State submittal included new VOC regulations for additional RACT III source categories not specifically covered by Ohio's existing rules and a site-specific revision for the Huffy Corporation. This **Federal Register** document does not address these other elements of the April 9, 1986, submittal. This notice also does not address those amendments to the ozone SIP that were previously submitted on March 28, 1983, to USEPA and for which final rulemaking was taken on January 18, 1989 (54 FR 1934).

Under Executive Order 12866, this action is not significant. It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

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

Dated: April 13, 1994.

Carol M. Browner,

Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(90) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(90) On April 9, 1986, the Ohio Environmental Protection Agency (OEPA) submitted amendments to the Ohio Administrative Code (OAC) Chapter 3745–21. The amendments are embodied in the following OAC regulations: Definitions, Rule 3745–21–01; Attainment dates and compliance time schedules, Rule 3745–21–04; Control of emissions of volatile organic compounds from stationary sources, Rule 3745–21–09; and Compliance test methods and procedures, Rule 3745–21–10. USEPA is approving these amendments with the following exceptions: The proposed relaxation for food can end sealing compounds in 3745–21–09(D)(1)(e) and (D)(2)(e) (from 3.7 to 4.4 lbs VOC/gallon); the proposed revision to the exemption in 3745–21–09(N)(3)(e) for the application by hand of any cutback asphalt or emulsified asphalt for patching or crack sealing; the recordkeeping requirements in 3745–21–09(N)(4); the relaxation from 3.5 to 6.2 lbs VOC/gallon for high performance architectural aluminum coatings in 3745–21–09(U)(1)(a)(viii); the exemption for new sources in 3745–21–09(U)(2)(f); and the relaxation for miscellaneous metals coatings in 3745–21–09(U)(1)(a)(vii).

(i) Incorporation by reference.

(A) Amendments to Ohio Administrative Code Rule 3745–21–01, effective on May 9, 1986.

(B) Amendments to Ohio Administrative Code Rule 3745–21–04, effective on May 9, 1986.

(C) Amendments to Ohio Administrative Code Rule 3745–21–09, effective on May 9, 1986, except for:

(1) 3745–21–09(D)(1)(e) and (D)(2)(e) (proposed relaxation for food can end sealing);

(2) 3745–21–09(N)(3)(e) (proposed revision to the exemption for the application by hand of any cutback or emulsified asphalt for patching crack sealing);

(3) 3745–21–09(N)(4) (recordkeeping requirements);

(4) 3745–21–09(U)(1)(a)(viii) (relaxation from 3.5 to 6.2 lbs VOC. gal for high performance architectural aluminum coatings);

(5) 3745–21–09(U)(2)(f) (the exemption for new sources); and

(6) 3745–21–09(U)(1)(a)(vii) (relaxation for miscellaneous metal coatings).

(D) Amendments to Ohio Administrative Code Rule 3745–21–10, effective May 9, 1996.

[FR Doc. 94–10652 Filed 5–3–94; 8:45 am]
BILLING CODE 6580–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[PP Docket No. 93–253, FCC 94–61]

Implementation of Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules establishing general procedures that will apply whenever it employs a system of competitive bidding ("auctions") to choose from among mutually exclusive applications for certain initial licenses. This action is taken to implement section 309(j) of the Communications Act of 1934, as amended. Procedures applicable to specific services will be determined in future Reports and Orders. The new rules will promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas. These rules also will promote economic opportunity and competition, and disseminate licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. This action will provide recovery for the public of a portion of the value of the public spectrum made available for commercial use.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Toni Simmons, Office of Plans and Policy, (202) 418–2030.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, PP Docket No. 93–253, adopted March 8, 1994, and released April 20, 1994. The full text of this Second Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, telephone (202) 857–3800.

Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3225, New Executive Office Building, Washington, DC 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

Please note: The Commission has requested emergency review of this collection by May 6, 1994, under the provisions of 5 CFR 1320.18.

Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order, PP Docket No. 93–253.

Action: New collections.

Respondents: Individuals, state or local governments, non-profit organizations, business or other for-profit entities, including small business.

Frequency of response: On occasion.

Estimated Annual Burden:

Section/forms	Number of respondents	Estimated average hours per response	Estimated annual responses
FCC Form 175	6,400	.50	3,200
Section 1.2105(a)(2)(i)–(ix)	6,400	.50	3,200
Section 1.2107	4,700	1.00	4,700
Section 1.2108	2,350	20.00	47,000
Section 1.2111	100	.50	50
FCC Form 175–S	2,700	.25	675
Microfiche Req	6,400	2.00	12,800
Total Annual Burden: 71,625.			

Needs and Uses: In the Second Report and Order in PP Docket No. 93–253, the Commission has amended 47 CFR part 1 to add a new Subpart Q which contains the general rules and requirements governing the competitive bidding process for certain initial licenses. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically, and financially qualified to be licensed. Affected public are any member of the public who wants to become a licensee. The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data

needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission Records Management Division, Paperwork Reduction project, Washington, DC 20554 and to the Office of the Management and Budget Paperwork reduction project, Washington, DC 20503.

Summary of Second Report and Order

Introduction

1. In this Second Report and Order, we prescribe general rules and procedures to implement the Commission's new authority under Section 309(j) of the Communications Act of 1934, as amended, to use competitive bidding to award licenses for use of the radio spectrum. In the future, in subsequent Reports and Orders, specific rules within the scope of these general rules will be adopted for each service subject to competitive bidding.

2. A voluminous number of comments and reply comments were filed by interested parties in response to the Notice of Proposed Rule Making (58 FR 53489 (October 15, 1993)) in this docket. These comments address the many proposals made in the Notice.

Eligibility of License Applications for Competitive Bidding

3. The Commission will use competitive bidding to award licenses only when the statutory criteria for auctionability set forth in Section 309(j) of the Communications Act are met. First, there must be mutually exclusive applications for an initial license or construction permit. Second, the service applied for must principally involve the transmission or reception of communications services to subscribers for compensation. Applying these criteria, the Commission determined that mutually exclusive licenses in the Interactive Video Data Service (IVDS), the Personal Communications Services, most of the Public Mobile Services, the Multipoint Distribution Service, the Multichannel Multipoint Distribution Service, the Specialized Mobile Radio Service, Marine Public Coast Stations and for exclusive frequencies above 900 MHz in the Private Carrier Paging Service should be awarded through competitive bidding.

4. Because licensees in the Broadcast Radio and Broadcast Television Services, Maritime Operational Fixed Stations, Personal Radio Services (except IVDS), certain Private Land Mobile Radio Services and certain other services do not receive compensation from subscribers, these services are excluded from the competitive bidding process. The following kinds of applications are not subject to competitive bidding: Applications for renewal of licenses, most applications for modification, applications for subsidiary communications services, and applications for frequencies used as intermediate links in the provision of service.

Competitive Bidding Design Options

5. We adopt simultaneous multiple round auctions as our primary auction methodology. However, as the record convinces us that there is no single competitive bidding design that is optimal for all auctionable services and because Congress directed us to design and test multiple alternative methodologies, we have provided alternative methods from which to choose under appropriate circumstances. The alternative design options are single round sealed bid auctions (either sequential or simultaneous) and sequential oral auctions.

6. The two primary characteristics that will determine the choice of auction design are: (1) The degree to which licenses are interdependent, and (2) whether the expected license values are high or low. Because we expect most licenses to be of high value and interdependent, the simultaneous multiple round auction is our preferred auction design. The Commission will select the competitive bidding design to be used in auctioning particular licenses on a service-specific basis. Combinatorial bidding, which may be used with any type of auction, is also authorized for use as a competitive bidding mechanism.

Procedures to Implement the Competitive Bidding Designs

7. To efficiently implement the competitive bidding designs, we must specify certain auction procedures. We will choose from these procedures and incorporate them into the service-specific rules that we will adopt in the future.

8. *Sequencing.* We will choose the sequence of what is auctioned. The importance of the choice of sequence increases with the degree of interdependence among the items auctioned in sequence. We intend to minimize the importance of the choice of sequence by auctioning licenses sequentially only when there is not a high degree of value interdependence across the licenses or groups that are offered in sequence.

9. *Duration of bidding rounds.* In simultaneous multiple round auctions, bids can be submitted continuously with the high bids announced at the end of each round. With discrete rounds, the Commission can more readily control the pace at which the auction proceeds. The duration of bidding rounds and the interval between rounds in simultaneous multiple round auctions may be varied by announcement during the course of an auction. We generally intend to give bidders a single business day to submit bids and intend to conduct a new bidding round each business day, but we may choose other round lengths and intervals between rounds.

10. *Minimum bid increments.* In multiple round auctions, whether they be sequential or simultaneous, the Commission will generally specify minimum bid increments. The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current round. Imposing a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction comes to closure within a reasonable period of time. We reserve the right to specify minimum bid increments in dollar terms as well as in percentage terms. We also may vary the minimum bid increments with respect to different licenses being awarded in one auction.

11. *Stopping rules for multiple round auctions.* Prior to each multiple round auction, the Commission will announce by Public Notice a stopping rule for determining when the auction is over. We seek a stopping rule that will (1) terminate the auction in a reasonable period of time, (2) be simple and clearly understood by participating bidders and observers of the auction process, and (3) in the case of simultaneous auctions, close all markets at approximately the same time. In simultaneous auctions, the stopping rules must also specify whether to close markets individually or simultaneously. Hybrid stopping rules are also possible.

12. The following stopping rules are preferred: (1) When auctioning licenses one at a time, or simultaneously and closing markets one at a time bidding on a market will close if a single round passes in which no new acceptable bids (*i.e.*, no bids that meet any applicable bid increment rule) are submitted for that license; (2) when auctioning licenses simultaneously and closing markets simultaneously—bidding on all markets will close if a single round

passes in which no new acceptable bids are submitted for any license.

13. *Activity rules.* To ensure that simultaneous auctions with our preferred simultaneous stopping rule close within a reasonable period of time, an activity rule is likely to be necessary to prevent bidders from waiting until the end of the auction before participating. Where we decide to employ an activity rule, we will seek one that (1) moves auctions along at an appropriate speed, (2) provides bidders with sufficient flexibility to pursue a wide range of alternative bidding strategies, and (3) is simple and clearly understood by participating bidders.

14. When the Commission employs a simultaneous stopping rule, our preferred activity rule will be the three stage rule proposed by Professors Paul Milgrom and Robert Wilson. Under this rule, the minimum activity level, measured as a fraction of the self declared maximum eligibility, would increase during the course of the auction. The auction would be divided into three stages. During the first stage of the auction, bidders would be required to be active on licenses encompassing at least one-third of the MHz-pops for which they are eligible. In the second stage, bidders would be required to be active on licenses encompassing at least two-thirds of the MHz-pops for which they are eligible. In the third stage, bidders would be required to be active on licenses encompassing 100 percent of the MHz-pops for which they are eligible. Bidders under this rule would be required to meet these activity levels to retain their desired eligibility. A shortfall in activity would reduce eligibility levels accordingly.

15. The Commission retains the flexibility to choose among activity rules, other than the three stage Milgrom-Wilson rule, on a case-by-case basis. These include: (1) A Milgrom-Wilson rule with one or two stages, (2) a rule that requires bidders to be active on a single license, (3) a rule that requires that a bidder's activity level remain within a single range throughout the action, (4) a rule that replaces the maximum allowed bidding levels in the Milgrom-Wilson rule with a bidding premium for exceeding those maximums, or (5) a combination of the foregoing rules. We conclude that a waiver procedure is necessary in conjunction with a Milgrom-Wilson activity rule. Under our preferred option, bidders will be permitted five automatic waivers of the minimum activity requirement during the course of an auction.

16. *Bid withdrawal and default penalties.* If a high bid is withdrawn prior to the close of a simultaneous round auction, the Commission will impose a penalty equal to the difference between the withdrawn bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty will be assessed if the subsequent winning bid exceeds the withdrawn bid. If a winning bidder defaults after the close of such an auction, the defaulting bidder will be required to pay the foregoing penalty plus an additional penalty equal to three percent of the amount of the winning bid the next time the license is offered by the Commission or three percent of the amount of the defaulting bidder's bid, whichever is less.

17. In the case of open outcry auctions, the Commission may choose not to impose any penalty for bid withdrawal during the course of an auction and instead rely only on the default penalty to discourage insincere bidding. The default penalty will be assessed if a bidder fails to make the down payment on a license, fails to pay for a license or is disqualified after the close of an auction. In connection with single round bidding, only the basic penalty (and not the additional three percent penalty) would generally apply.

18. *Release of Bid Information.* We will announce bidder identification numbers and bid amounts during the course of an auction, but not the identities of bidders, to avoid potential manipulation and collusion among bidders.

19. *Delay, Suspension or Cancellation of Auction.* By Public Notice or by announcement during an auction, the Commission may delay, suspend or cancel an auction in the event of a natural disaster, technical obstacle, evidence of auction security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and competitive conduct of the competitive bidding. In such cases, the Commission may, at its sole discretion, resume the auction starting from the beginning of the current or some previous round or may cancel the auction in its entirety.

Pre-Auction Procedures and Bidder and License Qualification

20. To streamline the processing of auction applications and ensure that bidders and licensees are qualified, we are adopting the following procedures. Usually, no less than 75 days before each scheduled auction, the Commission will release a Public Notice announcing the auction. The initial Public Notice will normally contain information such as the licenses to be auctioned and the time, place and method of competitive bidding to be used, including applicable bid withdrawal procedures and penalties, stopping rules and activity rules.

21. The initial Public Notice will also specify filing windows for short-form applications (no long form applications are to be filed at this stage of the competitive bidding application procedure) and bidder certifications, filing fees, upfront and down payments. Applications filed before or after the dates specified in the Public Notice will not be accepted by the Commission. Applications submitted after the deadline specified will be dismissed with prejudice. An auction information package will be made available to prospective bidders after the release of the initial Public Notice. Slightly different procedures will apply when the rules permit applicants to submit long form applications after the occurrence or nonoccurrence of certain events (*e.g.*, passage of time and failure to serve a particular area).

22. The short-form applications and bidder certifications will normally require applicants to provide the following information: (1) The license(s) for which the applicant wishes to bid, (2) the applicant's name, (3) the identity of the person(s) authorized to bid, (4) certifications that the applicant is legally, technically, financially, and otherwise qualified, and (5) certification that the applicant satisfies any financial qualification requirements for the service in question. Applicants seeking to file as designated entities eligible for bidding preferences must indicate their status in the short-form application and must certify that they are qualified to file as designated entities. Bidders will also be required to identify all parties with whom they have entered into partnerships, joint ventures, consortium, or other arrangements or agreements. Bidders will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements with any parties other than those identified regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

23. After reviewing the short-form applications, the Commission will issue a Public Notice listing all defective applications and notify applicants of the specific defect. If the Commission receives only one application that is acceptable for filing for a particular license, the Commission will issue a Public Notice cancelling the auction for

this license and establishing a date for the filing of a long-form application, the acceptance of which would trigger the relevant procedures permitting petitions to deny. Applicants whose short-form applications are substantially complete but have minor errors or defects will be provided an opportunity to correct their applications prior to the auction. However, applicants will not be permitted to make any major modifications to their applications, including ownership changes or changes in the identification of parties to bidding consortia. Also, applications that are not signed or that fail to make the requisite certifications will be dismissed as unacceptable.

24. After reviewing the corrected applications, the Commission will release another Public Notice announcing the names of all applicants whose applications have been accepted for filing. Applicants identified in the Public Notice will then be required to submit the full amount of their upfront payment to the Commission's lock-box bank by a date to be specified in that Public Notice which generally will be no later than 14 days before the scheduled auction.

25. Once the Commission has received from the lock-box bank the names of all applicants who have submitted timely unfront payments, the Commission will issue a fourth Public Notice announcing the names of all applicants that have been determined to be qualified to bid. Each of these applicants will be provided a bidder identification number and further information and instructions regarding the auction procedures.

Competitive Bidding Payments

26. *Upfront Payments.* In most cases, some form of upfront payment is necessary to deter frivolous or insincere bidding. We have determined that the best approach is to retain flexibility to determine the amount of upfront payment on an auction-by-auction basis. Generally, a bidder must submit an upfront payment equal to $0.02 per pop per MHz for the largest combination of MHz-pops the bidder anticipates bidding on in any single round of bidding. A bidder may file applications for every license being auctioned, but its actual bidding in any round of an auction will be limited by the amount of its upfront payment.

27. Upfront payments will provide the Commission with a source of available funds in the event a penalty must be assessed for bid withdrawal prior to further payments. In future Reports and Orders establishing service-specific auction rules, we may determine that the $0.02 per pop per MHz formula is inappropriate because of product market or license characteristics or auction design choice. In some circumstances, we may decide that it is more appropriate instead to set a fixed upfront payment or eliminate the upfront payment. We therefore reserve the option of revising or waiving the upfront payment. In such cases, we will adopt an alternative upfront payment in service-specific auction rules or in the Public Notice announcing the auction.

28. As a general rule, we will not cap upfront payments because we need to ensure that those bidding on large numbers of licenses have the financial capability to build out those licenses and are bidding in good faith. However, we reserve the right to institute caps in specific services if we are satisfied that an absolute dollar amount will provide sufficient deterrence against frivolous bidding and pernicious strategic bidding. Setting a minimum upfront payment may be appropriate when use of our preferred formula would result in a payment that would be too small. Although a general minimum upfront payment of $2,500 is reasonable, we retain the flexibility to modify this amount.

29. As a general matter, to protect the integrity of the auction process, all applicants should be required to tender their upfront payments to the Commission prior to bidding. However, given the likely magnitude of some upfront payments and the fact that there will be a significant interval between the date that short-form applications are filed and the auction date, we will not require the filing of upfront payments with short-form applications. Upfront payments will be required to be made to the Commission on a date to be announced by Public Notice, generally no later than 14 days before the scheduled auction.

30. *Down Payment.* A 20 percent down payment is appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system and protect against possible default, while at the same time not being so onerous as to hinder growth and diminish access. We therefore will require that winning bidders supplement their upfront payments with a down payment sufficient to being their total deposits up to 20 percent of their winning bid(s). The down payment by cashier's check or wire transfer to our lock-box will generally be required within five business days after the auction is over.

31. *Remainder of License Payment.* The Commission will not permit licensees to satisfy their payment obligations to the Commission through the payment of royalties. With the exception of certain designated entities, we are requiring full payment of the remainder of the winning bid in a lump sum. This will leave financing to the private sector and eliminate the need for the Commission to conduct detailed credit checks.

32. *Default and Disqualification.* It is critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses, or default on a balance due. We will require any auction winner who defaults by failing to remit the required down payment within the prescribed time to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission.

33. A defaulting auction winner will also be assessed a penalty of three percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the three percent penalty will be calculated based on the defaulting bid's amount. This additional penalty will also apply if an auction winner is disqualified or fails to remit the balance of its winning bid after having made the required down payment. We will hold deposits made by defaulting or disqualified auction winners to help ensure that the penalty is paid.

34. If a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission also may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it may deem necessary. Where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation.

35. If the high bidder makes the down payment in a timely manner, a long-form application will be required to be filed by a specified date, generally within ten business days after the close of the auction. The Commission will then review the long-form application to determine if it is acceptable for filing. Upon acceptance for filing, the Commission will release a Pubic Notice announcing acceptance for filing of the long-form application thus triggering the filing window for petitions to deny.

36. The long-form application must include as an exhibit a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement they have entered into relating to the competitive bidding process prior to the close of bidding. All such arrangements must have been entered into prior to the filing of the short-form application. If all petitions to deny are dismissed or denied, the Commission is satisfied that the applicant is qualified, the license(s) will be granted to the auction winner.

37. The Commission need not conduct a hearing before denial if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination. In the event that the Commission identifies substantial and material issues of fact in need of resolution, Sections 309 (j)(5) and (i)(2) of the Communications Act permit in any hearing the submission of all or part of evidence in written form and allows employees other than administrative law judges to preside at the taking of written evidence.

38. As a general rule, when an auction winner defaults on its final payment or is otherwise disqualified after having made the required down payment, the best course of action is to re-auction the license. Nevertheless, if a default occurs within five business days after the end of bidding, the Commission retains the right to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders at their final bid levels. If a new auction becomes necessary because of a disqualification or default more than five business days after the end of bidding, we will afford new parties an opportunity to file applications to assure that serious interested bidders are in the pool of qualified bidders at any re-auction.

39. *Reservation Prices.* We will retain the flexibility to utilize a reservation price below which a license would not be awarded if we decide that it is appropriate in a particular auction. The reservation price could be disclosed, in which case it would effectively constitute a minimum bid, or it could be undisclosed.

Regulatory Safeguards

40. We will impose a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether by a designated entity or not. We will give particular scrutiny to action winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, in order to determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context. The applicant will be required to file, together with its application, the associated contracts for sale, option agreements and all other documents disclosing the total consideration received in return for the transfer of its license

41. We believe that it is unnecessary and undesirable to impose performance requirements on all auctionable services in excess of those set forth in service rules for most existing services. We do not believe that additional, general requirements are needed to address concerns over "warehousing" of spectrum. With respect to those services where no performance requirements currently exist, however, we will prescribe such performance rules as are necessary at the same time we promulgate competitive bidding rules for each of those services.

Designated Entities

42. *Definitions.* We are adopting a menu of preferences from which we will choose in service-specific auction rules. These preferences are designed to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively "designated entities") are given the opportunity to participate in both the competitive bidding process and in the provision of spectrum-based services. To qualify as a "small business" for the purposes of competitive bidding, an entity must be an independently-owned business with a net worth not exceeding $6 million dollars and an average net income after Federal income taxes for two preceding years not in excess of $2 million. In order to be eligible for preferences, businesses owned by women or minorities will be required to have at least 50.1 percent equity ownership and a 50.1 percent controlling interest owned by women or minorities. Rural telephone companies will be eligible for preferences if they are independently owned, have 50,000 access lines or fewer and serve communities with no more than 10,000 inhabitants.

43. *Installment payments.* We may allow small businesses (including rural telephone companies and businesses owned by women and minorities and rural telephone companies) that are winning bidders for certain blocks of spectrum to pay in installments over the term of their licenses. As a general matter, we will only allow installment payments for licenses in those smaller spectrum blocks that are most likely to match the business objectives of *bona fide* small businesses. The down payment for such designated entities will be 10 percent of the winning bid instead of 20 percent. Once the license is granted we will require that the remaining 10 percent of the down payment be made within five business days of grant, thereby commencing the eligible entity's installment payment plan, which will extend over the period of the license.

44. We will impose interest of installment payments equal to the rate for U.S. Treasury obligations of maturity equal to the license term. The schedule of installment payments will begin with interest-only payments for the first two years. After that, principal and interest will be amortized over the remaining term of the license. An eligible designated entity that elects installment payments will have its license conditioned upon the full and timely performance of its payment obligations under the installment plan. However, we will consider (on a case-by-case basis) a grace period before a delinquent payor's license cancels.

45. *Bidding credits.* Bidding credits (payment discounts) may be available to designated entities on certain frequency blocks. Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures. We reserve the option to determine, on a service-specific basis, whether certain auctionable services should allow other bidding credits to a consortium of companies organized to bid for auctionable services.

46. To further promote the investment and rapid deployment of new technologies and services in rural areas, we will also institute a system of bidding credits for rural telephone companies for licenses in their rural service areas. The amount of the bidding credit for rural telephone companies will be tied to their commitments to achieve certain telecommunications infrastructure build-out milestones in their rural service areas. The amount of the bidding credit will be proportionately linked to the amount by which the rural telephone company agrees to expand its built-out commitment. Failure to meet a build-out commitment will result in liability for a penalty in the amount of the bidding credit, plus interest. Grant of licenses to rural telephone companies utilizing bidding credits will be conditioned upon payment of this penalty, if and when it becomes applicable.

47. *Set-aside spectrum.* We may establish set-aside spectrum in certain services in which eligibility to bid may be limited to some or all designated entities. For any auctions of set-aside spectrum, we anticipate that we will establish lower upfront payments. This lower payment would serve to encourage participation by all eligible designated entities in the auction.

48. *Tax certificates, distress sales and royalties.* We will not at this time adopt a general tax certificate program for services subject to competitive bidding because other available measures will generally provide sufficient incentive to attract investors in designated entity enterprises. We will examine the feasibility of utilizing tax certificates in subsequent competitive bidding rules for particular services, especially where the record demonstrates a need to further stimulate designated entity participation in spectrum auctions and in the after-market for auctioned services. Before we determine whether distress sales to designated entities should be authorized, we will evaluate the success of our other measures. We do not adopt royalties as an alternative payment method for designated entities. Such a procedure would prove extremely intrusive and difficult to implement.

49. *Preventing unjust enrichment.* If we employ set-asides to benefit some or all of the designated entities, we will impose a recapture provision, applicable in the event of a sale to a non-designated entity, that would be designed to recoup for the government a portion of the value of the benefit received by the designated entity in the bidding. Such a recapture provision would require that licensees seeking to transfer their licenses for profit must within a specified time remit to the government a penalty equal to a portion of the total value of the benefit conferred by the government. We will generally reduce the penalty as time passes or construction benchmarks are met.

50. Any specific recapture provisions will be set forth in competitive bidding rules applicable to any services in which we decide to set aside licenses. In no event will recapture provisions apply to the transfer or assignment of a license that has been held for more than five years. If the transfer is made to another eligible designated entity, there would be no penalty.

51. If a small business making installment payments sells its license to an entity that does not qualify under the standards we have set for small businesses, we will require payment of the full amount of the remaining principal balance as a condition of the license transfer. Also, where bidding credits are used, transfer of a license to a non-designated entity or any action relating to ownership or control that will result in loss of status as an eligible designated entity, will require the designated entity to reimburse the government for the amount of the bidding credit, plus interest.

Final Regulatory Flexibility Analysis

Need for and purpose of this action:

52. This rulemaking proceeding was initiated to implement Section 309(j) of the Communications Act, as amended. The rules adopted herein will carry out Congress's intent to establish a system of competitive bidding for choosing from among mutually exclusive applications for initial licenses to use the electromagnetic spectrum principally for the transmission or reception of communications signals to or from subscribers for compensation. The rules adopted herein also will carry out Congress's intent to ensure that small businesses, rural telephone companies, and businesses owned by women and minorities are afforded an opportunity to participate in the provision of spectrum-based services.

Issues raised in response to the Initial Regulatory Flexibility Analysis:

53. The IRFA noted that the proposals under consideration in the NPRM included the possibility of new reporting and recordkeeping requirements for a number of small business entities. No commenters responded specifically to the issues raised to the IFRA. We have made some modifications to the proposed requirements as appropriate.

Significant alternatives considered and rejected:

54. All significant alternatives have been addressed in the Second Report and Order.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Reporting and recordkeeping requirements, Telecommunications.

Amendatory Text

47 CFR part 1 is amended as follows:

PART 1—[AMENDED]

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. A new subpart (Q), consisting of §§ 1.2101–1.2111, is added to read as follows:

Subpart Q—Competitive Bidding Proceedings

General Procedures

Sec.

1.2101 Purpose.
1.2102 Eligibility of applications for competitive bidding.
1.2103 Competitive bidding design options.
1.2104 Competitive bidding mechanisms.
1.2105 Bidding application and certification procedures; prohibition of collusion.
1.2106 Submission of upfront payments.
1.2107 Submission of down payment and filing of long-form applications.
1.2108 Procedures for filing petitions to deny against long-form applications.
1.2109 License grant, denial, default, and disqualification.
1.2110 Designated entities.
1.2111 Assignment or transfer of control: Unjust enrichment.

Subpart Q—Competitive Bidding Proceedings

General Procedures

§ 1.2101 Purpose.

The provisions of this subpart implement section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), authorizing the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for certain initial licenses.

§ 1.2102 Eligibility of applications for competitive bidding.

(a) Mutually exclusive initial applications in the following services or classes of services are subject to competitive bidding:

(1) Interactive Video Data Service (see 47 CFR part 95, subpart F);

(2) Marine Public Coast Stations (see 47 CFR part 80, subpart J);

(3) Multipoint Distribution Service and Multichannel Multipoint Distribution Service (see 47 CFR part 21, subpart K). This subsection does not apply to applications in these services that were filed prior to July 26, 1993;

(4) Exclusive Private Carrier Paging above 900 MHz (see 47 CFR part 90, subpart P and the Private Carrier Paging Exclusivity Report and Order, 8 FCC Rcd 8318 (1993));

(5) Public Mobile Services (see 47 CFR part 22), except in the 800 MHz Air-Ground Radiotelephone Service, and in the Rural Radio Service. Paragraph (a)(g) of this section does not apply to certain applications in the cellular radio service that were filed prior to July 26, 1993;

(6) Specialized Mobile Radio Service (SMR) (see 47 CFR part 90, subpart S)

including finder's preference requests for frequencies allocated to the SMR service (see 47 CFR 90.173); and

(7) Personal Communications Services (PCS) (see 47 CFR part 24).

Note: To determine the rules that apply to competitive bidding in the foregoing services, specific service rules should also be consulted.

(b) The following types of license applications are not subject to competitive bidding procedures:

(1) Applications for renewal of licenses;

(2) Applications for modification of license; provided, however, that the Commission may determine in particular instances that applications for modification that are mutually exclusive with other applications should be subject to competitive bidding;

(3) Applications for subsidiary communications services. A "subsidiary communications service" is a class of service where the signal for that service is indivisible from that of the main channel signal and that main channel signal is exempt from competitive bidding under other provisions of these rules. See, *e.g.*, § 1.2102(c) (exempting broadcast services). Examples of such subsidiary communications services are those transmitted on subcarriers within the FM baseband signal (see 47 CFR 73.295), and signals transmitted within the Vertical Blanking Interval of a broadcast television signal; and

(4) Applications for frequencies used as an intermediate link or links in the provision of a continuous, end-to-end service were no service is provided directly to subscribers over the frequencies. Examples of such intermediate links are

(i) Point-to-point microwave facilities used to connect a cellular radio telephone base station with a cellular radio telephone mobile telephone switching office; and

(ii) Point-to-point microwave facilities used as part of the service offering in the provision of telephone exchange or interexchange service.

(c) Applications in the following services or classes of services are not subject to competitive bidding:

(1) Alaska-Private Fixed Stations (see 47 CFR part 80, subpart O);

(2) Broadcast radio (AM and FM) and broadcast television (VHF, UHF, LPTV) under 47 CFR part 73;

(3) Broadcast Auxiliary and Cable Television Relay Services (see 47 CFR part 74, subparts D, E, F, G, H and L and part 78, subpart B);

(4) Instructional Television Fixed Service (see 47 CFR part 74, subpart I);

(5) Maritime Support Stations (see 47 CFR part 80, subpart N);

(6) Marine Operational Fixed Stations (see 47 CFR part 80, subpart L);

(7) Marine Radiodetermination Stations (see 47 CFR part 80, Subpart M);

(8) Personal Radio Services (see 47 CFR part 95), except applications filed after July 26, 1993, in the Interactive Video Data Service (see 47 CFR part 95, subpart F);

(9) Public Safety, Industrial/Land Transportation, General and Business Radio categories above 800 MHz, including finder's preference requests for frequencies not allocated to the SMR service (see 47 CFR 90.173), and including, until further notice of the Commission, the Automated Vehicle Monitoring Service (see 47 CFR 90.239);

(10) Private Land Mobile Radio Services between 470–512 MHz (see 47 CFR part 90, subparts B through F) including finder's preference requests, see 47 CFR 90.173;

(11) Private Land Mobile Radio Services below 470 MHz (see 47 CFR part 90, subparts B through F) except in the 220 MHz band (see 47 CFR part 90, subpart T), including finder's preference requests (see 47 CFR 90.173); and

(12) Private Operational Fixed Services (see 47 CFR part 94).

§ 1.2103 Competitive bidding design options.

(a) The Commission will select the competitive bidding design(s) to be used in auctioning particular licenses or classes of licenses on a service-specific basis. The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

(1) Single round sealed bid auctions (either sequential or simultaneous);

(2) Sequential oral auctions; or

(3) Simultaneous multiple round auctions.

(b) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 1.2104 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish the sequence in which multiple licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum bid increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(e) *Stopping rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate the auctions within a reasonable time.

(f) *Activities rules.* The Commission may establish activity rules which require a minimum amount of bidding activity.

(g) *Withdrawal, default and disqualification penalties.* As specified below, when the Commission conducts a simultaneous multiple round auction pursuant to § 1.2103, the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (g)(1) of this section plus an additional penalty equal to three (3) percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or

disqualified bidder has deposited with the Commission.

When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(h) *Bidder identification during auctions.* During any auction, the Commission may identify bidders and the bids only by bid numbers.

(i) The Commission may delay, suspend, or cancel an auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

(a) *Submission of Short Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate filing fee set forth in public notice. Unless otherwise provided by Public Notice, the Form 175 need not be accompanied by an upfront payment (see § 1.2106).

(1) All Form 175s will be due:

(i) On the date(s) specified by public notice; or

(ii) In the case of application filing dates which occur automatically by operation of law (see *e.g.*, 47 CFR 22.902), on a date specified by public notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principles or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) If the applicant applies as a designated entity pursuant to § 1.2110, a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 1.2110;

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to section 308(b) of the Communications Act of 1934, as amended;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of section 310 of the Communications Act of 1934; as amended;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure. All such arrangements must have been entered into prior to the filing of Form 175 and no such arrangements may be entered into after the filing of Form 175 until after the winning bidder has made the required down payment;

(ix) Certification under penalty of perjury that is has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to paragraph (a)(2)(viii) of this section regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid;

Note: The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and Dismissal of Form 175.* (1) Any Form 175 that is not signed or otherwise does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. The application will be dismissed with prejudice and the upfront payment, if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. Form 175 may be amended or modified to make minor changes or correct minor errors in the application (such as typographical errors). The Commission will classify all amendments as major or minor, pursuant to rules applicable to specific services. An application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicant who fail to correct defects in their applications in a timely manner as specified by public notice will have their applications dismissed with no opportunity for resubmission.

(c) *Prohibition of Collusion.* After the filing of short-form applications, all bidders are prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders until after the high bidder makes the required down payment, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application.

§ 1.2106 Submission of upfront payments.

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. No interest will be paid on upfront payments. In auctions for licenses set aside pursuant to § 1.2110(c), the Commission may establish lower upfront payments for eligible designated entities.

(b) Upfront payments must be made either by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(c) If an upfront payment is not in compliance with the Commission's Rules, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder.

(e) Notwithstanding the provisions of paragraph (d) of this section, in the event a penalty is assessed pursuant to § 1.2104 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default penalty before being applied toward any additional payment obligations that the high bidder may have.

§ 1.2107 Submission of Down Payment and Filing of Long-Form Applications

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

(b) Within five (5) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy penalties) up to twenty (20) percent of its high bid(s). (In single round sealed bid auctions conducted under § 1.2103, however, bidders may be required to submit their down payments with their bids.) This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Winning bidders who are qualified designated entities eligible for installment payments under § 1.2110(d) are only required to bring their total deposits up to ten (10) percent of their winning bid(s). Such designated entities must pay the remainder of the twenty (20) percent down payment within five (5) business days of grant of their application. See § 1.2110(e) (1) and (2). Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable penalties. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder (unless it has already submitted such an application, as contemplated by § 1.2105(a)(1)(b). For example, if the applicant is a high bidder for a license in the Interactive Video Data Service (see 47 CFR part 95, subpart F), the long form application will be submitted on FCC Form 574 in accordance with Section 95.815 of the Rules. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, 1919 M Street NW., room 222, Washington, DC 20554, Attention: Auction Application Processing Section.

An applicant that fails to submit the required long-form application as required under this subsection, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the penalties set forth in § 1.2104.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 1.2105.

§ 1.2108 Procedures for filing petitions to deny against long-form applications.

(a) Where petitions to deny are otherwise provided for under the Act or the Commission's Rules, and unless other service-specific procedures for the filing of such petitions are provided for elsewhere in the Commission's Rules, the procedures in this section shall apply to the filing of petitions to deny the long-form applications of winning bidders.

(b) Within thirty (30) days after the Commission gives public notice that a long-form application has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such opposition and replies will be those provided in § 1.45.

(d) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold an evidentiary hearing and will deny the application.

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

§ 1.2109 License grant, denial, default, and disqualification.

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within five (5) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default penalty specified in § 1.2104(g)(2). In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment

obligations set forth in § 1.2107(b) will apply.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the penalty set forth in § 1.2104(g)(2). In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

§ 1.2110 Designated entities.

(a) Designated entities are small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

(b) Definitions.

(1) Small businesses. Unless otherwise provided in rules governing specific services, a small business is an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.

(2) Businesses owned by members of minority groups and/or women. A business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens have at least 50.1 percent equity ownership and 50.1 percent controlling interest in the applicant. For applicants that are limited partnerships, the general partner either must be a minority and/or woman (or minorities and/or women) who is a U.S. citizen and owns at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlling principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(3) Rural telephone companies. A rural telephone company is an independently owned and operated local exchange carrier with 50,000 access lines or fewer, and serving communities with 10,000 or fewer inhabitants.

(c) The Commission may set aside specific licenses for which only eligible designated entities, as specified by the Commission, may bid.

(d) The Commission may permit small businesses, including small businesses owned by women and minorities and rural telephone companies that qualify as small businesses, that are high bidders for licenses specified by the Commission, to pay the full amount of their high bids in installments over the term of their licenses pursuant to the following:

(1) Unless otherwise specified, each eligible applicant paying for its license(s) on an installment basis must deposit by wire transfer or cashier's check in the manner specified in § 1.2107(b) sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within five (5) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(2) Within five (5) business days of the grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(3) Upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment payment plan. Such plans will:

(i) Impose interest based on the rate of U.S. Treasury obligations (with maturities closest to the duration of the license term) at the time of licensing;

(ii) Allow installment payments for the full license term;

(iii) Begin with interest-only payments for the first two years; and

(iv) Amortize principal and interest over the remaining term of the license.

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.

(ii) Upon default or in anticipation of default of one or more installment payments, a licensee may request that the Commission permit a three to six month grace period, during which no installment payments need be made. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining term of the license.

(iii) Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the license will automatically cancel and the Commission will initiate debt collection procedures pursuant to subpart O of this part.

(e) The Commission may award bidding credits (*i.e.*, payment discounts) to eligible designated entities.

(1) Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures.

(2) Any bidding credit for rural telephone companies will be available only for licenses in rural telephone company service areas and only if eligible rural telephone companies make an infrastructure build-out commitment beyond any standard performance requirement. The amount of the bidding credit for rural telephone companies will be based on the amount by which eligible applicants agree to expand or accelerate the build-out commitment. If a rural telephone company fails to meet an accelerated or expanded build-out

commitment, it must make payment to the Commission within ninety (90) days of a penalty equal to the amount of the bidding credit. Grant of the license will be conditioned upon payment of this penalty if and when it becomes applicable.

(f) The Commission may offer designated entities a combination of the available preferences or additional preferences.

§ 1.2111 Assignment or transfer of control: Unjust enrichment.

(a) *Reporting requirement.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase; below market financing).

(b) *Unjust enrichment payment: set-asides.* As specified in this paragraph (b), an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor pursuant to a set-aside for eligible designated entities under § 1.2110(c), or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of a comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No Payment will be required if:

(1) The license is transferred or assigned more than five years after its initial issuance; or

(2) The proposed transferee or assignee is an eligible designated entity under § 1.2110(c), and so certifies.

(c) *Unjust enrichment payment: installment financing.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing installment financing available to designated entities under § 1.2110(d) will be required to pay the full amount of the remaining principal balance as a condition of the license transfer. No payment will be required if the proposed transferee or assignee assumes the installment payment obligations of the transferor or assignor, and if the proposed transferee or assignee is itself qualified to obtain installment financing under § 1.2110(d), and so certifies.

(d) *Unjust enrichment payment: bidding credits.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing bidding credits available to eligible designated entities under § 1.2110(e), or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and will be required to make an unjust enrichment payment (Payment) to the Government by wire transfer or cashier's check before consent will be granted. The Payment will be the sum of the amount of the bidding credit plus interest at the rate applicable for installment financing in effect at the time the license was awarded. See § 1.2110(e). No payment will be required if:

(1) The proposed transferee or assignee is an eligible designated entity under § 1.2110(e), and so certifies; or

(2) The proposed transferor or assignor is a rural telephone company as defined in § 1.2110(b)(3), and the proposed transferee or assignee is also a rural telephone company and agrees to meet the same construction requirements as the transferor or assignor.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Editorial Note: This appendix will not appear in the Code of Federal Regulations.

BILLING CODE 6712-01-M

Appendix—FCC Form 175

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

APPROVED BY OMB
3060-XXXX
EXPIRES XX/XX/XX
Est. Avg. Burden Hrs.
Per Response: 30 minutes

APPLICATION TO ENTER AN FCC AUCTION

Notice: The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of this application is in the public interest. In researching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to the Commission rules. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 30 minutes per response including the time for reviewing instruction, searching existing data needed, and completing and reviewing the collection. Send comments regarding this burden, to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20554.

The Notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. 552a(e)(3) and the Paperwork Reduction Act of 1980, P.L. 96-511, December 11, 1980.

FCC 175

Federal Communications Commission
Washington, DC 20554

Approved by OMB
3060-XXXX
Expires XX/XX/XX
Est. Avg. Burden Hrs.
Per Response: 30 min.

FOR FCC USE ONLY	

Application to Participate in an FCC Auction

(Read Instructions on Back Before Completing)

1. Applicant	8. Applicant Classification: ☐ Individual ☐ Partnership ☐ Trust ☐ Corporation ☐ Other _____
2. Mailing Address	9. Applicant Type: ☐ Rural telephone company ☐ Minority owned business ☐ Woman owned business ☐ Small business ☐ None of the above
3. City / 4. State / 5. Zip Code	
6. Auction No. / 7. Identification No.	10. Preference Claimed: ☐ Yes ☐ No

11. **Markets and Frequency Block for which you want to bid.** If more than 5 markets, use supplemental form (FCC-175S).

	Market No.	Frequency Block No. 1	2	3	4	5	6	7	8	9	10	11
(a)												
(b)												
(c)												
(d)												
(e)												

☐ Check here if supplemental forms are attached. Indicate number of supplemental forms attached:_____

12. Person(s) authorized to make or withdraw a bid (Typed/Printed Name)

(a)	(b)	(c)

Certification: I certify the following:

(1) that the applicant is and will be legally, technically, financially and otherwise qualified pursuant to Section 308(b) of the Communications Act and the Commission's Rules and is in compliance with the foreign ownership provisions contained in Section 310 of the Communications Act.
(2) that the applicant is the real party in interest in this application and that there are no agreements or understandings of any kind other than those specified in this application (see instructions for certification), which provide that someone other than the applicant shall have an interest in the license.
(3) that the applicant is aware that, if upon Commission inspection, this application is shown to be defective, the application will be dismissed without further consideration, and certain fees forfeited. Other penalties may also apply.
(4) that the applicant has not entered into and will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in this application regarding the amount to be bid, bidding strategies or the particular licenses on which the applicant or other parties will or will not bid.
(5) that the applicant, or any party to this application, is not subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
(6) that, if a preference(s) is claimed in block 10, the applicant is eligible to receive a preference(s) under the Commission's Rules.

I declare under penalties of perjury, that I am an authorized representative of the above-named applicant for the license(s) specified above, that I have read the instructions and the foregoing certification and all matters and things stated in this application and attachments, including exhibits, are true and correct.

Typed/Printed Name of Person Certifying	Title of Person Certifying	Date
Signature of Person Certifying	**Contact Person**	**Telephone Number**

Willful false statements made on this form are punishable by fine and imprisonment (U.S. Code, Title 18, Section 1001) and/or revocation of any station license or construction permit (U.S. Code, Title 47, Section 312(a)(1), and/or forfeiture (U.S. Code, Title 47, Section 503).

INSTRUCTIONS

Item 1-Applicant Name Enter the legal name of the person or entity applying to participate in an auction. If other than an individual, insert the exact name of the entity as it appears on the legal document(s) establishing the entity such as the Articles of Incorporation.

[Note: Applicants who have entered into an arrangement(s) of any kind relating to the license(s) specified in this application must provide additional information. See certification instructions.]

Item 2-Applicant Mailing Address Enter the street address to which the entity wants future correspondence relating to this application to be mailed. Indicate street numbers or rural route numbers whenever appropriate.

Item 3-City Enter the city name for the applicant mailing address.

Item 4-State Enter the two-letter state abbreviation for the applicant mailing address.

Item 5-ZIP Code Enter the Zip Code for the applicant mailing address.

Item 6-Auction Number Enter the appropriate auction number. This number will have been supplied by the Commission in the Public Notice announcing the auction.

Item 7-Identification No. Enter your personal identification number. This number must consist of ten digits. You have two options to create this Identification Number. Option 1 - you may use your taxpayer identification number (TIN) with a prefix of "0" i.e., 0123456789. Option 2 - You may use your ten-digit telephone number (i.e., 5551234567). You should use this same number when submitting additional information/material regarding this application, including fees (i.e., FCC Account No.), to the Commission.

Item 8-Applicant Classification Place an [X] in the appropriate box following the type of entity to indicate the type of legal entity applying. If an [X] is placed in the "Other" box indicate the type of entity applying in the space provided (e.g., governmental entity, association, etc.). Limited liability companies should check the "Partnership" box.

Item 9-Applicant Type Place an [X] in the appropriate box or boxes following the appropriate applicant type. This information will be used for purposes of determining the applicant's eligibility for any preferences available for designated entities. See Part 1 of the Commission's Rules for definitions of the different types of designated entities.

Item 10-Preference Claimed Place an [X] in the "Yes" box if you are claiming a preference(s) available to designated entities. If you are not claiming a preference(s) available to eligible designated entities, place an [X] in the "No" box. In order to claim a preference(s) you must have checked one or more of the boxes in item 9 other than the "None of the above" box, be eligible to receive a preference(s), and a preference(s) must be available for the license(s) for which you are applying.

Item 11-Markets/Frequency Blocks Enter the code for the market(s) which you want to bid on in the column under Market No. The codes will be provided by the Commission in a Public Notice. Use a separate line (a-e) for each different market. If you plan to bid on more than five markets place an [X] in the box below the table to indicate there are supplementary forms attached and list the number of supplementary forms attached in the space provided. You must use Supplementary Form 175-S. After each market list the code for the frequency block(s) or channel(s) for which you want to bid. These codes will be provided by the Commission in a Public Notice. For example, if you only wanted to bid on two frequency blocks in market (a) and one block in market (b) you would enter the codes for those two blocks in columns 1 and 2 on line (a) and leave the remaining columns on that line blank. On line (b) you would enter the code for the block you wanted in market (b) and leave the remaining columns on the line blank.

Item 12-Authorized Representatives Type or print the name(s) of the person(s) you which to designate as an authorized representative(s). Only authorized representatives will be allowed to make or withdraw bids at an auction. You may list a maximum of 3 authorized representatives.

Certification Read the certification. Enter the typed/printed name of the individual authorized to sign the application, his/her title, date signed, authorized individual's signature, the name of a person familiar with the application (contact person) and the phone number (including area code) of the contact person. See Part 1, Subpart Q of the Commission's Rules. All applications must bear an original signature of a person authorized to sign on behalf of the applicant.

List in the space provided below or in an exhibit 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 and address of a principal or other responsible person. See Part 1, Subpart Q of the Commission's Rules.

Also list in the space provided below or in an exhibit all parties with whom the applicant has entered into an agreement(s), of any kind, relating to the licenses being auctioned including such agreement(s) relating to the post auction market structure. See Part 1, Subpart Q of the Commission's Rules.

NOTE: The Commission's Public Notice announcing the auction for the licenses for which you are interested in bidding on has information essential to completing this form correctly. Forms which are completed incorrectly may be dismissed without opportunity for resubmission.

Use this space for listing additional information required by the Certification. [If additional space is needed attach a separate sheet(s) as an exhibit.]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Approved by OMB
3060-XXXX
Expires XX/XX/XX
Est. Avg. Burden Hrs.
Per Response: 15 minutes

APPLICATION TO PARTICIPATE IN AN FCC AUCTION
SUPPLEMENTAL FORM

(This form is to be used in conjunction with FCC Form 175)

APPLICANT	Payor's ID No.	AUCTION NO.	PAGE ___ OF ___
STREET ADDRESS/CITY		STATE	ZIP CODE

Frequency Block

	Market No.	1	2	3	4	5	6	7	8	9	10	11
f												
g												
h												
i												
j												
k												
l												
m												
n												
o												
p												
q												
r												
s												
t												
u												
v												
w												
x												
y												
z												

FCC 175-S

BILLING CODE 6712-01-C

Notice: The solicitation of personal information requested in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine whether grant of this application is in the public interest. In researching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. In addition, all information provided in this form will be available for public inspection. If information requested on the form is not provided, processing of the application may be delayed or the application may be returned without action pursuant to the Commission rules. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 15 minutes per response including the time for reviewing instruction, searching existing data needed, and completing and reviewing the collection. Send comments regarding this burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20554.

The Notice is required by the Privacy Act of 1974, Public Law 93–579, December 31, 1974, 5 U.S.C. 552a(e)(3) and the Paperwork Reduction Act of 1980, Public Law 96–511, December 11, 1980.

[FR Doc. 94–10638 Filed 4–29–94; 4:43 pm]
BILLING CODE 6712–01–M

47 CFR Part 73

[ET Docket No. 92–298, FCC 94–88]

Broadcast Services; AM Radio Stereophonic Transmitting Equipment Standard

AGENCY: Federal Communications Commission.

ACTION: Final rule; supplemental order.

SUMMARY: By this Supplemental Order, the Commission affirms its decision to adopt the Motorola C-Quam system as the standard for the stereophonic AM broadcast radio service. On November 23, 1993, the Commission released a Report and Order implementing the C-Quam AM stereo standard. Subsequent to the release on the Report and Order, it has come to the attention of the Commission that a number of comments had been inadvertently overlooked. After review of these additional comments, the Commission finds no new evidence or information that warrants a change in its decision in this matter.

EFFECTIVE DATE: March 20, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Means, Office of Engineering and Technology, Authorization and Evaluation Division, (301) 725–1585, extension 206.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 94–88, adopted April 12, 1994, and released April 28, 1994. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. Copies may also be purchased from the Commission's duplicating contractor, International Transcription Services, at (202) 857–3800 or 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of the Order

1. In response to the Telecommunications Authorization Act of 1992 (Authorization Act), the Commission adopted a Report and Order in this proceeding, 58 FR 66300, December 20, 1993, selecting the C-Quam system as the single AM stereo transmission standard.[1] Subsequent to the release of the Report and Order, it was found that twenty comments had inadvertently not been considered. Most of these comments were improperly or untimely filed. Nevertheless, because other late and improperly filed comments were considered in the Report and Order, we have elected to consider all of these comments at this time.

2. All of the previously unconsidered comments oppose the Commission's proposed selection of C-Quam as the AM stereo standard. Most parties generally allege some form of technical superiority of the Kahn system, or conversely, some technical inferiority of the C-Quam system. Specifically, these parties claim the C-Quam system exhibits technical flaws, including "platform motion," loss of coverage, and increased adjacent channel interference.[2] In addition, some commenting parties recommend that additional testing or evaluation be undertaken. Other parties question the compatibility of C-Quan with future AM band digital audio transmission systems, argue that adopting a system other than Kahn's as the standard will force them to re-engineer antenna array, or contend that Motorola unfairly manipulated the marketplace to create its competitive lead.

Discussion

3. The relative technical performance of the Kahn and C-Quam systems was addressed in the Report and Order, including specifically the issues of platform motion, coverage area and adjacent channel performance. With regard to platform motion, we concluded that recent improvements in receiver design mitigate such effects. Modern C-Quam receivers compensate for platform motion by gradually reducing stereo channel separation as signal-to-noise ratios deteriorate, creating a smooth transition to monaural operation when signals are weak. Further, as previously noted, such weak signal effects as platform motion generally occur beyond a station's protected coverage area. Claims of loss of coverage area and increased adjacent channel interference with C-Quam appear to be based on allegations that the C-Quam signal must be modulated at lower levels to avoid excessive bandwidth. As stated in the Report and Order, we find no evidence that currently authorized C-Quam equipment violates the Commission's bandwidth requirements when operated properly. The additional commenting parties present no new analysis or measurements to support their claims. We further note that the record contains no complaints of lost coverage from the hundreds of broadcasters currently using the C-Quam system.

4. With regard to suggestions that further testing and evaluation should be performed, in the Report and Order we noted that the Motorola and Kahn systems have been tested and comparatively evaluated over the years, and both systems were found to have technical advantages. As stated, we have no reason to expect that further testing would reveal any new information. Moreover, any further testing would lead to additional delays and would be inconsistent with the statutory time restrictions on this proceeding.

5. The issue of compatibility with future AM band digital audio broadcast systems was also discussed in the Report and Order. We noted that there is no reason to believe that either the C-Quam system or the Kahn system would have any advantage in compatibility with future digital systems. We further

[1] See Telecommunications Act of 1992, Public Law No. 102–538. See also Report and Order, FCC 93–485 (released November 23, 1993).

[2] See, for example, comments of Hughes H. Brewer, Broadcast Devices, Inc. (BDI), E. P. De La Hunt, Joseph A. Dentici, David Smith Forsman, Interstate Broadcasting Company (Interstate), Richard W. Jolls, Robert M. Kanner, Patrick M. O'Gara, and Ridgefield Broadcasting Corporation (Ridgefield).