requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of San Joaquin Valley's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. This program for delegations applies to both existing and future standards but is limited to sources covered by the part 70 program.

III. Administrative Requirements

A. Docket

Copies of the District's submittal and other information relied upon for the final interim approval, including all comments received on the proposal and EPA's responses to those comments, are contained in docket number CA–SJV–95–001 maintained at the EPA Regional Office. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's action under section 502 of the Act does not create any new requirements but simply addresses the operating permits program developed and submitted by the San Joaquin Valley District to meet the requirements of 40 CFR part 70. EPA evaluated the impact on small businesses of the title V operating permit program as part of its promulgation of part 70 and determined that operating permit programs required by part 70 would not have a significant economic impact on a substantial number of small business and no Regulatory Flexibility Act analysis was necessary.

D. Unfunded Mandates Act

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

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector and therefore, no budgetary impact statement is necessary.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: April 10, 1996.

Felicia Marcus,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding paragraph (y) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * * * *

(y) *San Joaquin Valley Unified APCD* (complete submittal received on July 5 and August 18, 1995); interim approval effective on May 24, 1996; interim approval expires May 25, 1998.

* * * * *

[FR Doc. 96–10094 Filed 4–23–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 261

[SW–FRL–5461–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a petition submitted by Bethlehem Steel Corporation (''BSC''), Lackawanna, New York, to exclude (or ''delist''), on a one-time basis, certain solid wastes contained in a landfill from being listed hazardous wastes. This action responds to BSC's petition to delist these wastes on a ''generator-specific'' basis from the hazardous waste lists. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency has concluded that BSC's petitioned waste will not adversely affect human health and the environment. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

EFFECTIVE DATE: April 24, 1996.

ADDRESSES: The RCRA regulatory docket for this final rule is located at Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (703) 603–9230 for appointments. The reference number for this docket is F–96–B5EF–FFFFF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Chichang Chen, Waste Identification Branch, Office of Solid Waste (Mail Code 5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow the Agency to determine that the waste to be excluded does not meet any of the

criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Bethlehem Steel Corporation (BSC), Lackawanna, New York, petitioned the Agency to exclude from hazardous waste control its ammonia still lime sludge presently listed as EPA Hazardous Waste No. K060. After evaluating the petition, EPA proposed, on December 7, 1995, to exclude BSC's waste from the lists of hazardous waste under § 261.31 and § 261.32 (see 60 FR 62794). This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant BSC's petition.

II. Disposition of Delisting Petition

Bethlehem Steel Corporation, Lackawanna, New York

A. Proposed Exclusion

Bethlehem Steel Corporation (BSC), located in Lackawanna, New York, was engaged in primary metal-making and coke-making operations prior to 1983. BSC petitioned the Agency to exclude, on a one-time basis, the waste contained in an on-site landfill, presently listed as EPA Hazardous Waste No. K060—''Ammonia still lime sludge from coking operations''. The listed constituents of concern for EPA Hazardous Waste No. K060 are cyanide, naphthalene, phenolic compounds, and arsenic. BSC refers to this landfill as Hazardous Waste Management Unit No. 2 (HWM–2). Although only a portion of the waste in the landfill is the ammonia still lime sludge, the entire volume of waste is considered to be a listed waste in accordance with § 261.3(a)(2)(iv) (*i.e.*, the mixture rule). The mixture of listed ammonia still lime sludge and solid waste contained in HWM–2 is the subject of this petition.

BSC petitioned the Agency to exclude its waste because it does not believe that the waste meets the criteria of the listing. BSC claims that the mixture of ammonia still lime sludge and solid waste is not hazardous because the constituents of concern, although present in the waste, are present in either insignificant concentrations or, if present at significant levels, are essentially in immobile forms. BSC also believes that this waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

On July 18, 1984, BSC petitioned the Agency to exclude the waste contained in its on-site landfill identified as HWM–2, and subsequently provided additional information. After evaluating the petition, the Agency proposed to deny BSC's petition to exclude the waste contained in HWM–2 on April 7, 1989 (see 54 FR 14101). The Agency's evaluation of the petition, which used the ''VHS'' fate and transport model and the analytical data provided by BSC, indicated that the petitioned waste exhibited significant concentrations of leachable lead and benzo(a)pyrene. Furthermore, the Agency considered the sampling and analysis program conducted in support of the petition to be incomplete. Moreover, groundwater monitoring data collected from wells monitoring this on-site landfill indicated that the landfill might have been adversely impacting groundwater quality at the site. On August 26, 1991, the Agency published a final denial, including responses to public comments, in the Federal Register (see 56 FR 41944). On October 30, 1991, BSC petitioned the U.S. Court of Appeals for the District of Columbia Circuit to overturn EPA's denial decision. Subsequently, BSC agreed to stay this litigation for a re-evaluation by EPA using a new fate and transport model (EPA's Composite Model for Landfills (''EPACML'')) and updated health-based levels, and on November 17, 1992 submitted extensive supplemental waste characterization and groundwater monitoring data. After reviewing the new data in conjunction with the existing petition information, the Agency proposed on December 7, 1995 to withdraw its August 26, 1991 final denial decision and to grant BSC's petition (see 60 FR 62794 for details).

In support of its petition, BSC submitted: (1) Detailed descriptions and schematics of its manufacturing process; (2) a list of all raw materials and Material Safety Data Sheets (MSDS) for all trade name materials that might be expected to have contributed to the waste; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24, antimony, nickel, thallium, and cyanide; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP; SW–846, Method 1311) for the eight TC metals, antimony, nickel, and thallium; (5) results from the EP leachate procedure for the eight TC metals, nickel, and cyanide; (6) results from total constituent analyses for sulfide and reactive sulfide; (7) results from total oil and grease analyses; (8) results from characteristics testing for ignitability, corrosivity, and reactivity; (9) results from total constituent analyses for 70 volatile organic and semivolatile organic constituents, including the TC organic constituents (excluding pesticides and herbicides); (10) results from the TCLP analyses for 63 volatile organic and semivolatile organic constituents, including the TC organic constituents (excluding pesticides and herbicides); and (11) ground-water monitoring data collected from wells monitoring the on-site landfill.

B. Response to Public Comments

Comment: The Agency received public comments from one interested party (BSC) on the December 7, 1995 proposal. The commenter expressed its strong support for the proposed rule and urged the Agency to finalize this rulemaking as soon as practicable. The commenter also stated it ''does not believe that any of its comments materially affect the Agency analyses, evaluations and conclusions in the proposed rule.'' However, the commenter recommended a slight modification of the proposed language for the regulatory exclusion. Specifically, the commenter recommended that based on its legal survey of the landfill surface acreage and resulting recalculation of the waste volume contained in the unit, the proposed exclusion language in the Waste Description at 40 CFR part 261, Appendix IX be modified to specify approximately 118,000 cubic yards of waste, in lieu of 110,000 cubic yards. The commenter contended that such an increase in waste volume does not affect the Agency's EPACML evaluation of BSC's waste.

Some of the other comments relate to the conservative nature of the Agency's analysis and evaluation of BSC's petition. The commenter agreed that EPA's use of the EPACML model as described in the proposal is an appropriate means for evaluating its petitioned waste. However, the commenter briefly described several conservative assumptions (pertaining to input parameter frequency distributions, infinite steady-state contaminant source, and various subsurface attenuation mechanisms including biodegradation of organics, metal precipitation, non-

linear non-equilibrium sorption phenomena, etc.) inherent in the EPACML, and believed that the model as proposed is more appropriate for use as a worst-case, first-stage screening tool in a delisting evaluation. The commenter also argued that the Agency's use of EP and TCLP extract concentrations as inputs to the EPACML tends to overstate the real-world leaching potential of metals from wastes that are not reasonably likely to be co-disposed in a municipal landfill environment. Moreover, the commenter questioned the Agency's use of the proposed health-based levels for lead and 1,1-dichloroethane, meaning that they may be too stringent.

Finally, the commenter presented a variety of clarifications and corrections, primarily for the record, on miscellaneous items and details addressed in the proposed rule. The commenter considered these to be ''relatively minor''. The commenter also believed that any EPA statements, comments, or interpretations pertaining to the regulatory status of the HWM–2 landfill and BSC's compliance obligations are not necessary.

Response: In the December 7, 1995 proposal, the Agency determined that disposal in any Subtitle D landfill is the most reasonable, worst-case disposal scenario for BSC's petitioned waste, that the major exposure route of concern for any hazardous constituents would be ingestion of contaminated groundwater, and that the EPACML fate and transport model is appropriate for evaluating BSC's petitioned waste. As further explained in the ''Docket Report on EPACML Evaluation of Bethlehem Steel's Petitioned Waste'' contained in the public docket for the proposed rule, the Agency used an EPACML dilution/attenuation factor (DAF) of 48 to evaluate the potential for groundwater contamination due to contaminant releases from BSC's estimated waste volume of 110,000 cubic yards. The Agency notes here that this one-time waste volume of 110,000 cubic yards (equivalent to annual generation of 5,500 cubic yards over 20 years) actually corresponds to an EPACML DAF of 51. In order to account for possible variations associated with land survey and volume calculations, the Agency in fact applied a slightly lower, thus more stringent, DAF of 48 corresponding to one-time waste volume of 120,000 cubic yards, or 6,000 cubic yards/year x 20 years. Hence, increasing the petitioned volume from 110,000 cubic yards to 118,000 cubic yards (less than 120,000 cubic yards) has no adverse effect on the results of the Agency's evaluation of the potential impact of BSC's waste via groundwater route of exposure.

The small volume increase of 8,000 cubic yards (constituting only 7.3% of 110,000 cubic yards) does not adversely affect the Agency's air and surface water evaluations either, for the following reasons. As discussed in the proposed rule, the Agency's evaluation of the potential hazards resulting from air and surface water routes of exposure to BSC's petitioned waste quantity of 110,000 cubic yards were very conservative. Furthermore, the calculated airborne and surface water release concentrations at the assumed downgradient receptors were well below (more than 10 times and 29 times lower, respectively) the applicable air emissions levels of concern and water quality criteria for consumption of water and organisms used for the evaluation of BSC's waste (see docket for the proposed rule). Therefore, calculations based on 118,000 cubic yards (as compared to 110,000 cubic yards) would result in an insignificant change in air and surface water releases.

Consequently, the Agency is finalizing the exclusion language in 40 CFR part 261, Appendix IX, Table 2 to delist 118,000 cubic yards of the petitioned waste as the commenter (*i.e.*, BSC) recommended. The Agency believes this revised volume more accurately reflects the actual waste quantity contained in the petitioned HWM–2 landfill. The other issues raised by the commenter with respect to the conservative nature of the Agency's analysis and evaluation of BSC's petition as well as the commenter's clarifications and corrections for the record do not affect EPA's decision to grant this petition; therefore, the Agency is not addressing those comments in today's rule. The Agency would like to refer the readers to relevant Agency responses to some similar comments provided in previous delisting rulemakings, *e.g.*, 56 FR 67197, December 30, 1991; 58 FR 40067, July 27, 1993; 60 FR 31107, June 13, 1995.

E. Final Agency Decision

For the reasons stated in both the proposal and this final rule, the Agency believes that BSC's petitioned waste should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Bethlehem Steel Corporation, Lackawanna, New York, for its ammonia still lime sludge and other co-disposed solid wastes contained in the on-site landfill referred to as HWM–2, described in the petition as EPA Hazardous Waste No. K060. This one-time exclusion applies to 118,000 cubic yards of waste covered by BSC's delisting demonstration.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction by this final exclusion, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation (see 40 CFR part 260, Appendix I).

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the States. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program, *i.e.*, to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, BSC must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

IV. Effective Date

This rule is effective on April 24, 1996. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after

publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 USC § 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. The reduction is achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. This rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have an adverse economic impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and will be limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: April 4, 1996.

James R. Berlow,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX, Part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2. WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
Bethlehem Steel Corporation	Lackawanna, New York	Ammonia still lime sludge (EPA Hazardous Waste No. K060) and other solid waste generated from primary metal-making and coking operations. This is a one-time exclusion for 118,000 cubic yards of waste contained in the on-site landfill referred to as HWM–2. This exclusion was published on April 24, 1996.
* *	* *	* * *

[FR Doc. 96–10106 Filed 4–23–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[Gen. Dockets Nos. 90–54 and 80–113, MM Docket No. 94–131 and PP Docket No. 93–253, FCC 96–130]

Private Operational-Fixed Microwave Service, et. al.; 2.1 and 2.5 GHz Frequency Use

Use of the Frequencies in the 2.1 and 2.5 GHz Affecting Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service; Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding.

AGENCY: Federal Communications Commission.

ACTION: Final rule; Third Order on Reconsideration and Order to Clarify.

SUMMARY: This *Third Order on Reconsideration and Order to Clarify* resolves the issues raised in reconsideration petitions filed against the *Second Order on Reconsideration* in Gen. Dockets No. 90–54 and 80–113. The *Second Order on Reconsideration* essentially adopted three changes. First, it enlarged the protected service area for Multipoint Distribution Service (MDS) stations from 710 square-miles (the area of a circle with a 15-mile radius) to approximately 3,848 square-miles (the area of a circle with a 35-mile radius). Second, it revised the rules for serving interference studies upon potentially affected stations in the Instructional Television Fixed Service (ITFS). Third, it clarified the use of frequency offset interference protection and the MDS cut-off rule. In this *Third Order on Reconsideration and Order to Clarify*, the Commission also provides clarification of provisions set forth in the *MDS Report and Order* in MM Docket No. 94–131 and PP Docket No. 93–253, including the interference study requirements for pending ITFS applications and the statement of intention to be filed by some winning bidders in the MDS auction. This Commission action is intended to expedite more service to the public and enhance opportunities for wireless cable to reach its potential as a competitor to wired cable.

EFFECTIVE DATES: June 24, 1996, except that the new or modified paperwork requirements contained in Section 21.902(i), which are subject to approval by the Office of Management and Budget (OMB), will go into effect upon OMB approval. The Commission will issue at a later date a public notice with this effective date.

FOR FURTHER INFORMATION CONTACT: Jerianne Timmerman at (202) 416–0881 or Sharon Bertelsen at (202) 416–0892.

The complete text of the *Third Order on Reconsideration and Order to Clarify* follows. It is also available for inspection and copying during normal business hours in the MDS public reference room, Room 207, at the Federal Communications Commission, 2033 M Street, N.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, D.C. 20037, (202) 857–3800.

I. Introduction and Background

1. The Commission has before it three petitions for reconsideration of the *Second Order on Reconsideration* in Gen. Docket Nos. 90–54 and 80–113, 10 FCC Rcd 7074 (1995), 60 FR 36737 (July 18, 1995) (''*Second Order on Reconsideration*''), which revised the definition of the protected service area of Multipoint Distribution Service (''MDS'')[1] stations. In the *Second Order on Reconsideration*, the protected service area for MDS stations was enlarged from 710 square-miles (the area of a circle with a 15-mile radius) to approximately 3,848 square-miles (the area of a circle with a 35-mile radius). Also revised were the rules for serving interference studies upon potentially affected stations in the Instructional Television Fixed Service (''ITFS''). In addition, clarification was provided regarding frequency offset interference protection and the MDS cut-off rule. Three petitions for reconsideration of various aspects of the *Second Order on Reconsideration* were timely filed with the Commission. The reconsideration petitions include a request for clarification of certain provisions of the order and a request for reconsideration of a Commission public notice issued after the order was released, which cited the order. Two oppositions were received, and no replies were filed.

2. The petitions for reconsideration principally raise issues regarding the expanded protected service area for authorized and previously proposed MDS stations. The major factors that prompted adoption of the expanded protected service area in the *Second Order on Reconsideration* included: (1) the many MDS operators that have been serving areas larger than the 710 square-mile service area formerly provided by the MDS rules; (2) the technological innovations in reception equipment that have contributed to a significant increase in the geographic area to which reliable MDS service can be provided; and (3) the potential overcrowding of the MDS spectrum that would result from continued use of the smaller service area. *See Second Order on Reconsideration* at 7077–78. We also noted that the desirability of an expansion of the protected service area had been enhanced by two separate rulemakings: a 1995 ITFS rulemaking which established a fixed 35-mile distance as one of several criterion for ITFS receiver site protection,[2] and the *Report and Order* in *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act–Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (July 17, 1995) (''*MDS Report and Order*''), *recon. granted in part and denied in part, Memorandum and Order on Reconsideration, Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section*

[1] Unless otherwise indicated, ''MDS'' includes single channel Multipoint Distribution Service stations and Multichannel Multipoint Distribution Service stations.

[2] *Report and Order, Amendment of Part 74 of the Commission's Rules with Regard to the Instructional Television Fixed Service*, 10 FCC Rcd 2907, 2921 (1995), 60 FR 20241 (April 25, 1995) (''*ITFS Filing Procedures Order*''). A combination of ITFS and MDS frequencies are used to provide a video entertainment service popularly known as ''wireless cable.'' The rules for these two services were initially developed independently. However, with the increasing combined use of both service frequencies to provide a single video service to consumers and to provide a competitor to wired cable operators, coordination of the rules and policies for both services has been encouraged. *See Notice of Proposed Rulemaking and Notice of Inquiry, Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules, Pertaining to Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 971 (1990), 55 FR 7344 (March 1, 1990).