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Friday
February 2, 1996

Briefings on How To Use the Federal Register
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN: February 6, 1996 at 9:00 am and February 21, 1996 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

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Contents

Federal Register
Vol. 61, No. 23
Friday, February 2, 1996

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Economics Management Staff
See Farm Service Agency
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Nonregulated status determinations—
Asgrow Seed Co.; genetically engineered squash, 3899–3900

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Sprint Corp. et al., 3970–4028

Army Department
NOTICES
Privacy Act:
Systems of records, 3912–3922

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3901–3902

Children and Families Administration
NOTICES
Organization, functions, and authority delegations:
Regional Offices, 3937–3938

Coast Guard
PROPOSED RULES
Federal regulatory review:
Electrical engineering requirements for merchant vessels, 4132–4165

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 3910–3911

Commodity Credit Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3900

Defense Department
See Army Department
See Defense Investigative Service
RULES
Privacy Act; implementation, 3813–3814
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 3911–3912

Defense Investigative Service
RULES
Privacy Act; implementation, 3814–3815

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Broomes, Edward L.C., M.D., 3946–3948
Bynum, Therial L., M.D., 3948–3950

Economics Management Staff
RULES
Availability of information to the public; CFR part removed, 3787–3788

Education Department
PROPOSED RULES
Postsecondary education:
Higher Education Act of 1965—
Federal student assistance programs; improved oversight, 4198–4201
NOTICES
Grants and cooperative agreements; availability, etc.:
Individuals with disabilities—
Closing date, 4168–4181
Postsecondary education—
Campus-based programs; waiver of allocation reduction for underuse of funds, 4184–4185
Special education and rehabilitative services—
Final priorities for six programs administered under Individuals with Disabilities Education Act, 4178–4181

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 3950–3951

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Debarment and suspension (procurement) and governmentwide debarment and suspension (nonprocurement); drug-free workplace requirements, 3877–3882
NOTICES
Environmental statements; availability, etc.:
Argonne National Laboratory-West, ID—
Electrometallurgical Treatment Research and Demonstration Project; public hearings, 3922

Hanford Site, WA—
K-Basins; spent nuclear fuel management, 3922–3923
Nevada Test Site and Off-site locations, NV, 3924–3925
Grant and cooperative agreement awards:
University of Georgia Research Foundation, 3925
Meetings:
Environmental Management Advisory Board, 3925
Environmental Management Site-Specific Advisory Board—
Oak Ridge, TN, 3925–3926

Environmental Protection Agency
RULES
Air programs:
Fuel and fuel additives—
Prohibition on gasoline containing lead or lead additives for highway use, 3832–3838
Air quality implementation plans; approval and promulgation; various States:
Georgia, 3817–3824
Michigan, 3815–3817
Rhode Island, 3824–3827
Clean Air Act:
State operating permits programs—
Massachusetts, 3827–3832
PROPOSED RULES
Air programs:
Fuel and fuel additives—
Prohibition on gasoline containing lead or lead additives for highway use, 3894
Air quality implementation plans; approval and promulgation; various States:
Georgia, 3891–3892
Michigan, 3891
Rhode Island, 3892–3893
Clean Air Act:
Acid rain program—
Nitrogen oxides emissions reduction program, 3893–3894
State operating permits programs—
Massachusetts, 3893
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts, 3932–3934
Sabine Mining Co., TX; permit for waste water discharges, 3934
South Bay International Wastewater Treatment Plant, CA, 3934–3935
Meetings:
Ozone Transport Commission, 3936
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 3936
Interagency Testing Committee—
Report, 4188–4196

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 3966

Farm Service Agency
RULES
Program regulations:
Rural technology and cooperative development grants, 3779–3787
PROPOSED RULES
Program regulations:
Business and industrial loan program, 3853–3877
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3900–3901

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 3793–3795
de Havilland, 3792–3793
Standard instrument approach procedures, 3795–3799
PROPOSED RULES
Airworthiness directives:
Robinson Helicopter Co., 3882–3884
Restricted areas, 3884–3885
NOTICES
Passenger facility charges; applications, etc.:
Cyril E. King Airport, VI, 3962

Federal Communications Commission
RULES
Radio services, special:
Private land mobile services—
Wireless services; phase I licensees in 220 MHz service; minor modifications, 3841–3846

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 3965

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Ventway Pty Ltd. et al., 3926–3929
Environmental statements; availability, etc.:
Granite State Gas Transmission, Inc., 3929–3930
Applications, hearings, determinations, etc.:
Chandeleur Pipe Line Co., 3930
Chevron U.S.A., Inc., 3930
Mid Louisiana Gas Co., 3930–3931
Panhandle Eastern Pipe Line Co., 3931
Questar Pipeline Co., 3931
Southern Natural Gas Co., 3931–3932
Tennessee Gas Pipeline Co.; correction, 3967
Texas Gas Transmission Corp., 3932
Trunkline Gas Co., 3932

Federal Maritime Commission
NOTICES
Agreements filed, etc.; correction, 3967

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 3965–3966
Applications, hearings, determinations, etc.:
Cousatte, Arthur W., 3936–3937

Federal Trade Commission
RULES
Industry guides:
Hosiery industry, 3799–3800

Fish and Wildlife Service
RULES
Importation, exportation, and transportation of wildlife:
Designated port status—
Atlanta, GA, 3849–3851

PROPOSED RULES
Importation, exportation, and transportation of wildlife:
Box turtles; export, 3894–3898
NOTICES
Endangered and threatened species permit applications, 3943
Marine mammals:
Authorization letters; incidental take—
Oil and gas industry activities; polar bears and Pacific walruses, 3943–3944

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Nutrient content claims and health claims; special requirements, 3885–3891

Foreign Assets Control Office
RULES
Foreign assets control regulations:
Terrorism sanctions regulations; implementation, 3805–3813

General Services Administration
RULES
Federal travel:
Relocation income tax (RIT) allowance tax tables, 3838–3840
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 3911–3912

Government Printing Office
NOTICES
Meetings:
Online access to Federal Register and other Federal databases; demonstration, 3937

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 3939–3941
Organization, functions, and authority delegations:
Assistant Secretary for Housing-Federal Housing Commissioner, 3941

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Cold-rolled carbon steel flat products from—
Germany, 3902–3903
Antidumping duty orders and findings:
Intent to revoke, 3903–3904

Justice Department
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3945–3946

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Closure of public lands:
Arizona, 3941–3942
Environmental statements; availability, etc.:
Cyprus Bagdad Copper Corp., AZ, 3942
Realty actions; sales, leases, etc.:
Nevada, 3942–3943

Minerals Management Service
RULES
Royalty management:
Outer Continental Shelf lease bidding systems, 3800–3805

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 3911–3912

National Credit Union Administration
RULES
Credit unions:
Organization and operations—
Secondary capital from foundations and other philanthropic-minded institutional investors, 3788–3792

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Michelin North America, Inc., 3962–3963

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 3938–3939

National Oceanic and Atmospheric Administration
RULES
Marine mammals:
Commercial fishing operations—
Commercial fisheries authorization; list of fisheries categorized according tofrequency of incidental takes; delay of effective date, 3851–3852
NOTICES
National Weather Service; modernization and restructuring:
Weather Service and Forecast Offices; consolidations, 3904–3909
Permits:
Marine mammals, 3909–3910

National Park Service
NOTICES
Environmental statements; availability, etc.:
Padre Island National Seashore, TX, 3944

Native American human remains and associated funerary objects:
Anchorage Museum of History and Art, AK—Inventory, 3944
Southern Methodist University et al., NM—Inventory, 3944–3945

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co. et al., 3951–3953
IES Utilities, Inc., 3953–3955

Occupational Safety and Health Administration
PROPOSED RULES
Occupational injury and illness; recording and reporting requirements, 4030–4067

Panama Canal Commission
RULES
Acquisition regulations:
Debarment, suspension and ineligibility, 3846–3849

Personnel Management Office
NOTICES
Cost-of-living allowances in Alaska; winter 1995 surveys; report, 4070–4130

Presidential Documents
PROCLAMATIONS
Special observances:
African American History Month, National (Proc. 6863), 3777
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.
United States-Pacific Trade and Investment Policy, Commission on; amendment (EO 12987), 4205

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Rural Business-Cooperative Service
RULES
Program regulations:
Rural technology and cooperative development grants, 3779–3787
PROPOSED RULES
Program regulations:
Business and industrial loan program, 3853–3877

Rural Housing Service
RULES
Program regulations:
Rural technology and cooperative development grants, 3779–3787
PROPOSED RULES
Program regulations:
Business and industrial loan program, 3853–3877

Rural Utilities Service
RULES
Program regulations:
Rural technology and cooperative development grants, 3779–3787
PROPOSED RULES
Program regulations:
Business and industrial loan program, 3853–3877

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc.; correction, 3967
National Association of Securities Dealers, Inc., 3955–3956
National Securities Clearing Corp.; correction, 3967
Philadelphia Depository Trust Co., 3956–3958
Philadelphia Depository Trust Co. et al., 3958–3960
Applications, hearings, determinations, etc.:
United of Omaha Separate Account B, 3960

Small Business Administration
NOTICES
Disaster loan areas:
Florida, 3960
Rhode Island, 3960

Social Security Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 3961

State Department
RULES
Press building passes, 3800

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern Railroad Co., 3963
Wisconsin Central Ltd. et al., 3963–3964

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 3961
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 3961
Meetings:
Partnership Council, 3962

Treasury Department
See Foreign Assets Control Office
NOTICES
Committees; establishment, renewal, termination, etc.:
U.S. Community Adjustment and Investment Program Advisory Committee, 3964

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Sacred Realm: The Emergence of the Synagogue in the Ancient World, 3964

Separate Parts In This Issue

Part II
Department of Justice, Antitrust Division, 3970–4028

Part III
Department of Labor, Occupational Safety and Health Administration, 4030–4067

Part IV
Office of Personnel Management, 4070–4130

Part V
Department of Transportation, Coast Guard, 4132–4165

Part VI
Department of Education, 4168–4181

Part VII
Department of Education, 4184–4185

Part VIII
Environmental Protection Agency, 4188–4196

Part IX
Department of Education, 4198–4201

Part X
The President, 4205

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6863 3777
Executive Orders:
12964 (Amended by EO 12987) 4205
12987 4205

7 CFR
1901 3779
1940 3779
1951 3779
2003 3779
4001 3787
Ch. XLII 3779
4284 3779
Proposed Rules:
1980 3853
4279 3853
4287 3853

10 CFR
Proposed Rules:
1035 3877
1036 3877

12 CFR
701 3788
709 3788
741 3788

14 CFR
39 (2 documents) 3792, 3793
97 (3 documents) 3795, 3796, 3797
Proposed Rules:
39 3882
73 3884

16 CFR
22 3799

21 CFR
Proposed Rules:
101 3885

22 CFR
9b 3800

29 CFR
Proposed Rules:
1904 4030
1952 4030

30 CFR
206 3800
260 3800

31 CFR
595 3805

32 CFR
311 3813
321 3814

34 CFR
Proposed Rules:
Ch. VI 4198

40 CFR
52 (5 documents) 3815, 3817, 3819, 3821, 3824
70 3827
80 3832
Proposed Rules:
52 (5 documents) 3891, 3892
70 3893
76 3893
80 3894

41 CFR
302–11 3838

46 CFR
Proposed Rules:
108 4132
110 4132
111 4132
112 4132
113 4132
161 4132

47 CFR
90 3841

48 CFR
3509 3846
Proposed Rules:
909 3877

50 CFR
14 3849
229 3851
Proposed Rules:
23 3894

Federal Register
Vol. 61, No. 23
Friday, February 2, 1996

Presidential Documents

Title 3—

The President

Proclamation 6863 of January 30, 1996

National African American History Month, 1996

By the President of the United States of America

A Proclamation

Today's schoolchildren are fortunate to grow up in classrooms where they are taught to appreciate all of the many heroes of American history. While previous generations read textbooks that told only part of our Nation's story, materials have been developed in recent years that give our students a fuller picture—textured and deepened by new characters and themes. African American History Month provides a special opportunity for teachers and schools to celebrate this ongoing process and to focus on the many African Americans whose lives have shaped our common experience.

This year, our observance emphasizes black women and the strides made to bring their achievements to the fore. From Sojourner Truth's sermons, to Mary McLeod Bethune's speeches, to the contemporary novels of Nobel laureate Toni Morrison, the voices of African American women have called attention to the twin burdens of racism and sexism and have invited listeners to discover the richness of traditions kept alive in back kitchens and workrooms. In churches and communities, and more recently in universities and statehouses across America, these women have fought extraordinary battles for social, economic, and political empowerment.

Barbara Jordan once wrote,

> 'We the people'; it is a very eloquent beginning. But when the Constitution of the United States was completed on the seventeenth of September, 1787, I was not included in that 'We the people.'

As we mourn the loss of this great American, let us honor her by seeking to further the progress made since those early days toward true equality and inclusion. During African American History Month and throughout the year, we must embrace the diverse strands of our story so that all children can see themselves in our Nation's past and know that they have a role to play in seizing the future's countless opportunities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 1996, as National African American History Month. I call upon Government officials, educators in schools, colleges, universities, and libraries, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs that raise awareness of African American history and invite further inquiry into this area of study.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of January, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–2363
Filed 2–1–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 61, No. 23
Friday, February 2, 1996

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

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business—Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1901, 1940, 1951, and 2003

Rural Business—Cooperative Service

Rural Utilities Service

7 CFR Chapter XLII and Part 4284

RIN 0570–AA02

Rural Technology and Cooperative Development Grants

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) revises its regulations for Rural Technology and Cooperative Development Grants (RTCDG) and amends other regulations utilized by RBS in administering its grant programs. This action is necessary to comply with legislation which authorizes grants for establishing and operating centers for rural technology or cooperative development. The intended effect of this action is to implement this grant program.

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph R. Binder, Director, Specialty Lenders Division, Rural Business-Cooperative Service, US Department of Agriculture, Room 2245, South Agriculture Building, 14th and Independence Ave. SW, Washington, D.C. 20250. Telephone (202) 720–1400.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866, and the Office of Management and Budget has determined that it is not a ''significant regulatory action.''

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and; (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR, part 1900, subpart B, or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994, whichever is applicable, must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.771 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. RBS has conducted intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information collection and record keeping requirements contained in these regulations were previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S. C. Chapter 35 and have been assigned OMB control numbers 0575–0018, 0575–0066, and 0570–0006, in accordance with the Paperwork Reduction Act of 1980. This final rule does not impose any new information or record keeping requirements from those approved by OMB.

Background

The RTCDG program was established by interim rule on August 12, 1994 (59 Fed. Reg. 41386–98). The public comment period ended October 11, 1994. The RTCDG program is authorized by section 310B(f) through (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. § 1932 Act). The primary objective of the program is to improve the economic condition of rural areas. The RTCDG program will achieve this objective by supporting the creation or enhancement of institutions including cooperatives capable of

promoting the development and commercialization of new services, products, processes, and enterprises. The program is administered through Rural Economic and Community Development (RECD) State Offices acting on behalf of RBS. RBS, formerly known as the Rural Business and Cooperative Development Service, is the successor of the Rural Development Administration as to the RTCDG program pursuant to the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).

Discussion of Public Comments

A total of 14 commenters offered comments to the interim rule. The commenters represented the federal agencies, Arkansas Enterprise Groups, National Rural Cooperative Development Task Force, New York Department of City & Regional Planning, Winrock International in Arkansas, Southwest Grain of North Dakota, The Maine Ambulatory Care Coalition, and The North Dakota Associations of Rural Electric and Telephone Cooperatives.

Several respondents objected to the kinds of demographic data required because they believe it was not available, did not accurately represent, or only partially represented the distressed economic conditions of rural areas. The Agency agrees and, therefore, amends the regulation to allow applicants to use their choice of data as long as they reflect the intent of serving economically distressed communities and the data are from established official independent sources. This change will give applicants flexibility to use available data that best describe the conditions impacted by their proposal. The Agency, however, still will give preference in selecting those projects demonstrating their ability to effectively serve rural areas with few rural industries and agribusinesses, high levels of unemployment or underemployment, high rates of outmigration of people, businesses, and industries, or low levels of per capita income. This preferential treatment is required by Conact § 310B (f) (3).

Three respondents objected to the use of the terms, ''industry'' and ''agribusiness'' because there were no definitions provided and there is no consistent source of comprehensive data available. These terms also did not explain how to consider other points such as temporary businesses, and small vs. large businesses. These comments were adopted to allow applicants to use their choice of data with regard to industries and agribusinesses as long as they provided an accurate, comprehensive description of the economic conditions of their community and their data are secured from established official independent sources.

Three respondents recommended that a higher score or priority be given to applicants who collaborate with others. The comment was not adopted because collaboration will strengthen the preapplication in all or most of the listed selection criteria so that it would not be a distinguishing factor. One respondent suggested that a higher priority be given to regional and multistate projects. The rule was not amended to adopt this comment because it would work unfairly against those organizations which do not have multistate responsibilities. Under the final rule there is no prohibition against multistate projects. In fact, applicants who propose multistate projects may get more points because of their project's ability to demonstrate national applicability of innovations developed under the program. One of the preferential selection criteria is the transferability or demonstration value of the project in helping rural areas outside the project area.

One respondent suggested that a higher priority be given to applicants in states who have not received RTCDG grants. This comment was not adopted because it would work unfairly against organizations which produce multiple quality applications.

One respondent suggested that a higher priority be given to organizations which administer multiple projects through several organizations. Another respondent suggested that fewer points be given to organizations which administer multiple projects. These comments were not adopted because the Agency sees no clear advantages or disadvantages to funding organizations who administer multiple projects. The possibility exists that organizations which administer multiple projects would have a broader perspective, a better ability to disseminate their innovations nationally, and a stronger capacity to manage projects effectively; however, the possibility also exists that this organization would increase overhead costs and provide fewer resources to benefit rural communities. Thus, the Agency finds no basis for treating multiple project applicants differently than single project applicants.

Two respondents suggested that a higher priority be given to organizations with demonstrated ability to administer effective projects. The Agency agrees and has adopted the comment as part of the criteria for scoring. Specifically, the Agency will consider the experience, organizational skills, and background needed to successfully carry out the project.

One respondent suggested that the requirement for 25 percent matching funds be limited to administrative costs. The rule was not amended because program funds are limited and it is believed that organizations need to match some of the funding to demonstrate local support for the application.

One respondent suggested that all projects must be exclusively rural. The comment was not adopted. The projects will serve rural areas; however, there is nothing wrong with indirect benefits supporting urban interests as well as rural.

Two respondents recommended that the requirement to secure ''evidence of support'' for the project from all of the affected local governmental bodies be dropped. The rule was not amended because all affected governmental bodies should be on record as supporting the project. The time spent documenting this support will be worth the time spent in order to avoid misunderstandings later.

One respondent recommended that projects be selected in all major rural areas of the United States. The comment was not adopted in order to allow for the highest quality preapplications to be selected.

One respondent recommended that a different theme be selected each year. The Agency agrees that this is a desirable policy and plans to adopt it to the extent possible in keeping with rule-making requirements of the Administrative Procedures Act.

One respondent recommended that the preapplications be sent to the RECD State Office for initial processing to determine eligibility and to ensure that all necessary forms were in place before sending the preapplications to the RBS National Office for scoring and selection. The RBS National Office will follow this process. This is a better process because the RECD State Office employees know the area, applicants, and conditions of the communities better and can advise the National Office. Organizations who prepare multistate preapplications are to submit their preapplications through the state where the organization's headquarters are located.

One respondent commented that using RTCDG funds for revolving loans should be given a low priority. The Agency agrees that the RTCDG program should emphasize those statutory factors that will benefit economically distressed communities. However, Conact § 310B (f) (2) (C) specifically

provides that an acceptable center activity is a program providing loans and grants to individuals, small businesses, and cooperatives in rural areas served by the center for purposes of generating, evaluating, developing, and commercializing new products, processes, or services. The Agency will continue to carry out this mandate in its review and selection process.

In addition to the changes made in response to public comments, the Agency has made some administrative revisions. The Agency has revised its selection criteria to provide for Administrator's points. The Administrator may give emphasis to geographical distribution, interagency cooperation, or other appropriate factors. This change will allow the Administrator the flexibility to choose the best applicants for limited grant funds.

The Agency has added definitions for ''center'' and ''subcenter'' for clarity.

The Agency also has added references to the applicability of recently adopted departmental regulations to RTCDG grants made to nonprofit institutions. The Uniform Administrative Requirements For Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, 7 CFR part 3019, were adopted by interim final rule (60 Fed. Reg. 44122–39) on August 24, 1995.

The final rule removes the points from the selection criteria. The points assigned to each of the selection criteria will be given in the Federal Register notice to be published in advance each year. This will allow the Agency to adjust the priorities given to each of the preferential factors on a yearly basis to best meet the objectives set forth in the regulations.

All references to Farmers Home Administration in the organization procedures of 7 CFR part 2003 will be left in place but will be revised in the near future. At that time they will be changed to reflect the current names of the new agencies which were formed as a result of the reorganization.

Internal management procedures have been removed from the regulations but will appear in internal agency instructions.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1940

Allocations, Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 2003

Organization and functions (Government agencies).

7 CFR Part 4284

Business and Industry, Grant programs—Housing and community development, Rural areas.

Accordingly, chapters XVIII and XLII, title 7, Code of Federal Regulations, are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY

PART 1901—PROGRAM-RELATED INSTRUCTIONS

1. The authority citation for part 1901, subpart E, is revised as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 40 U.S.C. 442; 42 U.S.C. 1480, 2942.

Subpart E—Civil Rights Compliance Requirements *C*

2. Section 1901.204 is amended by revising paragraph (a)(27) to read as follows:

§ 1901.204 Compliance reviews.

(a) * * *

(27) Rural Technology and Cooperative Development Grants in subpart F of part 4284 of this title.

* * * * *

PART 1940—GENERAL

3. The authority citation for part 1940 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

§ 1940.590 [Removed and Reserved]

4. Section 1940.590 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

5. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

6. Section 1951.201 is revised to read as follows:

§ 1951.201 Purpose.

This subpart prescribes the Rural Economic and Community Development (RECD) mission area policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance program grants; National Nonprofit Corporation grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; section 306C WWD loans and grants in subpart E of part 4284 of this title; and Rural Technology and Cooperative Development Grants in subpart F of part 4284 of this title. RECD State Offices act on behalf of the Rural Housing Service, the Rural Business-Cooperative Service and the Rural Utilities Service as to loan and grant programs formerly administered by the Farmers Home Administration, the Rural Development Administration, and the Rural Electrification Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

* * * * *

PART 2003—ORGANIZATION

7. The authority citation for part 2003 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; Public Law 100–82, 101 Stat. 545.

Subpart A—Functional Organization of the Farmers Home Administration or its Successor Agency Under Public Law 103–354

Exhibit A to part 2003 [Amended]

8. In part 2003, Exhibit A of subpart A, paragraph 2, under the heading of Assistant Administrator—Community and Business Programs is amended by revising ''rural technology development grants'' to read ''rural technology and cooperative development grants.''

9. The heading of 7 CFR chapter XLII is revised to read as follows:

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

Chapter XLII (Parts 4284 and 4285) [Amended]

10. In 7 CFR chapter XLII (consisting of parts 4284 and 4285), everywhere ''Farmers Home Administration'', ''FmHA'', ''Rural Development Administration'', or ''RDA'' appear, except ''FmHA Instruction'' and ''Form FmHA'' references, add the phrase ''or its successor agency'' immediately thereafter.

PART 4284—GRANTS

11. The authority citation for part 4284 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

12–13. Subpart F of part 4284 is revised to read as follows:

Subpart F—Rural Technology and Cooperative Development Grants

Sec.
4284.501 Purpose.
4284.502 Policy.
4284.503 [Reserved]
4284.504 Definitions.
4284.505 Applicant eligibility.
4284.506–4284.514 [Reserved]
4284.515 Grant purposes.
4284.516 Ineligible grant purposes.
4284.517–4284.526 [Reserved]
4284.527 Other considerations.
4284.528 Application processing.
4284.529–4284.539 [Reserved]
4284.540 Grant selection criteria.
4284.541 Grant approval, fund obligation, grant closing, and third-party financial assistance.
4284.542–4284.556 [Reserved]
4284.557 Fund disbursement.
4284.558 Reporting.
4284.559–4284.570 [Reserved]
4284.571 Audit requirements.
4284.572 Grant servicing.
4284.573 Programmatic changes.
4284.574 Subsequent grants.
4284.575 Grant suspension, termination, and cancellation.
4284.576–4284.586 [Reserved]
4284.587 Exception authority.
4284.588–4284.599 [Reserved]
4284.600 OMB control number.

Subpart F–Rural Technology and Cooperative Development Grants

§ 4284.501 Purpose.

(a) This subpart outlines the Rural Business-Cooperative Service's (RBS) policies and authorizations and sets forth procedures to provide grants for technology and cooperative development in rural areas.

(b) Grants for establishing and operating centers for rural technology or cooperative development will be for the primary purpose of improving the economic condition of rural areas by promoting the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of new services and products that can be produced or provided in rural areas; new processes that can be utilized in the production of products in rural areas; and new enterprises or cooperatives that can add value to on-farm production through processing or marketing.

(c) Copies of all forms and Instructions referenced in this subpart are available in the RBS National Office or any RECD State Office.

§ 4284.502 Policy.

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Native American tribes within the state regardless of whether state development strategies include Indian reservations within the state's boundaries. Native American tribes residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of RECD servicing offices.

§ 4284.503 [Reserved]

§ 4284.504 Definitions.

Approval official—Any authorized agency official.

Center—The place established and operated by the grantee for rural technology or cooperative development.

Cooperative—An association organized to provide a specific service with open membership, equality in ownership and control, limited return on members' capital, and equitable methods to distribute any excess earnings back to its members.

Cooperative development—The startup, expansion, or operational improvement of a cooperative which will promote the development of new services and products that can be produced or provided in rural areas, new processes that can be utilized in the production of products in rural areas, or new enterprises that can add value to on-farm production through processing or marketing. Operational improvement includes making the cooperative more efficient, better managed, etc.

Economic development—The growth of an area as evidenced by increases in total income, employment opportunities, decreased outmigration of populations, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment, higher wage levels, or gains in other measurements of economic activity, such as land values.

Nonprofit institution—Any organization or entity, including an accredited institution of higher education, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Project—The undertaking for which funds will be used to develop or operate a technology or cooperative development center.

Public body—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal and state reservation or other federally recognized Indian tribe in rural areas.

RBS—The Rural Business-Cooperative Service, an agency of the United States Department of Agriculture, or a successor agency.

RECD—Rural Economic and Community Development mission area.

Rural and rural area—Includes all territory of a state that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile, as determined by the Secretary of Agriculture according to the latest decennial census of the United States.

Servicing office. Any RECD State Office or successor office.

Small business—A business which does not exceed the maximum number of employees or annual receipts allowed for a concern (including its affiliates) to be considered small according to the established size standards for Small Business Administration (SBA) assistance as set forth in § 121.601, 13 CFR, part 121. The business may be operated on a profit or nonprofit basis but must rely primarily on revenues of the business for operation rather than outside support.

State—Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subcenter—A unit of a center acting under the same direction as and having a purpose consistent with that of the center.

Technology—The application of science to industrial or commercial objectives. The entire body of methods and material used to achieve such objectives.

Technology development—The creation of new technology or the use and application of existing technology to promote the development and commercialization of new products, new processes, and new services that can be produced or provided in rural areas.

Urbanized area—An area immediately adjacent to a city having a population of 50,000 or more which, for general social and economic purposes, constitutes a single community and has a boundary contiguous with that of the city. Such community may be incorporated or unincorporated to extend from the contiguous boundaries to recognizable open country, less densely settled areas, or natural boundaries such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. Outer boundaries of an incorporated community extend at least to its legal boundaries. Cities which may have a contiguous border with another city, but are located across a river from such city, are recognized as a separate community and are not otherwise considered a part of an urbanized or urbanizing area, as defined in this section, are not in a nonrural area.

Urbanizing area—A community which is not now, or within the foreseeable future not likely to be, clearly separate from and independent of a city of 50,000 or more population and its immediately adjacent urbanized areas. A community is considered ''separate from'' when it is separated from the city and its immediately adjacent urbanized area by open country, less densely settled areas, or natural barriers such as forests or water. Minor open spaces such as airports, industrial sites, recreational facilities, or public parks shall be disregarded. A community is considered ''independent of'' when its social and economic structure (e.g. government; educational, health, and recreational facilities; and business, industry, tax base, and employment opportunities) is not primarily dependent on the city and its immediately adjacent urbanized areas.

§ 4284.505 Applicant eligibility.

(a) Grants may be made to public bodies or nonprofit institutions.

(b) Grants may be made for technology and cooperative development in ''rural areas.'' In determining whether an area is rural, the Agency will determine whether the area is urbanized or urbanizing and then the population density per square mile. All such density determinations will be made on the basis of minor civil division or census county division as used by the Bureau of the Census. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, and cemeteries or land set aside for such purposes will be excluded.

(c) An outstanding judgement obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive any grant or loan until the judgement is paid in full or otherwise satisfied. RBS grant funds may not be used to satisfy the judgement.

§§ 4284.506–4284.514 [Reserved]

§ 4284.515 Grant purposes.

Grant funds may be used to pay up to 75 percent of the costs for establishing or operating centers for rural technology or cooperative development. Applicant's contribution may be in cash or third party in-kind contribution in accordance with parts 3015, 3016 and 3019 of this title and must be from nonfederal funds except that a loan from another federal source can be used for the applicant's contribution. Grant funds may be used for, but are not limited to, the following purposes:

(a) Technology research, investigations, and basic feasibility studies in any field or discipline for the purpose of generating principles, facts, technical knowledge, new technology, or other information that may be useful to rural industries, cooperatives, agribusinesses, and other persons or entities in rural areas served by such centers in the development and commercialization of new products, processes, or services.

(b) The collection, interpretation, and dissemination of principles, facts, technical knowledge, new technology, or other information that may be useful to rural industries, cooperatives, agribusinesses, and other persons or entities in rural areas served by the center in the development and commercialization of new products, processes, or services.

(c) Providing training and instruction for individuals residing in rural areas served by the center with respect to the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of new products, processes, or services.

(d) Providing loans and grants to individuals, small businesses and cooperatives in rural areas for purposes of generating, evaluating, developing and commercializing new products, processes, or services.

(e) Providing technical assistance and advisory services to individuals, small businesses, cooperatives, and industries in rural areas served by the center for purposes of developing and commercializing new products, processes, or services.

(f) Providing research and support to individuals, small businesses, cooperatives, and industries in rural areas served by the center for purposes of developing new agricultural enterprises to add value to on-farm production through processing or marketing.

(g) Paying up to 75 percent of the administrative costs of the applicant in carrying out its projects.

(h) Equipment and materials necessary to carry out other eligible grant purposes under this section.

§ 4284.516 Ineligible grant purposes.

Grant funds may not be used to:

(a) Pay more than 75 percent of project costs.

(b) Pay more than 75 percent of administrative costs.

(c) Duplicate current services or replace or substitute support previously provided.

(d) Pay costs of preparing the application package for funding under this program.

(e) Pay costs incurred prior to the effective date of the grant made under this subpart.

(f) Pay for building construction or the purchase of real estate or vehicles; improving or renovation of office space; or repair or maintenance of privately-owned property.

(g) Fund political activities.

(h) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

§§ 4284.517–4284.526 [Reserved]

§ 4284.527 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, and national origin as outlined in subpart E of part 1901 of this title. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap; the requirements of the Age Discrimination Act of 1975 which prohibits discrimination on the basis of age; and title III of the Americans with Disabilities Act, Pub. L. 101–336, which prohibits discrimination on the basis of disability by private entities in places of public accommodations.

(b) *Environmental requirements.*

(1) *General applicability.* Unless specifically modified by this section, the requirements of subpart G of part 1940 of this title apply to this subpart. For example, the Agency's general and specific environmental policies contained in §§ 1940.303 and 1940.304 of subpart G of part 1940 of this title must be met. Although the purpose of the grant program established by this subpart is to improve business, industry, and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmland and forest lands, prime rangelands, wetland, and flood plains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans and projects that minimize the potential to adversely impact on the environment.

(2) *Technical assistance.* An application for a technical assistance project is generally excluded from the environmental review process by § 1940.333 of subpart G of part 1940 of this title. However, as further specified in that section, the grantee of a technical assistance grant, in the process of providing technical assistance, must consider and generally document within their plans the potential environmental impacts of the plan and recommendations provided to the recipient of the technical assistance.

(3) *Applications for grants to provide financial assistance to third-party recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA 1940–20, ''Request for Environmental Information,'' for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. The Agency will review the preapplication, supporting materials, and any required Forms FmHA 1940–20 and initiate an appropriate environmental review for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time from the information submitted. Because the Agency's approval of this type of grant application does not constitute a commitment to the use of grant funds for any identified third-party projects (see § 4284.541 of this subpart), no public notification requirements will apply to the preapplication. After the grant is approved, each third-party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this title prior to the Agency providing its consent to the grantee to assist the third-party project. If the preapplication reflects only one specific project which is specifically identified as the third-party recipient for financial assistance, the Agency may perform the appropriate environmental assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements .

(c) *Government wide debarment and suspension (non-procurement) and requirements for drug-free workplace.* Persons who are disbarred or suspended are excluded from federal assistance and benefits including grants under this subpart. Grantees must certify that they will provide a drug free workplace. See part 3017 of this title and FmHA Instruction 1940–M (available in any RECD State Office) for further guidance.

(d) *Restrictions on lobbying.* All grants must comply with the lobbying restrictions set forth in part 3018 of this title.

(e) *Excess capacity or transfer of employment.*

(1) If a proposed grant is for more than $1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide written support for an Agency determination that the proposal will not result in a project which is calculated to, or likely to, result in:

(i) The transfer of any employment or business activity from one area to another (this limitation will not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations, or

(ii) An increase in the production of goods, materials, or commodities or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. The applicant's written support will consist of a resolution from the applicant and Form FmHA 449–22, ''Certification of Non-Relocation and Market and Capacity Information Report,'' from each existing and future occupant of the site. The applicant may use Guide 2 of subpart G of part 1942 of this title (available in any RECD State Office) as an example in preparing the resolution. Future occupants of the site must be certified by the Department of Labor (DOL) as outlined in paragraph (e)(3) of this section for a period of 3 years after the initial certification by DOL.

(2) [Reserved]

(3) Grants shall not be made if the Secretary of Labor certifies within 30 days after the matter has been submitted by the Secretary of Agriculture that the provisions of paragraph (e) (1) of this section have not been met. Information for obtaining this certification will be submitted, in writing, by the applicant to RECD. Grant approval may be given and funds may be obligated, subject to the DOL certification being received, provided RBS has made its own separate determinations of paragraphs (e) (1) (i) and (ii) of this section when applicable.

(f) *Management assistance.* Grant recipients will be supervised, as necessary, to ensure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under, and are subject to, parts 3015, 3016, 3017 and 3019 of this title, as appropriate, and established RBS guidelines.

(g) *National Historic Preservation Act of 1966.* All projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with subpart F of part 1901 of this title.

(h) *Uniform Relocation Assistance and Real Property Acquisition Policies Act.* All projects must comply with the requirements set forth in part 21 of this title.

(i) *Flood plains and wetlands.* All projects must comply with Executive Order 11988, ''Flood Plain Management,'' and Executive Order 11990, ''Protection of Wetlands.''

(j) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, flood or mudslide insurance must be provided.

(k) *Termination of Federal requirements.* Once the grantee has provided assistance with project loans in an amount equal to the grant provided by RBS, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the RTCDG funds. Such new projects shall not be considered as being derived from federal funds. The purposes of such new projects , however, shall be consistent with these regulations.

(l) *Intergovernmental review.* Grant projects are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. A loan fund established in whole, or in part, with grant funds will also be considered a project for the purpose of intergovernmental review as well as the specific projects funded with grant funds from the RTCDG funds. For each project to be assisted with a grant under this subpart and which the state has elected to review under their intergovernmental review process, the state point of contact must be notified. Notification, in the form of a project description, can be initiated by the grantee. Any comments from the state must be included with the grantee's request to use RBS grant funds for the specific project. Prior to RBS's decision on the request, compliance with requirements of intergovernmental consultation must be demonstrated for each project. These requirements should be completed in accordance with ''Intergovernmental Review of Department of Agriculture Programs and Activities,'' subpart V of part 3015 of this title (see FmHA Instruction 1940–J, available in any RECD State Office).

§ 4284.528 Application processing.

(a) *Preapplications.*

(1) Applicants will file an original and one copy of Standard Form (SF)–424.1, ''Application for Federal Assistance (For Non-construction),'' with the appropriate RECD State Office. This form is available in any RECD State Office.

(2) All preapplications shall be accompanied by:

(i) Evidence of applicant's legal existence and authority to perform the proposed activities under the grant.

(ii) Latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include a balance sheet and an income statement. A current audit report is preferred where one is reasonably obtainable.

(iii) Estimated breakdown of total costs, including costs to be funded by the applicant as well as other sources. Other sources should be identified. Certification must be provided from the applicant that its matching share to the project is available and will be used for the project. The matching share must meet the requirements of parts 3015, 3016 and 3019 of this title. Certifications from an authorized representative of each source of funds must be provided indicating that funds are available and will be used for the proposed project.

(iv) Budget and description of the accounting system in place or proposed.

(v) Area to be served, identifying each government unit, i.e., town, county, etc., if affected by the proposed project and evidence of support and concurrence in the proposed project from the affected local governmental bodies as evidenced by a resolution or a written statement from the chief elected local official.

(vi) Evidence that the proposed project will serve or have the potential to serve economically distressed areas supported by established official independent sources of data which are sufficient to verify the extent to which economically distressed conditions exist. (Preference will be given in selecting projects demonstrating their ability to effectively serve rural areas with few rural industries and agribusinesses, high levels of unemployment or underemployment, high rates of outmigration of people, businesses, and industries, or low levels of per capita income).

(vii) A listing of businesses to be assisted.

(viii) Applicant's experience, including experience of key staff members and persons who will be providing the proposed services and managing the project.

(ix) The number of months duration of the project or service and the estimated time it will take from grant approval to beginning of service.

(x) Method and rationale used to select the areas or businesses that will receive the service.

(xi) Brief description of how the work will be performed and whether organizational staff, consultants or contractors will be used.

(xii) Evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished.

(xiii) A brief plan which contains the following provisions and describes how the applicant will meet those provisions:

(A) A provision that substantiates that the applicant will effectively serve rural areas in the United States.

(B) A provision that the primary objective of the applicant will be to improve the economic condition of rural areas by promoting the development (through technological innovation, cooperative development, and adaptation of existing technology) and commercialization of:

(*1*) New services and products that can be produced or provided in rural areas;

(*2*) New processes that can be utilized in the production of products in rural areas; and

(*3*) New enterprises that can add value to on-farm production through processing or marketing.

(C) Copies of the established official independent sources of data need to be included in the plan along with any documentation that more fully explains the date produced, methodology, source, or interpretation of the data.

(D) A description of the activities that the applicant will carry out to accomplish such objective.

(E) A description of the proposed activities to be funded under this subpart.

(F) A description of the contributions that the applicant's proposed activities are likely to make to the improvement of the economic conditions of the rural areas served by the applicant.

(G) Provisions that the applicant, in carrying out its activities, will seek, where appropriate, the advice, participation, expertise, and assistance

of representatives of business, industry, educational institutions, the federal government, and state and local governments.

(H) Provisions that the applicant will consult with any college or university administering Extension Service programs and cooperate with such college or university in the coordination of the center's activities and programs.

(I) Provisions that the applicant will take all practicable steps to develop continuing sources of financial support for the center, particularly from sources in the private sector.

(J) Provisions for:

(*1*) Monitoring and evaluating its activities; and

(*2*) Accounting for money received and expended by the institution under this subpart.

(K) Provisions that the applicant will provide for the optimal application of technology and cooperative development in rural areas, especially those areas adversely affected by agricultural economic conditions, through the establishment of demonstration projects and subcenters for:

(*1*) Rural technology development where the technology can be implemented by communities, community colleges, businesses, cooperatives, and other institutions; or

(*2*) Cooperative development where such development can be implemented by cooperatives to improve local economic conditions.

(xiv) If grant funds are to be used for the purpose of making loans or grants to individuals, small businesses, or cooperatives (ultimate recipients) in rural areas for eligible purposes under this subpart, the preapplication must include the agreement proposed to be used between the applicant and the ultimate recipients which includes the following:

(A) An assurance that the responsibilities of the grantee, as a recipient of grant funds under this subpart, are passed on to the ultimate recipient and the ultimate recipient understands its responsibilities to comply with the requirements set forth in this subpart, including parts 3015, 3016, and 3019 of this title.

(B) Provisions that the ultimate recipient will comply with debarment and suspension requirements contained in part 3017 of this title and will execute Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

(C) Provisions that the ultimate recipient will execute Forms FmHA 400–1, ''Equal Opportunity Agreement,'' and FmHA 400–4, ''Assurance Agreement.''

(D) Documentation that the ultimate recipient understands its responsibilities to the applicant.

(E) Documentation that the applicant understands its responsibilities in monitoring the ultimate recipient's activities under the grant and the applicant's plan for such monitoring.

(F) Documentation when other references or sources of information are used, along with copies if possible, to provide dates, addresses, page numbers and explanations of how interpretations are made to substantiate that such things as economically distressed conditions do exist.

(G) Narrative addressing all items in § 4284.540 (a) of this subpart regarding grant selection criteria.

(b) *Applications.* Upon notification that the applicant has been selected for funding, the following will be submitted to the RECD by the applicant:

(1) SF 424.1, ''Application for Federal Assistance (for Non-construction)''.

(2) Proposed scope of work, detailing the proposed activities to be accomplished and time frames for completion of each activity.

(3) Proposed budget, including source and amount of applicant contribution and any other funding sources for the proposed project.

(4) Other information requested by RECD to make a grant award determination.

(c) *Applicant response.* If the applicant fails to submit the application and related material by the date shown on the notice, RECD may discontinue consideration of the preapplication.

§§ 4284.529–4284.539 [Reserved]

§ 4284.540 Grant selection criteria.

Grants will be awarded under this subpart on a competitive basis. The priorities described in this paragraph will be used by RBS to rate preapplications. Preference will be given to applicants demonstrating factors in paragraphs (a) (4) and (5) of this section. RBS' review of preapplications will include the complete preapplication package submitted to the RECD State Office. Points will be distributed according to ranking as compared with other preapplications on hand. Recognizing that a wide variety of individual strategies and approaches may be used to promote economic development and that specific needs vary according to geographic region and over time, the Agency has determined to publish an informational notice annually in the Federal Register which will contain those objective strategies or approaches, consistent with this subpart with weighted priorities, that the Agency wishes to emphasize during that year. The notice will establish the period of time that the Agency will accept preapplications for consideration of that fiscal year's funding.

(a) The selection criteria are as follows:

(1) Likelihood of project being effective in achieving one or more of the following: technological innovation, adaptation of existing technology, cooperative development, commercialization of new services and products, and promotion of new processes and enterprises.

(2) Innovativeness or originality of project in addressing authorized grant purposes.

(3) Experience, organizational skills, and background that are needed for applicant to successfully carry out project.

(4) Transferability or demonstration value of project to help rural areas outside of project area.

(5) Ability of project to contribute to the improvement of economic conditions in rural areas with one or more of the following: few rural industries and agribusinesses; high levels of unemployment or underemployment; high rates of outmigration of people, businesses, industries; and low levels of per capita income.

(6) The Administrator may award discretionary points to focus on geographical distribution, interagency cooperation or other appropriate factors.

(b) Each preapplication for assistance will be carefully reviewed in accordance with the priorities established in this section. A priority rating will be assigned to each preapplication. Preapplications selected for funding will be based on the priority rating assigned each preapplication and the total funds available. All preapplications submitted for funding should contain sufficient information to permit RBS to complete a thorough priority rating.

§ 4284.541 Grant approval, fund obligation, grant closing, and third-party financial assistance.

The grantee will execute all documents required by the Agency to make a grant under this subpart.

§§ 4284.542–4284.556 [Reserved]

§ 4284.557 Fund disbursement.

Grants will be disbursed as follows:

(a) An SF–270, ''Request for Advance or Reimbursement,'' will be completed by the applicant and submitted to RECD

not more frequently than monthly. The grantee will only be reimbursed for allowable costs incurred.

(b) [Reserved]

(c) The grantee's share in the cost of the project will be disbursed in advance of grant funds or on a pro-rata distribution basis with grant funds during the disbursement period. The grantee may not provide its contribution at the end of the grant period.

§ 4284.558 Reporting.

An SF–269, ''Financial Status Report,'' and a project performance activity report will be required of all grantees on a quarterly basis. A final project performance report will be required with the last SF–269. The final report may serve as the last quarterly report. The final report must include a final evaluation of the project. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to RECD. The project performance reports shall include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives (if any) were not met;

(c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetable established for the next reporting period.

§§ 4284.559–4284.570 [Reserved]

§ 4284.571 Audit requirements.

The grantee will provide an audit report in accordance with § 1942.17 of subpart A of part 1942 of this title. The audit requirements only apply to the years in which grant funds are received. Audits must be prepared in accordance with general accounting principles and standards using the publication, ''Standards for Audit of Governmental Organizations, Programs, Activities and Functions.''

§ 4284.572 Grant servicing.

Grants will be serviced in accordance with subpart E of part 1951 of this title.

§ 4284.573 Programmatic changes.

The grantee shall obtain prior approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope or budget can result in suspension or termination of grant funds.

§ 4284.574 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements set forth in this subpart.

§ 4284.575 Grant suspension, termination, and cancellation.

Grants may be canceled by RBS by written notice. Grants may be suspended or terminated for cause or convenience in accordance with parts 3015, 3016, and 3019 of this title.

§§ 4284.576–4284.586 [Reserved]

§ 4284.587 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law, or a decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's financial interest and shows how the adverse impact will be eliminated or minimized if the exception is made.

§§ 4284.588–4284.599 [Reserved]

§ 4284.600 OMB control number.

The reporting and record keeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0006. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 8 hours per response, with an average of 1.85 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250, and to the Office of Management and Budget, Paperwork Reduction Project (OMB#0570–0006), Washington, D.C. 20503.

Dated: January 3, 1996.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 96–1578 Filed 2–1–96; 8:45 am]

BILLING CODE 3410–32–U

Economics Management Staff

7 CFR Part 4001

Availability of Information

AGENCY: Economics Management Staff, USDA.

ACTION: Final rule.

SUMMARY: This document removes the regulations of the Economics Management Staff (EMS) regarding the availability of information to the public in accordance with the Freedom of Information Act (FOIA) to reflect an internal reorganization of the Department of Agriculture (USDA).

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Stasia A.M. Hutchison, FOIA Coordinator, Information Staff, Agriculture Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770, Telephone (301) 344–2207.

SUPPLEMENTARY INFORMATION: The FOIA (5 U.S.C. 552(a)(1) requires Federal agencies to publish in the Federal Register regulations describing how the public may obtain information from the agency. Part 4001 of Title 7, Code of Federal Regulations, was issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR Part 1, Subpart A, implementing FOIA.

Pursuant to an internal reorganization of USDA, EMS has been abolished. This document removes 7 CFR Part 4001. Requests for information relating to EMS may be obtained through the FOIA Coordinator for ARS pursuant to 7 CFR Part 1, Subpart A, and 7 CFR Part 510.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply.

List of Subjects in 7 CFR Part 4001

Freedom of information.

Accordingly, under the authority of U.S.C. 301 and 552, Part 4001 is removed.

Done at Washington, DC, this 29th day of January 1996.

Catherine E. Woteki,

Deputy Under Secretary, Research, Education and Economics.

[FR Doc. 96–2068 Filed 2–1–96; 8:45 am]

BILLING CODE 3410–03–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 709 and 741

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: This interim rule authorizes credit unions serving predominantly low-income members to raise secondary capital from foundations and other philanthropic-minded institutional investors. Increased capital will in turn enable these credit unions to make more loans and improve other financial services for the limited income groups and communities they serve.

This rule establishes a new section in NCUA's Regulations providing authority for secondary capital accounts and amending existing regulatory provisions concerning designation of low-income status. The rule also amends an existing rule to address the authority of federally insured state credit unions to issue secondary capital accounts, and amends another rule to establish that secondary capital accounts are paid after all other claims in the event of liquidation.

Secondary capital accounts will not be issued as share accounts and will not establish voting or ownership rights. The applicability of this rule is limited to credit unions having a low-income designation from NCUA or the appropriate state regulator.

DATES: The interim rule is effective January 25, 1996. Comments must be received on or before April 1, 1996.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518–6480. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Joyce Jackson, Special Assistant, Office of Community Development Credit Unions, at the above address or telephone (703) 518–6610, or David Marquis, Director, Office of Examination and Insurance, or Stephen Austin, Director of the Department of Supervision, Office of Examination and Insurance, both at the above address or telephone (703) 518–6360, or Robert M. Fenner, General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

As of November, 1995, there were 260 federally insured credit unions designated by NCUA or the appropriate state regulator as serving predominantly low-income members. Like other credit unions serving members of limited financial means, these credit unions perform an important mission of providing loans and other financial services to individuals and communities who most need these services and most often do not have them available from other sources. Like all insured credit unions, the low-income designated credit unions are, as a group, quite healthy and financially strong. For example, the average net capital ratio for low-income designated credit unions as of May, 1995 was 9.8 percent.

Individual low-income designated credit unions find it difficult, however, in view of the limited resources of their members, to accumulate capital. (As cooperatives, credit unions build their primary capital—statutory reserves—solely by setting aside a portion of their income each accounting period.) To ease this burden, and to facilitate an additional opportunity for low-income designated credit unions to build capital that will support greater lending and financial services in their communities, the NCUA Board is issuing this interim final rule authorizing secondary capital accounts. These capital accounts, to the extent that low-income designated credit unions choose to offer them, will supplement rather than reduce existing statutory reserve requirements.

Overview

The Board has established certain key safety and soundness elements in this interim rule to ensure both that secondary capital accounts serve the purpose of capital—i.e. that they are available to absorb loss and thus prevent losses to members or the failure of the institution—and that there is no misunderstanding on the part of investors as to the nature of the accounts and the risks involved. Included are the following:

- The accounts may be offered only to organizational investors, not to natural person members or other natural person investors.
- The accounts are subordinate to all other claims on the assets of the credit union.
- The accounts are not insured by the National Credit Union Share Insurance Fund or any other government entity, and may not be offered as share accounts. It is anticipated that credit unions will issue these accounts as a form of subordinated debt.
- Funds in the accounts must be available to cover losses, after depletion of reserves and undivided earnings, but prior to liquidation of the credit union.
- The accounts must have a minimum maturity of five years.
- These and other key provisions must be reflected in an account agreement and in disclosures prescribed as an Appendix to the interim rule.
- When the remaining maturity of a secondary capital account is less than five years, the credit union will reflect through a footnote to its financial statement, and NCUA will recognize, the capital value of the account as a percentage of the account's face value, on a sliding scale ranging from 80% of face value (four years to less than five years remaining maturity) to zero (less than one year remaining maturity).

Additional Explanation of Amendments

This interim rule contains four separately numbered amendments. The following is an additional explanation of each.

Amendment 1 removes from Section 701.32 of NCUA's rules the provisions concerning designation of low-income status. Those provisions are now placed in new Section 701.34. As a result, Section 701.32 now deals solely with the limitations on federally insured credit unions receiving nonmember shares above certain levels without prior NCUA approval. Such shares include public unit shares in all federally insured credit unions and other nonmember shares in the case of low-income designated credit unions. Section 701.34 contains the provisions related solely to low-income designated credit unions: The rules concerning designation of low-income status and the new provisions concerning receipt of secondary capital accounts.

Because secondary capital accounts are not share accounts, they are not subject to the Section 701.32 limitations. A reference in Section 701.32(b)(1) to ''accounts'' is replaced

with ''shares'' to eliminate any possible confusion over the fact that Section 701.32 is limited in its applicability to nonmember *share* accounts.

Amendment 2 establishes the new Section 701.34. Section 701.34(a) contains the provisions concerning designation of low-income status, Section 701.34(b) contains the provisions authorizing secondary capital accounts and setting forth the terms and conditions for these accounts, and Section 701.34(c) establishes the sliding scale capital values for accounts with remaining maturities of less than five years.

As previously discussed, the Board has established a number of requirements in this interim rule to ensure both that these accounts actually serve as capital and that there is no misunderstanding on the part of investors as to the risks involved. A credit union offering these accounts must adopt a written plan addressing how the credit union will use the funds and how the credit union will meet liquidity needs to repay the funds upon maturity. The plan must be submitted to the appropriate NCUA Regional Director. The submission is for purposes of notice to NCUA; the credit union need not await NCUA approval.

Other requirements include that the accounts may be offered only to nonnatural person investors, that the accounts have a minimum maturity of five years, that they are not insured, that they may not be provided as security on other obligations of the accountholder, that the accounts will not ''carry over'' in the event of merger into a credit union that is not low-income designated, that claims represented by these accounts are subordinate to all other claims on the credit union, and that they are available to cover losses. The accounts may not be offered as share accounts. Lowincome designated Federal credit unions that choose to offer these accounts will do so pursuant to their borrowing authority, and this will presumably be the case for federally-insured state chartered credit unions as well, depending on their authority under state law.

Funds in secondary capital accounts must be available to cover losses in an *operating* credit union, i.e. the funds are available without having to liquidate the credit union. The funds must be available to cover losses that exceed available ''reserves and undivided earnings''. For this purpose, reserves and undivided earnings are *exclusive* of all allowance accounts for loan and investment losses, inasmuch as such allowance accounts are already earmarked to cover other anticipated losses.

To avoid overreliance on the availability of these temporary accounts to cover future operating losses, the rule establishes a declining scale for the capital value of accounts with less than five years remaining maturity. (All of the funds, however, will continue to be at risk to cover losses that exceed reserves and undivided earnings.) Accounts with remaining maturities of at least four years but less than five are counted as capital at 80 percent of face value, remaining maturities of at least three but less than four years are counted at 60 percent, and so on, to the point of less than one year remaining maturity, where the account reflects no capital value. In addition to preventing overstatement of the true value of these accounts as continuing capital, this feature will encourage credit unions to continually replenish their sources of maturing secondary capital to the extent such funds are needed to support ongoing lending programs and other operations. The reduced capital value of the accounts will be shown through a footnote to the credit union's financial statement.

The interim rule sets forth prescribed disclosures, as Appendix A to section 701.34, that must be provided to investors in secondary capital accounts, and requires that signed originals of the disclosure and account agreement be retained by the credit union at least for the life of the agreement.

Amendment 3 updates NCUA's regulatory provisions for federally insured state credit unions related to low-income designation and receipt of secondary capital accounts. This amendment revises Part 741 *Requirements for Insurance* by adding a new 741.204(c) and making conforming amendments to Section 741.204(b). The new 741.204(c) establishes that state chartered federally insured credit unions may offer secondary capital accounts on the same terms and conditions as Federal credit unions, as long as the credit union has a low-income designation pursuant to 741.204(b) and the accounts are not inconsistent with state law or regulation. State chartered credit unions must submit their plan to both the Regional Director and their state supervisor, and should coordinate with the state supervisor to confirm that these accounts are permissible under state law and to determine whether preapproval of the state supervisor is required.

Amendment 4 revises Section 709.5 *Payout Priorities in Involuntary Liquidation* by adding a new Section 709.5(b)(8) to establish that secondary capital accounts in low-income designated credit unions are paid after all other claims in the event of involuntary liquidation. Also, Section 709.5(e) is revised to specify that, in the unlikely event of a liquidation surplus, secondary capital holders would be repaid before payment of a liquidation dividend.

Effective Date; Interim Rule; Comment Period

Although this amendment is being issued as an interim final rule and is effective immediately, the NCUA Board encourages credit unions to submit comments. Comments may be submitted on or before April 1, 1996.

Because this rule provides a new authority to low-income designated credit unions and use of the authority is voluntary, the NCUA Board finds that good cause exists for an immediate effective date. Moreover, the Board finds it necessary and appropriate to act quickly in this matter in order to allow credit unions an additional avenue to meet the matching fund requirements established by the Community Development Financial Institutions (CDFI) Fund. 60 FR 54110, 54112 (October 19, 1995).

Institutions, including credit unions, seeking funds under the CDFI Program are to submit applications to CDFI by January 29, 1996. NCUA is aware of several low-income credit unions that have submitted or will submit applications to CDFI. CDFI will in turn grant funding in the form of loans, deposits/shares, or capital grants to qualifying institutions. However, one of the major qualifications of the CDFI Program is the requirement that the institution ''obtain matching funds from sources other than the Federal government.'' 60 FR at 54112. Institutions must have ''firm commitments for the matching funds requirements * * * not later than July 1, 1996.'' 60 FR 54136.

This interim rule will provide low-income credit unions that have applied for CDFI funds with a method of raising secondary capital that may be counted as matching funds for either capital grants or loans, depending on the approach ultimately followed by the CDFI Fund. If this was a proposed rule and not an interim rule with an immediate effective date, federally-insured credit unions would have a very limited window of opportunity from the date of a final rule to solicit secondary capital funds. Any delay in the effective date of this rule is contrary to the best interests of federally-insured credit

unions which qualify under the CDFI Program.

Request for Comments

Although this interim rule is effective immediately, the NCUA Board welcomes comment on any aspect of the rule. After the close of the comment period and analysis of the comments, the Board will determine whether any changes in the rule are necessary or appropriate.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that this rule will not have a significant impact on a substantial number of small credit unions. The rule affects only low-income designated credit unions, and imposes no mandatory regulatory burden on those credit unions. Rather, it increases flexibility by providing a new method of raising capital through secondary capital accounts. Accordingly, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the requirements that low-income designated credit unions choosing to offer secondary capital accounts must adopt a written plan, send a copy of the plan to their NCUA Regional Director, and have account contract documents and disclosure forms constitute collection of information requirements under the Paperwork Reduction Act of 1995. The Paperwork Reduction Act and regulations of the Office of Management and Budget (OMB) require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information. NCUA believes that these requirements are essential both to ensure the safe and sound operation of a secondary capital program and to ensure that account holders fully understand the nature of their investment in the credit union and the risks involved.

NCUA estimates that the increase in paperwork requirements will affect less than 50 credit unions. The requirements will affect only those credit unions that have a low-income designation and voluntarily choose to offer secondary capital accounts. NCUA estimates that it should reasonably take no more than three hours to comply with the paperwork requirements. This translates to 150 burden hours. The NCUA Board invites comment on: (1) Whether the collection of information is necessary for the proper performance of the functions of NCUA, including whether the information will have practical utility; (2) the accuracy of NCUA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Suzanne Beauchesne, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Comments should be postmarked by April 2, 1996.

NCUA will, after 60 days from the effective date of the interim rule, submit the paperwork requirements to OMB for review under the Paperwork Reduction Act and publish a notice to that effect in the Federal Register. NCUA will also publish a notice in the Federal Register once OMB takes action on the submission. Federally insured credit unions are not required, pursuant to the terms of the Paperwork Reduction Act, to comply with paperwork requirements until OMB approval and an OMB control number are received. Low-income designated credit unions that choose to offer secondary capital accounts will be expected, however, as a matter of safety and soundness, to adopt written plans, forward a copy of the credit union's plan to the Regional Director (and state supervisor in the case of state credit unions) and use account contract documents and disclosure forms that meet the requirements of this rule in every respect. Failure to do so may jeopardize the ability of low-income designated credit unions to use this authority pending completion of the rulemaking process.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effects of its actions on state interests. This rule has no adverse effects on state interests. The rule provides additional authority for federally insured state chartered credit unions, but only to the extent not inconsistent with state law and regulations. The NCUA Board, however, specifically requests the comments of State credit union regulators to obtain their guidance in how the rule may affect their credit unions.

List of Subjects in 12 CFR Parts 701, 709 and 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 25, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.32 is amended by revising the section heading and paragraphs (a) and (b)(1) to read as follows:

§ 701.32 Payment on shares by public units and nonmembers.

(a) *Authority.* A Federal credit union may, to the extent permitted under Section 107(6) of the Act and this section, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those terms are defined in § 745.1) and nonmember credit unions, and to the extent permitted under the Act, this section and § 701.34, receive payments on shares (regular shares, share certificates, and share draft accounts) from other nonmembers.

(b) *Limitations.* (1) Unless a greater amount has been approved by the Regional Director, the maximum amount of all public unit and nonmember shares shall not, at any given time, exceed 20% of the total shares of the federal credit union or $1.5 million, whichever is greater.

* * * * *

3. Section 701.34 is added by redesignating paragraph (d) of § 701.32 as paragraph (a) of § 701.34, by revising the third sentence of newly designated paragraph (a)(1) and by adding new paragraphs (b) and (c) and an Appendix as follows:

§ 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

(a) *Designation of low-income status.* (1) * * * The designation may be removed by the Regional Director upon notice to the federal credit union if the definitions set forth in paragraphs (a)(2)

and (3) of this section are no longer met. * * *

* * * * *

(b) *Receipt of secondary capital accounts by low-income designated credit unions.* A Federal credit union having a designation of low income status pursuant to paragraph (a) of this section may offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers on the following conditions:

(1) Prior to offering secondary capital accounts, the credit union shall adopt, and forward to the appropriate NCUA Regional Director, a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts.

(2) The secondary capital account must be established as a subordinated debt account or other form of non-share account.

(3) The maturity of the secondary capital account must be for a minimum of five years.

(4) The secondary capital account must not be redeemable prior to maturity.

(5) The secondary capital account shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

(6) The secondary capital account holder's claim against the credit union must be subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund.

(7) Funds in the secondary capital account (including both principal and interest) must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings (i.e., reserves and undivided earnings exclusive of allowance accounts for loan and investment losses), and to the extent funds are so used, the credit union shall under no circumstances restore or replenish the account. Losses shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

(8) The secondary capital account may not be pledged or provided by the account-holder as security on a loan or other obligation with the credit union or any other party.

(9) In the event of merger or other voluntary dissolution of the credit union, other than merger into another low-income designated credit union, the secondary capital accounts will, to the extent they are not needed to cover losses at the time of merger or dissolution, be closed and paid out to the account-holder.

(10) A secondary capital account contract agreement must be executed between an authorized representative of the account holder and the credit union accurately establishing the terms and conditions of this section and containing no provisions inconsistent therewith.

(11) A disclosure and acknowledgment as set forth in the Appendix to this section must be provided to and executed by an authorized representative of the secondary capital account holder at the time of entering into the account agreement, and original copies of the account agreement and the disclosure and acknowledgment must be retained by the credit union for the term of the agreement.

(c) *Accounting treatment; weighted value for purposes of recognizing capital value of secondary capital accounts.* A low-income designated credit union that issues secondary capital accounts pursuant to paragraph (b) of this section shall record the funds on its balance sheet in an equity account entitled ''secondary capital account''. For such accounts with remaining maturities of less than five years, the credit union shall reflect the capital value of the accounts in a footnote to its financial statement in accordance with the following scale:

1. Four to less than five years remaining maturity—80 percent.
2. Three to less than four years remaining maturity—60 percent.
3. Two to less than three years remaining maturity—40 percent.
4. One to less two years remaining maturity—20 percent.
5. Less than one year remaining maturity—0 percent

Appendix to § 701.34

Disclosures and acknowledgment in the following form must be provided to any investor in secondary capital accounts in a low-income designated credit union.

An original, signed copy must be retained by the credit union.

Disclosure and Acknowledgment

I, _____ (name of signatory), hereby acknowledge and agree to the following in my capacity as _____ (official position or title) of _____ (name of institutional investor):

- _____ (name of institutional investor) has committed _____ (amount of funds) to a secondary capital account with _____ (name of credit union).
- The funds committed to the secondary capital account are committed for a period of ____ years and are not redeemable prior to _____.
- The secondary capital account is not a share account and the funds committed to the secondary capital account are not insured by the National Credit Union Share Insurance Fund or any other governmental or private entity.

The funds committed to the secondary capital account and any interest paid to the account may be used by _____ (name of credit union) to cover any and all operating losses that exceed the credit union's net available reserves and undivided earnings (i.e., reserves and undivided earnings exclusive of allowance accounts for loan and investment losses), and in the event the funds are so used _____ (name of credit union) will under no circumstances restore or replenish those funds to _____ (organization).

- In the event of liquidation of _____ (name of credit union), the funds committed to the secondary capital account shall be *subordinate to all other claims* on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.

_____
(signature)

_____
(official title)

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

4. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1766; Public Law 101–73, 103 Stat. 183, 530 (1989) (12 U.S.C. 1787 *et seq.*).

5. Section 709.5 is amended by revising paragraphs (b)(6) and (b)(7), by adding a new paragraph (b)(8) and by revising the last sentence of paragraph (e) to read as follows:

§ 709.5 Payout priorities in involuntary liquidation.

(a) * * *

(b) * * *

(6) Shareholders to the extent of their respective uninsured shares and the National Credit Union Share Insurance Fund to the extent of its payment of share insurance;

(7) In a case involving liquidation of a corporate credit union, membership capital share deposits of corporate credit unions; and

(8) In a case involving liquidation of a low-income designated credit union, any outstanding secondary capital accounts issued pursuant to the authority of §§ 701.34 or 741.204(c) of this chapter.

* * * * *

(e) * * * If a surplus remains after making distribution in full on all allowed claims described in paragraphs (b)(1) through (b)(8) of this section, such

surplus shall be distributed pro rata to the credit union's shareholders.

PART 741—REQUIREMENTS FOR INSURANCE

6. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790.

7. Section 741.204 is amended by revising the third sentence of paragraph (b) and adding a new paragraph (c) to read as follows:

§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.

* * * * *

(a) * * *

(b) * * * The designation will be made and reviewed by the state regulator on the same basis as that provided in § 701.34(a) of this chapter for federal credit unions. * * *

(c) Receive secondary capital accounts only if the credit has a low-income designation pursuant to paragraph (b) of this section, and then only in accordance with the terms and conditions authorized for Federal credit unions pursuant to § 701.34 of this chapter and to the extent not inconsistent with applicable state law and regulation. State chartered federally insured credit unions offering secondary capital accounts must submit the plan required by § 701.34 to both the state supervisory authority and the NCUA Regional Director.

[FR Doc. 96–2018 Filed 2–1–96; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–12–AD; Amendment 39–9506; AD 96–03–09]

Airworthiness Directives; De Havilland Model DHC–8–102, –103, –106, –301, –311, –314, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8 series airplanes, that requires modification of a certain battery temperature monitor. This amendment is prompted by reports of failure of the battery temperature monitor, which resulted in smoke in the flight compartment. The actions specified by this AD are intended to prevent failure of the battery monitor, which could result in smoke in the flight compartment.

DATES: Effective March 4, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8 series airplanes was published in the Federal Register on February 21, 1995 (60 FR 9647). That action proposed to require modification of a certain battery temperature monitor.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Since issuance of the NPRM, Transport Canada Aviation has issued Canadian airworthiness directive CF–94–22R1, dated June 30, 1995, which revises the effectivity of the original version of the Canadian airworthiness directive by adding Model DHC–8–315 series airplanes.

The FAA has revised the applicability of the final rule to include these additional airplanes. These additional airplanes currently are operated by non-U.S. operators under foreign registry; therefore, they are not affected directly by this AD action. However, the FAA considers that the revision to the applicability of the rule is necessary to ensure that the unsafe condition is addressed in the event that these subject airplanes are imported and placed on the U.S. Register in the future.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,220, or $60 per airplane.

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

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–03–09 De Havilland, Inc.: Amendment 39–9506. Docket 95–NM–12–AD.

Applicability: Model DHC–8–102, –103, –106, –301, –311, –314, and –315 series airplanes, serial numbers 003 through 389 inclusive; equipped with Ametek/Weston battery temperature monitor having part number (P/N) 522487; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the battery temperature monitor, which could result in smoke in the flight compartment, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the battery temperature monitor in accordance with de Havilland Service Bulletin S.B. 8–24–53, dated September 7, 1994.

(b) As of the effective date of this AD, no person shall install an Ametek/Weston battery temperature monitor, P/N 522487, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

(e) The modification shall be done in accordance with de Havilland Service Bulletin S.B. 8–24–53, dated September 7, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 4, 1996.

Issued in Renton, Washington, on January 25, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1873 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–274–AD; Amendment 39–9507; AD 96–03–10]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes. This action requires an inspection for damage of the fuel tube located in the forward engine strut, and repair, if necessary; installation of a new support bracket and clamps on the power feeder conduit; and an inspection for proper positioning of the power feeder conduit in each engine strut, and adjustment, if necessary. This amendment is prompted by reports of worn fuel tubes that were caused by the power feeder conduit moving and touching the fuel tube. The actions specified in this AD are intended to prevent wear of the fuel tube, which could result in a fuel leak in the engine strut and a consequent fire hazard.

DATES: Effective February 20, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 1996.

Comments for inclusion in the Rules Docket must be received on or before April 2, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–274–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2793; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Two operators of Boeing Model 747–400 series airplanes equipped with Rolls Royce engines have reported five incidents of worn engine fuel feed tubes found in the engine struts. In each case, the worn tube was found to be touching the engine power feeder cable conduit in the front of the engine strut. This touching created worn (chafed) areas on the fuel tubes; the worn areas were between 0.0055 and 0.014 inch deep. Investigation revealed that the currently-installed bracket and clamps for the power feeder conduit allow the conduit to rotate and consequently come into contact with the engine fuel feed tube. If this is not prevented, the conduit can wear a hole in the fuel tube, which could result in a fuel leak in the forward strut area. A fuel leak such as this, if not corrected, could pose a fire hazard.

Boeing has issued Alert Service Bulletin 747–28A2190, dated March 23, 1995, which describes procedures for inspecting the fuel tube in each strut for wear or damage, and repairing it, if necessary. It also describes procedures for installing a new support bracket and two new clamps on the power feeder

conduit in all four engine struts. The service bulletin also describes procedures for inspecting the power feeder conduit for proper positioning, and adjusting it to obtain maximum clearance between it and the fuel tube.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent a fuel leak in the forward engine strut. This AD requires (1) an inspection for wear of the fuel tube in the forward engine strut, and repair, if necessary; (2) the installation of a new support bracket and two new clamps on the power feeder conduit; and (3) an inspection for proper positioning of the power feeder conduit, and adjustment, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model 747–400 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. The cost of required parts would be $368 per airplane. Based on these figures, the cost impact of this AD would be $848 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–274–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–03–10 BOEING: Amendment 39–9507. Docket 95–NM–274–AD.

Applicability: Model 747–400 series airplanes equipped with Rolls Royce engines; as listed in Boeing Alert Service Bulletin 747–28A2190, dated March 23, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent a fuel leak in the forward engine strut, accomplish the following: (a) Within 90 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD in accordance with Boeing Alert Service Bulletin 747–28A2190, dated March 23, 1995:

(1) Inspect the fuel tube in each engine strut for wear and damage. Prior to further flight, repair any discrepancy found.

(2) Install a new support bracket and new clamps on the power feeder conduit in each engine strut.

(3) Inspect the engine power feeder cable conduit in the front of each engine strut for proper positioning. Prior to further flight, position the conduit to obtain the most clearance between it and the fuel tube.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

(d) The inspection and installation shall be done in accordance with Boeing Alert Service Bulletin 747–28A2190, dated March 23, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 20, 1996.

Issued in Renton, Washington, on January 25, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–1877 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 97

[Docket No. 28447; Amdt. No. 1707]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

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

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 26, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective February 29, 1996* * * *

Alturas, CA, Alturas Muni, GPS RWY 31, Orig
Oakland, CA, Metropolitan Oakland Intl, VOR/DME RWY 29, Orig
Ruston, LA, Ruston Rgnl, NDB RWY 18, Orig
Sulphur, LA, Southland Field, LOC RWY 15, Orig
Sulphur, LA, Southland Field, NDB RWY 15, Orig
Ruidoso, NM, Sierra Blanca Regional, LOC/DME RWY 24, Orig
Provo, UT, Provo Muni, VOR or GPS RWY 13, AMDT 1
Provo, UT, Provo Muni, ILS RWY 13, AMDT 4

* * * *Effective March 28, 1996* * * *

Venice, LA, Point in Space, COPTER LORAN RNAV 087, Orig, CANCELLED

* * * *Effective April 25, 1996* * * *

Stuttgart, AR, Stuttgart Muni, GPS RWY 18, Orig
Stuttgart, AR, Stuttgart Muni, GPS RWY 36, Orig
Boone, IA, Boone Muni, GPS RWY 14, Orig
Chariton, IA, Chariton Muni, GPS RWY 10, Orig
Sulphur, LA, Southland Field, GPS RWY 15, Orig
Farmington, MO, Farmington Regional, GPS RWY 2, Orig
Lake Ozark, MO, Lee C. Fine Memorial, GPS RWY 21, Orig
Monroe City, MO, Monroe City Regional, GPS RWY 27, Orig
Las Vegas, NM, Las Vegas Muni, GPS RWY 2, Orig
Las Vegas, NM, Las Vegas Muni, GPS RWY 20, Orig
Las Vegas, NM, Las Vegas Muni, GPS RWY 32, Orig
Roswell, NM, Roswell Industrial Air Center, GPS RWY 35, Orig
Taos, NM, Taos Muni, GPS RWY 4, Orig
Dumas, TX, Moore County, GPS RWY 19, Orig
Houston, TX, Houston Intercontinental, GPS RWY 26, Orig
Roosevelt, UT, Roosevelt Muni, GPS RWY 25, Orig

The FAA published Amendments in Docket No. 28408, Amdt. No. 1700 to Part 97 of the Federal Aviation Regulations (Vol 61 FR No. 7 Page 699, dated Wednesday, January 10, 1996) under Section 97.23 effective February 29, 1996 which are hereby rescinded:

West Milford, NJ, Greenwood Lake, VOR RWY 6, Orig
West Milford, NJ, Greenwood Lake, VOR or GPS–A, Amdt 3, CANCELLED

[FR Doc. 96–2253 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28448; Amdt. No. 1708]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

identification and the amendment number.

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (air).

Issued in Washington, DC, on January 26, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/19/96	DE	Wilmington	New Castle County	FDC 6/0510	VOR Rwy Amdt 5.
01/19/96	IA	Newton	Newton Muni	FDC 6/0490	ILS Rwy 32, Amdt 1.
01/19/96	KS	Washington	Washington County Memorial	FDC 6/0509	NDB–A Orig.
01/24/96	OR	Portland	Portland-Hillsboro	FDC 6/0569	VOR/DME or GPS–A, Orig.

[FR Doc. 96–2254 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28449; Amdt. No. 1709]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 26, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective FEB 29, 1996*

Rogers, AR, Rogers Municipal-Carter Field, VOR or GPS RWY 1, Amdt. 31 CANCELLED
Rogers, AR, Rogers Municipal-Carter Field, VOR RWY 1, Amdt 13
Magnolia, AR, Magnolia Muni, NDB or GPS RWY 35, Orig–A CANCELLED
Magnolia, AR, Magnolia Muni, NDB RWY 35, Orig–A
Bullhead City, AZ, Laughlin/Bullhead Intl, VOR/DME or GPS RWY 34, Orig CANCELLED
Bullhead City, AZ, Laughlin/Bullhead Intl, VOR/DME RWY 34, Orig
Flagstaff, AZ, Flagstaff Pulliam, VOR/DME or GPS RWY 21, Orig CANCELLED
Flagstaff, AZ, Flagstaff Pulliam, VOR/DME RWY 21, Orig
Ames, IA, Ames Muni, VOR or GPS RWY 31, Amdt 8A CANCELLED
Ames, IA, Ames Muni, VOR RWY 31, Amdt 8A
Tipton, IA, Mathews Memorial, VOR or GPS RWY 11, Amdt 2 CANCELLED
Tipton, IA, Mathews Memorial, VOR RWY 11, Amdt 2
Houma, LA, Houma-Terrebonne, VOR or GPS RWY 12, Amdt 4A CANCELLED
Houma, LA, Houma-Terrebonne, VOR RWY 12, Amdt 4A
New Orleans, LA, Lakefront, VOR or GPS RWY 18R, Amdt 3 CANCELLED
New Orleans, LA, Lakefront, VOR RWY 18R, Amdt 3
Grayling, MI, Grayling AAF, NDB or GPS RWY 14, Amdt 6 CANCELLED
Grayling, MI, Grayling AAF, NDB RWY 14, Amdt 6
Howell, MI, Livingston County, NDB or GPS RWY 13, Amdt 1 CANCELLED
Howell, MI, Livingston County, NDB RWY 13, Amdt 1
Kalamazoo, MI, Kalamazoo/Battle Creek Intl., VOR or GPS RWY 5, Orig CANCELLED
Kalamazoo, MI, Kalamazoo/Battle Creek Intl., VOR RWY 5, Orig
Kalamazoo, MI, Kalamazoo/Battle Creek Intl., VOR or GPS RWY 23, Amdt 17 CANCELLED
Kalamazoo, MI, Kalamazoo/Battle Creek Intl., VOR RWY 23, Amdt 17 CANCELLED
St Charles, MO, St Charles County Smartt, VOR or GPS RWY 18, Orig CANCELLED
St Charles, MO, St Charles County Smartt, VOR RWY 18, Orig
Sedalia, MO, Sedalia Memorial, NDB or GPS RWY 18, Amdt 7B CANCELLED
Sedalia, MO, Sedalia Memorial, NDB RWY 18, Amdt 7B
Hastings, NE, Hastings Muni, VOR or GPS RWY 14, Amdt 16 CANCELLED
Hastings, NE, Hastings Muni, VOR RWY 14, Amdt 16
Silver City, NM, Grant County, NDB or GPS RWY 26, Amdt 3 CANCELLED

Silver City, NM, Grant County, NDB RWY 26, Amdt 3
Sullivan, MO, Sullivan Regional, NDB or GPS RWY 24, Orig CANCELLED
Sullivan, MO, Sullivan Regional, NDB RWY 24, Orig
Rugby, ND, Rugby Muni, NDB or GPS RWY 30, Amdt 4 CANCELLED
Rugby, ND, Rugby Muni, NDB RWY 30, Amdt 4
Ponca City, OK, Ponca City Muni, VOR/DME RNAV or GPS RWY 35, Amdt 2 CANCELLED
Ponca City, OK, Ponca City Muni, VOR/DME RNAV RWY 35, Amdt 2
Burlington/Mount Vernon, WA, Burlington/Skagit Regional-Bay View, NDB or GPS RWY 10, Amdt 2 CANCELLED
Burlington/Mount Vernon, WA, Burlington/Skagit Regional-Bay View, NDB RWY 10, Amdt 2.

[FR Doc. 96–2255 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 22

Guides for the Hosiery Industry

AGENCY: Federal Trade Commission.

ACTION: Rescission of the guides for the hosiery industry.

SUMMARY: The Federal Trade Commission (the ''Commission''), as part of its periodic review of all its guides and rules, announces that it has concluded a review of its Guides for the Hosiery Industry (''Guides'' or ''Hosiery Guides''). The Commission has decided to rescind the Guides.

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Ann Stahl Guler, Investigator, Federal Trade Commission, Los Angeles Regional Office, 11000 Wilshire Blvd., Suite 13209, Los Angeles, CA 90024, (310) 235–7890.

SUPPLEMENTARY INFORMATION:

I. Background

The Hosiery Guides were issued by the Commission in 1979.[1] The Guides concerned deceptive advertising and marketing of all hosiery industry products, including stockings and socks that are marketed to men, women, and children. Specifically, the Guides proscribed misrepresentations as to the grade, character, construction, origin, denier, size, style, fashion, gauge, twist of yarn, quality, quantity, value, price, serviceability, resistance to snagging or the development of runs, holes or breaks in the in fabric, strength, stretch, length, color, finish, manufacture, or distribution of any hosiery product. The Hosiery Guides also delineated the use of the terms ''lisle,'' ''irregulars,'' and ''seconds'' as they apply to hosiery.

On April 15, 1994, the Commission published a Notice in the Federal Register soliciting comment on the Hosiery Guides.[2] Specifically, the Commission solicited comments on six questions pertaining to the costs and benefits of the guides and their regulatory and economic effect. The initial closing date for comments was June 14, 1994. The Commission subsequently extended the comment period until July 14, 1994. The Commission received 52 comments in response to the Notice. They are discussed in Part II below.

II. Comments Received

The Commission received comments from 18 individuals, all of whom focused on three issues related to women's history: fit, durability, and the need for labels in pantyhose. Several commenters complained that pantyhose wear out too quickly; others stated that pantyhose either are ill-fitting or that their packaging reflects incorrect sizes. Eight of the commenters asked the Commission to require that labels be sewn in pantyhose. Three of the individual commenters praised the quality of hosiery currently available to American consumers, and supported retention of the Hosiery Guides.

One government official submitted two comments. Lydia Justice Edwards, State Treasurer of Idaho, asked the Commission in her first comment to expand the Hosiery Guides to mandate labeling on hosiery packages. The State Treasurer submitted a proposed specification chart listing such characteristics as the fiber and weight of the fabric, as well as the type of stitch used. She also proposed that the Commission develop a rating system that would enable purchasers to evaluate and compare among brands such characteristics as resistance to runs and snags, elasticity, and durability. Ms. Edwards further suggested that the Commission develop a uniform sizing method that all hosiery manufacturers would be required to use. Her first comment also recommended that manufacturers be required to provide a means for consumers to examine and touch hosiery before making a purchase decision. The State Treasurer's second comment proposed that the Commission mandate for every hosiery product a ''statement of guarantee'' that the product is in perfect condition and meets a minimum quality standard.

The Crafted With Pride in the U.S.A. Council, Inc. urged the Commission not to modify current labeling requirements relating to country of origin.

Twenty-nine comments were received from individual hosiery manufacturers. The National Association of Hosiery Manufacturers (NAHM) and the American Textile Manufacturers Institute (ATMI) also submitted comments. All of the industry commenters supported the continuation of the Guides. The NAHM and its members stated that the guides provide a sound set of principles for the advertising and marketing of hosiery products, and ensure that consumers are provided with fair and accurate information. The ATMI commented that the guides are beneficial to the industry because they provide information on deceptive practices, definitions of hosiery and product classes, labeling information, and product sizing guidance.

The NAHM and 14 hosiery firms recommended that the Guides' definition of ''Industry Products'' be amended to include ''tights'' and to delete ''anklets.'' The NAHM and its members also requested that the FTC include in the Guides a definition of the terms ''non-run,'' ''no-run,'' and ''run-resistant'' that were contained in a Commission decision dismissing a complaint against *Holeproof Hosiery Company*.[3]

III. Conclusion

Although the comments submitted to the Commission supported retaining the Guides, they did not clearly demonstrate why the hosiery industry in particular needs special Commission guidance in the advertising or sale of its products. In this regard, the Commission notes that hosiery products are covered by its Textile Rules[4] and Care Labeling Rule.[5] The Textile Rules require that textile products be labeled with the fiber content, the name or registered identification number of the manufacturer or other responsible company, and the country of origin. For hosiery products, the required information may appear on the packaging and need not be on a label

[1] The Guides were originally issued as Trade Practice Rules. The Commission reissued them as guides in 1979 when it rescinded all Trade Practice Rules. Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. 16 CFR 1.5.

[2] 59 FR 18004.

[3] 47 F.T.C. 1668 (1951).

[4] Rules and Regulations under the Textile Fiber Products Identification Act, 16 CFR Part 303.

[5] Trade Regulation Rule concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended, 16 CFR Part 423.

affixed to the product itself.[6] Under the Care Labeling Rule, items of textile wearing apparel must be labeled with appropriate care instructions. For most such items, the care instructions must appear on a label permanently attached to the product. However, hosiery products have been granted an exemption from the labeling requirement if care instructions accompany the product on a tag or on packaging.[7]

In addition, the Commission notes that industry self-regulation efforts, led by the NAHM, already exist in certain technical areas. For example, the industry currently conforms sizing of all hosiery products to a set of voluntary standards.[8]

For these reasons, the Commission concludes that it is unnecessary to retain guides specific to the hosiery industry and therefore is rescinding the Guides. If, in the future, practices in the sale of hosiery are determined to be materially misleading and to cause consumer harm, the Commission can address such practices under Section 5 of the Federal Trade Commission Act.[9]

The Commission appreciates the concerns raised by the commenters. It declines, however, to expand the coverage of the guides as recommended. First, some of the areas suggested for inclusion in the guides are beyond the Commission's authority under the FTC Act, which is the basis for the content of the guides. Second, the Commission believes that existing rules governing care labeling and labeling of textile products are adequate to protect consumers from deceptive claims concerning the attributes and care of hosiery products.

List of Subjects in 16 CFR Part 22

Advertising, Hosiery, Labeling, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

PART 22—[REMOVED]

The Commission, under authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 of the Code of Federal Regulations by removing Part 22.

[FR Doc. 96–2261 Filed 2–1–96; 8:45 am]

BILLING CODE 6750–01–M

[6] 16 CFR 303.15(c).

[7] In addition, certain hosiery products which can be machine washed and dried at hot settings without damage and without transferring their dye to other fabrics, and which sell at retail for less than $3.00, need not provide any form of care instructions.

[8] Commercial Standard CS 46–49 (last revised in 1990).

[9] Section 5 of the FTC Act, 15 U.S.C. 45(a)(1), prohibits unfair or deceptive acts or practices in or affecting commerce.

DEPARTMENT OF STATE

22 CFR Part 9b

[Public Notice 2273]

Bureau of Public Affairs; Press Building Passes

AGENCY: Bureau of Public Affairs, State.

ACTION: Direct final rule.

SUMMARY: This rule eliminates the requirement for annual submission of a letter from press pass holders attesting that they continue to cover the Department of State on a regular and substantial basis to maintain their press passes. Instead, press building passes will automatically lose their validity if not used in a 12-month period without further notification to the pass holder. This rule also changes the period of validity for press building passes and allows issuance of press passes pending positive completion of international background investigation. The changes will reduce the administrative burden on press pass holders, as well as on the Department.

DATES: *Effective Date:* April 2, 1996. The rule will become final on April 2, 1996 unless this agency publishes a document withdrawing the rule based on receipt of adverse comments which are due on or before March 4, 1996.

ADDRESSES: Interested persons are invited to submit comments to: Director, Office of Press Relations, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Julie M. Reside, Office of Press Relations (202) 647–2492.

SUPPLEMENTARY INFORMATION: The implementation of this rule as a direct final rule is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). Promulgation notice and comment is ''unnecessary'' because the rule is noncontroversial and not likely to engender public comment. This rule is not expected to have a significant impact on small business entities. This final rule does not impose information collection requirements under the Paperwork Reduction Act of 1980. The rule has been reviewed as required under Executive Order 12778 and certified to be in compliance therewith. The rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 9b

Administrative practice and procedure, Federal buildings and facilities, News media, Security measures.

For the reasons set forth in the preamble, the Department of State amends 22 CFR part 9b as follows:

PART 9b—[AMENDED]

1. The authority citation for 22 CFR part 9b continues to read as follows:

Authority: 22 U.S.C. 2658.

2. Section 9b.8 is revised to read as follows:

§ 9b.8 Term and renewal of Department of State press building passes.

(a) Department of State press building passes for U.S. citizens are issued with three years' validity. Subject to positive completion of an international background check, passes for non-U.S. citizens are issued with one year's validity and may be renewed for three years. Notwithstanding its initial validity, any press building pass that has not been used for a twelve-month period, as recorded by the Bureau of Diplomatic Security's turnstyle entry devices, will become invalid at the end of that twelve-month period.

(b) For any valid passes issued before October 1, 1995, notification shall be sent by the Department of State to the holder of the pass that the pass has become invalid by reason of lack of use for 12-month period. However, failure of the holder for any reason to receive such a notification shall not affect the invalidity of the pass. Anyone whose pass has become invalid may apply for a new pass in accordance with §§ 9b.2 through 9b.5.

Richard M. Moose,

Under Secretary of State for Management.

[FR Doc. 96–1258 Filed 2–1–96; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 206 and 260

RIN 1010–AB93

Bidding Systems for Leases in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Minerals Management Service (MMS) to modify the bidding systems available for use on tracts offered for lease under the Outer Continental Shelf Lands Act (OCSLA). The change gives the Secretary of the Interior more flexibility in setting the terms of a lease sale. This rule provides four methods of modifying the existing alternative bidding systems: (1) setting the minimum prescribed royalty rate charged on Federal offshore leases below 12½ per centum but greater than zero per centum; (2) permitting operating allowances when computing payment obligations under the lease; (3) suspending or deferring royalty for a specific time period, volume, or value of production; and (4) expanding the methods for calculating royalty rates under variable royalty systems to include product prices, as well as value and amount of production, with the ability to use different formulas across time periods. The rule does not affect existing leases.

EFFECTIVE DATE: This rule is effective March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economic Evaluation Branch, telephone (703) 787–1536.

SUPPLEMENTARY INFORMATION: The OCSLA provides authority to modify any bidding system currently authorized by the Act if the Secretary determines the modification to be useful to accomplish the purposes and policies of the Act (section 8(a)(1)).

This final rule is the result of a review of alternative leasing policies conducted within MMS with input from constituents. The final rule, like the proposed rule, enables MMS to set royalty terms at the time of sale for new offshore leases that will adjust automatically to changing market conditions in the oil and gas industry as lease exploration, development, and production proceed. Implementation is expected to increase competition for new Federal offshore leases, ensure receipt of fair market value, and increase the likelihood that new leases will be explored and developed.

The new royalty terms will be considered for use in the leasing of specific types of tracts, such as tracts that can be identified before a sale containing potential oil and gas resources in reservoirs located below tabular salt formations. Other categories of tracts that we might choose to offer under the new terms include tracts with qualifying wells which have uneconomic reserves or tracts which previously received high bonus bids but were not explored.

When we choose to use the new bidding terms, MMS may set the minimum royalty rate at less than 12½ per centum for all or a part of the lease's productive life as described in the lease terms portion of a final notice of sale. The MMS may designate a royalty rate that is either a fixed constant or varied over the life of the lease or a royalty rate that emerges or fluctuates as specified conditions are met (e.g., royalties would not accrue until a designated time period expires or a specified production level or value is reached, or a predetermined capital cost allowance is recovered, or royalties would be reduced during periods of declining average product prices).

Concurrently, with MMS development of this rule, Congress enacted the Outer Continental Shelf Deep Water Royalty Relief Act (Pub. L. 104–58, November 28, 1995) which amended the OCSLA to add a new section 8(a)(1)(H) which defines a new bidding system. The new bidding system prescribes a cash bonus bid with a royalty of no less than 12½ per centum and provides for a suspension of royalties for a period, volume, or value of production determined by the Secretary. Such suspensions may vary based on the price of production from the lease. Any lease sale held before November 28, 2000, must use the new bidding system for all tracts located in water depths of 200 meters or more in the Western and Central Gulf of Mexico Planning Areas, including that portion of the Eastern Gulf of Mexico Planning Area west of 87 degrees, 30 minutes west longitude.

This rule allows MMS to implement this new bidding system. The proposed rule had included the substance of the required provisions. Thus, MMS is able to include implementing provisions in this final rule. We are preparing another rule to implement further details of the Outer Continental Shelf Deep Water Royalty Relief Act.

Twelve respondents submitted comments during the public comment period and MMS reviewed and analyzed the comments. The following is a discussion of the comments received and our response. Each time MMS announces use of this new bidding rule in a preliminary lease sale notice, interested parties may submit comments.

Narrative Response to Comments

Comment: Several commenters had specific questions regarding uncertainty over aspects or terms used in the proposed rule.

Question 1: What would a ''simple price-royalty rate formula'' look like?

Response: One example of such a formula is a royalty rate of one-sixth applies if the average oil price is above $18 (per barrel) and one-eighth if the average price is below $18. Or, the royalty rate could vary in several discrete increments, or even continuously, as a function of oil (and perhaps gas) prices prevailing during the life of the lease.

Question 2a: What does the MMS mean when it suggests it would be able to ''set royalty terms at time of sale for new leases that will adjust dynamically to changing market conditions?''

Response: An example of a royalty term that responds automatically to market conditions would be a royalty rate that depended on gross lease revenues. As prices declined or production from the lease decreased, the royalty rate would decline according to conditions specified in the sale notice, reflecting a lower profit potential on the lease. Such a system could include a predetermined cost allowance that would be deducted from gross revenues for the purpose of computing the net revenue amount, to which the royalty rate would be applied.

Question 2b: How frequently would royalty terms change?

Response: The frequency of change will be specified in the sale notice and lease. It will depend on both the form of the system and the variables defined in the sale notice and lease. For example, if MMS uses an inflation adjustment, the terms could change annually or monthly according to the specified adjustment factor. If MMS uses a fixed volume suspension, the change would occur only at the time the prescribed production volume is achieved. Once the lease is executed, any change in royalty will be triggered solely by satisfying the objectively determined economic and geologic factors specified in the lease.

Question 2c: Are there limits on the changes?

Response: Yes. The MMS will specify the range of values over which the royalty rate will change in the final notice of sale and the lease.

Question 2d: Is the 12½ per centum royalty the ceiling?

Response: No. When there is a ceiling we will specify it in the notice of sale.

Question 2e: How will MMS and industry administer these leases (e.g., audits)?

Response: We will continue to administer leases in the same manner. However, estimates of future prices could, under some systems, necessitate a recalculation not only in the receipts

subject to royalty, but also in the size of the royalty rate as well.

Question 2f: How would MMS administer these new leases when unitized with leases with different or fixed royalties?

Response: The MMS will be careful to ensure that lessees properly allocate production to each unitized lease. Normally unitized production from a common reservoir is based on the proportion of recoverable resources present on each lease.

Question 3a: How does the ''operating allowances'' concept relate to the amendments to the bidding systems regulations?

Response: Under existing royalty regulations, transportation costs and gas processing costs are permissible deductions in computing royalty due. The notion of a predetermined operating allowance is proposed partly to expand the set of tract-specific costs that MMS may consider in calculating payment obligations, without complicating the accounting. Or alternatively, MMS may simply offer some tracts under a bidding system with a specified transportation and processing allowance instead of actual costs incurred.

Question 3b: How do operating allowances relate to existing transportation and processing allowances in terms of substance and reporting requirements?

Response: Because the allowance concept is based on the specified standard, there will be some difference between actual costs incurred and those used to compute payment obligations. However, if set properly, we expect that the allowance will be about right on average. Moreover, this could alleviate some of the administrative and auditing burdens, since actual costs may not affect the amount of payments owed under some of these systems.

Question 3c: What is the effect of the introduction of the new concept of ''operating allowances'' into the valuation regulations?

Response: Operating allowances could be used in conjunction with valuation regulations in one of two ways. First, predetermined operating allowances, defined at the time of sale, could replace valuation regulations for the purpose of calculating net receipts subject to payment obligations.

Second, a predetermined operating allowance could be subtracted from net receipts after the valuation regulations are applied, to determine the final amount of receipts subject to payment obligations. In either case, the approach used would be designated in the proposed and final sale notices.

Question 4: Can phrases such as ''any amounts creditable against future royalties'' and ''inflation factor'' for purposes of determining value ''or amount'' of production be explained?

Response: Should the governing statutes change, MMS might consider allowing the lessee to credit other payments made to the Government (e.g., rentals) against future payments due the Government (e.g., royalties). Existing statutes do not allow MMS to encourage lessee behavior (e.g., starting exploration or production earlier in the primary term) by reimbursing the lessee in cash. In developing the original sliding-scale bidding system, MMS made the royalty rate dependent upon the gross value of production generated during a period. The MMS used an index or ''inflation factor'' to make adjustments in production value in future production periods to reflect the prevailing level of aggregate prices in the economy.

For simplicity, MMS will provide the details of any required modifications of this type in the official sale and lease documents, rather than in the regulations.

Question 5: Why would industry have to wait for publication of lease sale packages to examine royalty rate formulas?

Response: In the April 20, 1995, Federal Register Notice asking for comments on the proposal (60 FR 19767), MMS described the general nature of the equations and formulas, along with the applicable variables, and this notice continues the discussion. In many instances, the specific parameters that we will use in specific lease sales may depend on the characteristics of the tracts to which they apply as well as prevailing price and cost conditions at time of sale. The rule itself does not include values for the parameters. Whenever possible we will announce the formulas to be used, along with proposed values for the parameters, in the preliminary notice of sale. This will permit industry to comment on the details of the bidding system before MMS publishes the final notice of sale.

Question 6: What does ''suspension or deferral magnitudes or formulas'' mean?

Response: During the productive life of a lease, the existing royalty could be suspended (i.e., reduced or eliminated) or deferred (i.e., paid at a later time under some circumstances). Typically, such provisions will apply at the start of production. We may express the suspension or deferral variable as a specified number of barrels of oil equivalent produced, gross revenues collected from oil and gas sales, or length of time over which royalties would be collected at a reduced rate.

Question 7: What index will MMS use for pricing?

Response: We will specify the index to be used in the final sale notice. We expect that such indices will reflect the rate of inflation in either the energy sector or the economy as a whole. Indices of this nature typically appear in a variety of Federal documents published among others by the Department of Commerce and the Department of Energy.

Question 8: For a particular lease sale, can a bidder choose between a reduced (variable) rate or fixed rate? If so, how would the MMS award competitive bids?

Response: No. The MMS did not envision allowing the bidders to choose between different leasing systems on the same tract. The concept does have some appeal, however, since it would allow bidders with different capacities to bear risk to choose the system that best suits them. With this added flexibility, the ceiling royalty rate associated with the variable royalty rate option will have to be above the fixed rate. Otherwise, bidders presumably would be better off always choosing the reduced (variable) royalty rate. However, unless MMS develops a way to show that the anticipated value of the tract was the same under either system, there will be no simple way to choose among competitive cash bonus bids submitted under each of the systems. Thus, MMS has not chosen to pursue this option.

Question 9: How much lead time can companies expect to have between promulgation of final regulations and the first lease sale where they would apply?

Response: Before using some of the innovative new concepts covered by this rule, MMS will both take time to determine how the new system will be used in the specific lease sale and will solicit industry comments in a preliminary notice of sale. This will provide industry with an opportunity to understand the new system.

Question 10: Would a potential bidder have any flexibility in the bidding process with regard to the royalty rate? For example, could a potential bidder offer a traditional one-eighth royalty?

Response: These changes in bidding systems relate to the manner in which MMS will determine the applicable royalty rate during a give production period. We are not introducing these changes to facilitate various forms of actual bidding on the royalty rate to be paid by the lessee. Thus, we intend to set the form of the royalty rate, and the lessee will bid a cash bonus. Under this

format, the lessee cannot affect the royalty rate during the bidding process. Only if the royalty is the bid variable, would a potential bidder be free to offer a traditional one-eighth royalty.

Question 11: Would there be any changes to the basis upon which the MMS awards competitive bids?

Response: No. Under the proposed systems, the high cash bonus bidder will be awarded the lease subject to satisfying the MMS bid adequacy criteria.

Comment: One commenter mentioned that although the proposed rule does not specifically indicate MMS is contemplating such a system, they are against one which might call for bidding of both a royalty variable and bonus.

Response: The term ''variable royalty rate'' is meant to convey the notion that the royalty rate, as described in the sale notice, may vary over the life of the lease. This does not mean that MMS is making the royalty rate a bidding variable. This rule does not affect the MMS authority to use the royalty rate as a bidding term, either in place of or in conjunction with a cash bonus. While the OCSLA does not authorize MMS to use more than one bidding variable simultaneously, we may be able to design some systems that operate sequentially.

For example, in the unlikely event that bidding for some tracts involved both the cash bonus and the royalty rate, MMS needs a means to objectively determine the winning bidder. One way to do that would be to require bidding on the two terms in sequence rather than in parallel. Subject to a fixed minimum required cash bonus, bidding could be allowed on the royalty rate up to a predetermined and known maximum. If a bidder chooses to bid above the maximum royalty rate, it would do so by offering to add to the minimum required bonus bid.

Comment: One commenter stated that it would be unjust for a lessee to relinquish a lease after conducting exploratory drilling, with the possible public release of data, and then for the Government to reoffer the tract under more favorable terms to competitors.

Response: The original lessee purchased the contract for a cash bonus bid. If it then voluntarily relinquishes the lease after conducting exploratory drilling, the Government is free to reoffer the tract in the market at any terms it deems appropriate. The original lessee can compete on equal terms with others through the auction process used to reoffer the tract.

Comment: Two commenters suggested that royalty relief and flexible royalty terms would benefit production if MMS applies them to existing OCS leases that are approaching the economic limits of production.

Response: This rule does not affect the authority of MMS, under § 8(a)(3)(A) of OCSLA, to reduce or eliminate any royalty or net profit share on an active tract.

Response: One commenter strongly recommended that MMS consider providing an appropriate allowance for poor quality and/or low gravity crude in order to foster development of such resources.

Response: Lower quality crude sells for less. Since royalty paid is directly propositional to price, the current fixed royalty arrangement reflects differences in product quality. To the extent that an additional adjustment is needed for low quality crude, to account for higher costs of extraction, then a properly set cost allowance under the new bidding rule would be one way to handle the situation for tracts being offered for lease.

Comment: One commenter stated that it does not believe that royalty relief by itself, in the absence of other financial incentives such as a production tax credit, is sufficient to generate additional substantial deepwater activity.

Response: The MMS does not have taxing authority, so production tax credits are not part of the policies affected by this rule. The final rule differs from the proposed rule in that portions have been reworded for clarity. The final rule also contains a new system, § 260.110(a)(7), designed specifically to address the Outer Continental Shelf Deep Water Royalty Relief Act. This new system includes a cash bonus bid, a fixed royalty rate of not less than 12½ per centum, and an option for MMS to defer or suspend royalties. Although a lease sale of this type would have been possible under paragraph § 260.110(a)(5), MMS added the new paragraph specifically addressing the provisions in the statute. This will clearly indicate when MMS is conducting a lease sale under the provisions of the Outer Continental Shelf Deep Water Royalty Relief Act.

Author

This document was prepared by Marshall Rose, Mary Vavrina, and Keith Meekins, Offshore Resource Evaluation Division, MMS.

Executive Order (E.O.) 12866

MMS reviewed this rule and determined that the rule is not significant.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect lessees and operators-entities that are not, in general, small due to the technical complexities and financial resources necessary to conduct OCS activities. MMS also determined that the indirect effect of this rulemaking on small entities that provide support for offshore activities is small.

Paperwork Reduction Act

The information collection requirements contained in those parts of MMS's regulatory program affected by this rule have been approved by OMB under (44 U.S.C. 3501 *et seq.*). The forms, filing date, and approved OMB clearance numbers are identified in 30 CFR 210.10 and 30 CFR 216.10.

Takings Implication Assessment

The DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

E.O. 12778

The DOI has certified to OMB that this rule meets the applicable civil justice reform standards provided in Sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) compliance for the rule is covered by DOI procedures for implementing NEPA (516 DM2, Appendix 1.10). In accordance with those procedures, MMS will examine the potential environmental effects of the rule during NEPA review for each lease sale. This is appropriate because the potential environmental effects of the rule depend largely on how it is applied, and decisions on application will be made on a sale-by-sale basis.

List of Subjects

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources.

Dated: January 26, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, the Minerals Management Service amends 30 CFR parts 206 and 260 as follows:

PART 206—PRODUCT VALUATION

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

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Section 206.106 of subpart C is added to read as follows:

§ 206.106 Operating allowances.

Notwithstanding any other provisions in these regulations, an operating allowance may be used for the purpose of computing payment obligations when specified in the notice of sale and the lease. The allowance amount or formula shall be specified in the notice of sale and in the lease agreement.

3. Section 206.160 of subpart D is added to read as follows:

§ 206.160 Operating allowances.

Notwithstanding any other provisions in these regulations, an operating allowance may be used for the purpose of computing payment obligations when specified in the notice of sale and the lease. The allowance amount or formula shall be specified in the notice of sale and in the lease agreement.

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. The authority citation for part 260 is revised to read as follows:

Authority: 43 U.S.C. 1331 and 1337.

2. Section 260.001 of subpart A is revised to read as follows:

§ 260.001 Purpose and scope.

The purpose of this part 260 is to implement OCSLA, 43 U.S.C. 1331 *et seq.*, as amended, by providing regulations to foster competition including, but not limited to, regulations to prohibit joint bidding for development rights by certain types of joint ventures; the implementation of alternative bidding systems (including suspension of royalties for a period, volume, or value of production); and the establishment of diligence requirements for Federal OCS leases issued under the OCSLA.

3. Section 260.002 of subpart A is amended by revising the definition of ''OCSLA'' to read as follows:

§ 260.002 Definitions.

* * * * *

OCSLA means the Outer Continental Shelf Lands Act, (43 U.S.C. 1331 *et seq.*), as amended.

* * * * *

2. Section 260.110 of subpart B is amended by revising paragraphs (a)(1)(iii), (a)(2)(iii), (a)(3)(i)(C)(*4*) and (a)(3)(iii) and by adding new paragraphs (a)(5), (a)(6), and (a)(7) to read as follows:

§ 260.110 Bidding systems.

(a) * * *

(1) * * *

(iii) The annual rental to be paid by the highest responsible qualified bidder and any amounts creditable against future royalties shall be specified in the notice of sale published in the Federal Register.

* * * * *

(2) * * *

(iii) Rental payment amounts must be as specified in paragraph (a)(1)(iii) of this section.

* * * * *

(3) * * *

(i) * * *

(C) * * *

(*4*) The production period, inflation factor and procedures for making the inflation adjustment and for determining the value or amount of production shall be stated in the notice of sale published in the Federal Register.

* * * * *

(iii) Rental payment amounts must be as specified in paragraph (a)(1)(iii) of this section.

* * * * *

(5) *Cash bonus bid with a variable royalty rate or rates during one or more production periods in amount or value of the production saved, removed or sold, and an annual rental.* MMS may suspend or defer the royalty due for a period, volume, or value of production. Such suspensions or deferrals may vary based on changes in the prices of oil and/or gas as specified in the notice of sale published in the Federal Register.

(i) The royalty rate due on production may be less than 12½ per centum, but greater than zero per centum, at any designated time during the lease period based on the amount or value of production saved, removed, or sold. Royalty may be suspended or deferred for a period, volume, or value of production. The applicable royalty rate(s) and suspension or deferral magnitudes or formulas shall be specified in the notice of sale published in the Federal Register.

(ii) The amount and the procedure for payment of a cash bonus must be as specified in paragraph (a)(1)(ii) of this section.

(iii) Rental payment amounts must be as specified in paragraph (a)(1)(iii) of this section.

(6) *Cash bonus bid with a royalty rate or rates based on formula(s) or schedule(s) during one or more production periods in amount or value of the production saved, removed or sold, and an annual rental.* Royalty may be suspended or deferred for a period, volume, or value of production. Such a suspension or deferral may vary based on changes in the prices of oil and/or gas as specified in the notice of sale published in the Federal Register.

(i) The royalty due on production shall be specified as a percentage of the amount or value of the production saved, removed, or sold. When the value of production is used, by unit or in aggregate, the royalty rate will be determined based on prices for oil and/or gas as specified in the notice of sale published in the Federal Register.

(A) The lessee must calculate the royalty due using the formula or schedule specified in the lease based on the adjusted amount or indexed value of the oil and gas produced. The formula or schedule will describe the relationship between the adjusted or actual amount of production, indexed value, or indexed price, and the royalty rate. It will stipulate the lowest and highest royalty rates.

(B) The royalty rate formula or schedule and the suspension or deferral magnitudes or formulas shall be specified in the notice of sale published in the Federal Register.

(C) Royalty payment calculation.

(1) The royalty rate used to calculate the royalty due on production is based on an adjusted or actual amount of production, indexed value, or indexed price and is set through application of the specified formula or schedule to the designated production period.

(2) The lessee will determine the adjusted amount or indexed value, or indexed price by applying an index or inflation factor specified in the lease to the actual amount or value of production, or to the adjusted price.

(3) The lessee must apply the royalty rate to the actual value of production. The result is the amount in dollars that the lessee must pay to the United States,

or the amount of royalty oil and/or gas that the United States will take in kind.

(4) The production period, inflation factor and procedures for making the inflation adjustment and for determining the value or amount of production shall be stated in the notice of sale published in the Federal Register.

(ii) The amount and the procedure for payment of a cash bonus must be as specified in paragraph (a)(1)(ii) of this section.

(iii) Rental payment amounts must be as specified in paragraph (a)(1)(iii) of this section.

(7) *Cash bonus bid with a royalty rate of not less than 12½ per centum fixed in amount or value of the production saved, removed or sold, and with suspension of royalties for a period, volume, or value of production, and an annual rental.* Royalty may be suspended for a period, volume, or value of production. Such a suspension may vary based on changes in the prices of oil and/or gas as specified in the notice of sale published in the Federal Register.

(i) Except for a period of suspension, the royalty rate due on production will be specified as a percentage of the amount or value of the production saved, removed, or sold. The applicable royalty rate shall be specified in the notice of the lease sale published in the Federal Register. When the royalty rate is applied to the value of production, by unit or in aggregate, the royalty rate will be determined based on the prices for oil and/or gas as specified in the notice of sale published in the Federal Register.

(A) The lessee must calculate the royalty due using the formula or schedule specified in the lease agreement based on the adjusted amount or indexed value of the oil and gas produced. The formula or schedule will describe the relationship between adjusted or actual amount of production, indexed value, or indexed price, and the royalty rate. It will stipulate the lowest and highest royalty rates that may apply.

(B) The formula or schedule for royalty due on production and the suspension magnitudes or formulas shall be specified in the notice of sale published in the Federal Register.

(ii) The amount and the procedure for payment of a cash bonus must be as specified in paragraph (a)(1)(ii) of this section.

(iii) Rental payment amounts must be as specified in paragraph (a)(1)(iii) of this section.

[FR Doc. 96–2200 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 595

Terrorism Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing the Terrorism Sanctions Regulations to implement the President's declaration of a national emergency and imposition of sanctions against certain persons whose acts of violence have the purpose or effect of disrupting the Middle East peace process.

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION: Contact the Office of Foreign Assets Control, Department of the Treasury, Washington, DC 22201, Tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/515–1387 and type ''/GO FAC,'' or call 202/512–1530 for disks or paper copies. This file is available for downloading without charge in WordPerfect, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

On January 24, 1995, the President issued Executive Order 12947, declaring a national emergency with respect to ''grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process,'' and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The order blocks all property and interests in property of 12 terrorist organizations designated in the order, as well as the property and interests in property of other persons who are designated by the Secretary of State or the Secretary of the Treasury. The order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State and, as appropriate, the Attorney General, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order. In implementation of the order, the Treasury Department is issuing the Terrorism Sanctions Regulations (the ''Regulations'').

The Regulations block all property and interests in property of (1) persons designated in Executive Order 12947; (2) persons designated by the Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, because they are found (a) to have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East peace process, or (b) to assist in, sponsor, or provide financial, material, or technological support for, or services in support of, such acts of violence.

The Regulations also block all property and interests in property of persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any other designated person. Persons coming within any of these categories are called specially designated terrorists (''SDTs''). Executive Order 12947 blocks all property or interests in property of SDTs that are in the United States, that hereinafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches. Section 1(b) of Executive Order 12947 also prohibits any transaction or dealing by U.S. persons or in the United States in property or interests in property of SDTs, including the making or receiving of any contribution of funds, goods, or services for the benefit of an SDT.

Transactions otherwise prohibited under this part but found to be consistent with U.S. policy may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 595.801 of subpart H. Civil and criminal penalties for violations of the Regulations are described in subpart G.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public

participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties concerning any rule or other public document.

Paperwork Reduction Act

The Regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information contained in the Regulations have been submitted to and approved by the Office of Management and Budget (''OMB'') pending public comment, and have been assigned control number 1505–0156. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in the Regulations are contained in §§ 595.503, 595.504, subpart F, and §§ 595.703 and 595.801. This information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty, and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the Regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and record keepers are individuals and business organizations.

No assurances of confidentiality are given to persons who furnish information to OFAC unless specifically indicated in advance. It is the policy of OFAC to protect the confidentiality of information in appropriate cases pursuant to the exemptions from disclosure provided under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

Estimated total annual reporting and/or recordkeeping burden: 500 hours.

The estimated annual burden per respondent/record keeper varies from 30 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents and/or record keepers: 500.

Estimated annual frequency of responses: 1-12.

Comments are invited on: (a) whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments concerning the above information, the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project, control number 1505–0156, Washington, DC 20503, with a copy to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Annex, Washington, DC 20220. Any such comments should be submitted not later than April 2, 1996. Comments on aspects of the Regulations other than those involving collections of information should not be sent to OMB.

List of Subjects in 31 CFR Part 595

Administrative practice and procedure, Banking and finance, Blocking of assets, Fines and penalties, Reporting and recordkeeping requirements, Specially designated terrorists, Terrorism, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR part 595 is added to read as follows:

PART 595—TERRORISM SANCTIONS REGULATIONS

Subpart A—Relation of this Part to Other Laws and Regulations

Sec.

595.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

595.201 Prohibited transactions involving blocked property.
595.202 Effect of transfers violating the provisions of this part.
595.203 Holding of certain types of blocked property in interest–bearing accounts.
595.204 Prohibited dealing in property; contributions of funds, goods, or services.
595.205 Evasions; attempts; conspiracies.
595.206 Exempt transactions.

Subpart C—General Definitions

595.301 Blocked account; blocked property.
595.302 Effective date.
595.303 Entity.
595.304 Foreign person.
595.305 General license.
595.306 Information and informational materials.
595.307 Interest.
595.308 License.
595.309 Person.
595.310 Property; property interest.
595.311 Specially designated terrorist.
595.312 Specific license.
595.313 Transfer.
595.314 United States.
595.315 United States person; U.S. person.
595.316 U.S. financial institution.

Subpart D—Interpretations

595.401 Reference to amended sections.
595.402 Effect of amendment.
595.403 Termination and acquisition of an interest in blocked property.
595.404 Setoffs prohibited.
595.405 Transactions incidental to a licensed transaction.
595.406 Provision of services.
595.407 Offshore transactions.
595.408 Charitable contributions to specially designated terrorists.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

595.501 Effect of license or authorization.
595.502 Exclusion from licenses and authorizations.
595.503 Payments and transfers to blocked accounts in U.S. financial institutions.
595.504 Investment and reinvestment of certain funds.
595.505 Entries in certain accounts for normal service charges authorized.
595.506 Provision of certain legal services to a specially designated terrorist.
595.507 Authorization of emergency medical services.

Subpart F—Reports

595.601 Required records.
595.602 Reports to be furnished on demand.
595.603 Registration of persons holding blocked property subject to 595.201.

Subpart G—Penalties

595.701 Penalties.
595.702 Prepenalty notice.
595.703 Presentation responding to prepenalty notice.
595.704 Penalty notice.
595.705 Administrative collection action; referral to United States Department of Justice.

Subpart H—Procedures

595.801 Licensing.
595.802 Decisions.
595.803 Amendment, modification, or revocation.
595.804 Rulemaking.
595.805 Delegation by the Secretary of the Treasury.
595.806 Rules governing availability of information.

Subpart I—Paperwork Reduction Act

595.901 Paperwork Reduction Act notice.

Authority: 50 U.S.C. 1601–1641, 1701–1706; 3 U.S.C. 301; E.O. 12947, 60 FR 5079 (January 25, 1995).

Subpart A—Relation of This Part to Other Laws andRegulations

§ 595.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 595.201 Prohibited transactions involving blocked property.

Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, no property or interests in property of a specially designated terrorist, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

§ 595.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property held in the name of a specially designated terrorist or in which a specially designated terrorist has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property held in the name of a specially designated terrorist or in which a specially designated terrorist has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

Note: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property which, on or since the effective date, was held in the name of a specially designated terrorist or in which there existed an interest of a specially designated terrorist.

§ 595.203 Holding of certain types of blocked property in interest–bearing accounts.

(a)(1) Any person, including a U.S. financial institution, currently holding property subject to § 595.201 which, as of the effective date or the date of receipt if subsequent to the effective date, is not being held in an interest–bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control, shall transfer such property to, or hold such property or cause such property to be held in, an interest–bearing account or interest–bearing status in a U.S. financial institution as of the effective date or the date of receipt if subsequent to the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control.

(2) The requirement set forth in paragraph (a)(1) of this section shall apply to currency, bank deposits, accounts, obligations, and any other financial or economic resources or assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest–bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the specially designated terrorist having an interest in the accounts. If the account is held in the name of a specially designated terrorist, the name of the account to which interest is credited must be the same.

(b) For purposes of this section, the term *interest–bearing account* means a blocked account in a U.S. financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days.

(c) This section does not apply to blocked tangible property, such as chattels, nor does it create an affirmative obligation on the part of the holder of

such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

§ 595.204 Prohibited dealing in property; contributions of funds, goods, or services.

Except as otherwise authorized, no U.S. person may deal in property or interests in property of a specially designated terrorist, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of a specially designated terrorist.

§ 595.205 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this part, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

§ 595.206 Exempt transactions.

(a) *Personal Communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Information and informational materials.*—(1) The importation from any country and the exportation to any country of information or informational materials as defined in § 595.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a U.S. person. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co–produce, create or assist in the creation of information and informational materials, and payment of royalties to a specially designated terrorist with respect to income received for enhancements or alterations made by U.S. persons to information or informational materials imported from a specially designated terrorist.

(3) This section does not authorize transactions incident to the exportation of technical data under restriction as defined in § 779.4 of the Export Administration Regulations, 15 CFR parts 768–799 (1994), or to the exportation of goods for use in the transmission of any data. The exportation of such goods to specially designated terrorists is prohibited, as provided in § 595.201 of this part.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including non scheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 595.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 595.201 held in the name of a specially designated terrorist or in which a specially designated terrorist has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 595.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. EST, January 24, 1995, or, in the case of specially designated terrorists designated after that date, the earlier of the date on which a person receives actual or constructive notice of such designation.

§ 595.303 Entity.

The term *entity* means a partnership, association, corporation, or other organization, group or subgroup.

§ 595.304 Foreign Person.

The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

§ 595.305 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 595.306 Information and informational materials.

(a)(1) For purposes of this part, the term *information and informational materials* means publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds, and other information and informational articles.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The terms *information* and *informational materials* with respect to U.S. exports do not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the ''EAA''), or section 6 of the EAA to the extent that such controls promote nonproliferation or antiterrorism policies of the United States, including ''software'' that is not ''publicly available'' as these terms are defined in 15 CFR Parts 779 and 799.1; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 595.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (*e.g.*, '' an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 595.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 595.309 Person.

The term *person* means an individual or entity.

§ 595.310 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse

receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 595.311 Specially designated terrorist.

(a) The term *specially designated terrorist* means:

(1) Persons listed in the Annex to Executive Order 12947;

(2) Foreign persons designated by the Secretary of State, in coordination with the Secretary of the Treasury and the Attorney General, because they are found:

(i) To have committed, or to pose a significant risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East peace process, or

(ii) To assist in, sponsor, or provide financial, material, or technological support for, or services in support of, such acts of violence; and

(3) Persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any other specially designated terrorist.

(b) [Reserved]

§ 595.312 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 595.313 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 595.314 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 595.315 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States.

§ 595.316 U.S. financial institution.

The term *U.S. financial institution* means any U.S. person (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 595.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 595.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 595.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a specially designated terrorist, such property shall no longer be deemed to be property in which a specially designated terrorist has or has had an interest, or which is held in the name of a specially designated terrorist, unless there exists in the property another interest of a specially designated terrorist, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a specially designated terrorist, including by the making of any contribution of funds, goods, or services to or for the benefit of a specially designated terrorist, such property shall be deemed to be property in which there exists an interest of the specially designated terrorist.

§ 595.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether

by a U.S. bank or other U.S. person, is a prohibited transfer under § 595.201 if effected after the effective date.

§ 595.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, specially designated terrorist or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license.

§ 595.406 Provision of services.

(a) Except as provided in § 595.206, the prohibitions contained in §§ 595.201 and 595.204 apply to services performed by U.S. persons, wherever located:

(1) On behalf of, or for the benefit of, a specially designated terrorist; or

(2) With respect to property interests of a specially designated terrorist.

(b) *Example*: U.S. persons may not, except as authorized by the Office of Foreign Assets Control by or pursuant to this part, provide legal, accounting, public relations, educational, or other services to a specially designated terrorist. See § 595.506.

§ 595.407 Offshore transactions.

The prohibitions contained in § 595.201 apply to transactions by U.S. persons in locations outside the United States with respect to property which the U.S. person knows, or has reason to know, is held in the name of a specially designated terrorist, or in which the U.S. person knows, or has reason to know, a specially designated terrorist has or has had an interest since the effective date.

§ 595.408 Charitable contributions to specially designated terrorists.

(a) Unless otherwise specifically authorized by the Office of Foreign Assets Control by or pursuant to this part, no charitable contribution or donation of funds, goods, services,or technology to relieve human suffering, such as food, clothing or medicine, may be made to or for the benefit of a specially designated terrorist. For purposes of this part, a contribution or donation is made to or for the benefit of a specially designated terrorist if made to or in the name of a specially designated terrorist; if made to or in the name of an entity or individual acting for or on behalf of, or owned or controlled by, a specially designated terrorist; or if made in an attempt to violate, to evade or to avoid the bar on the provision of contributions or donations to specially designated terrorists.

(b) Individuals and organizations who donate or contribute funds, goods, services or technology without knowledge or reason to know that the donation or contribution is destined to or for the benefit of a specially designated terrorist shall not be subject to penalties for such donation or contribution.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 595.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 595.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 595.503 Payments and transfers to blocked accounts in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution. This authorization is subject to the condition that written notification from the U.S. financial institution receiving an authorized payment or transfer is furnished to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, within 10 days from the value date of the payment or transfer. This notification shall confirm that the payment or transfer has been deposited into a blocked account pursuant to this section and § 595.203 and shall provide the account number, the name and address of the person in whose name the account is held and, if the account party is not a specially designated terrorist, the name of the specially designated terrorist having an interest in the account, the name and address of the transferee U.S. financial institution, the name and address of the transferor financial institution, the amount of the payment or transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 595.603, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

(b) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

§ 595.504 Investment and reinvestment of certain funds.

(a) U.S. financial institutions are hereby authorized and directed to invest and reinvest assets held in blocked accounts in the name of a specially designated terrorist, subject to the following conditions:

(1) The assets representing such investments and reinvestments are credited to a blocked account or sub–account which is in the name of the specially designated terrorist and which is located in the United States or within

the possession or control of a U.S. person; and

(2) The proceeds of such investments and reinvestments are not credited to a blocked account or sub–account under any name or designation which differs from the name or designation of the specific blocked account or sub–account in which such funds or securities were held; and

(3) No immediate financial or economic benefit or access accrues (*e.g.*, through pledging or other use) to the specially designated terrorist.

(b)(1) U.S. persons seeking to avail themselves of this authorization must register with the Office of Foreign Assets Control, Blocked Assets Section, before undertaking transactions authorized under this section.

(2) Transactions conducted pursuant to this section must be reported to the Office of Foreign Assets Control, Blocked Assets Division, in a report filed no later than 10 business days following the last business day of the month in which the transactions occurred.

§ 595.505 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail insurance, stationary and supplies, check books, and other similar items.

§ 585.506 Provision of certain legal services to a specially designated terrorist.

(a) The provision to or on behalf of a specially designated terrorist of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipts of payment therefor must be specifically licensed. The provision of any other legal services as interpreted in § 595.406 requires the issuance of a specific license.

(b) Specific licenses may be issued, on a case–by–case basis, authorizing receipt of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to a specially designated terrorist:

(1) Provision of legal advice and counselling to a specially designated terrorist on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counselling is not provided to facilitate transactions in violation of this part;

(2) Representation of a specially designated terrorist when named as a defendant in or otherwise made a party to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction of a specially designated terrorist;

(4) Representation of a specially designated terrorist before any federal agency with respect to the imposition, administration, or enforcement of U.S. sanctions against a specially designated terrorist; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) Enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of a specially designated terrorist is prohibited unless specifically licensed in accordance with § 595.202(e).

§ 595.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services to a specially designated terrorist located in the United States is authorized, provided that any payment for such services requires prior authorization by specific license.

Subpart F—Reports

§ 595.601 Required records.

(a) Except as otherwise provided, every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction. Except as otherwise provided, every person holding property subject to § 595.201 shall keep a full and accurate record of such property, and such record shall be available for examination for the period of time that such property is blocked and for at least 5 years after the date such property is unblocked.

(b) Any person, other than an individual, required to maintain records pursuant to this section, must designate an individual to be responsible for providing information concerning such records to the Office of Foreign Assets Control when so requested.

§ 595.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the person required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

§ 595.603 Registration of persons holding blocked property subject to § 595.201.

(a) Any individual holding property subject to § 595.201 must register with the Office of Foreign Assets Control, Blocked Assets Division by the later of February 12, 1996, or within 10 days after the date such property is received or becomes subject to § 595.201.

(b) Any person, other than an individual, holding property subject to § 595.201 must register the name, title, address, and telephone number of the individual designated under § 595.601(b) to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, by the later of February 12, 1996,

or, unless notification is given pursuant to § 595.503, 10 days after the date such property is received or becomes subject to § 595.201.

Subpart G—Penalties

§ 595.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705), which provides that a civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under the International Emergency Economic Powers Act; and that whoever willfully violates any license, order, or regulation issued under the International Emergency Economic Powers Act, shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. Section 206 of the International Emergency Economic Powers Act is applicable to violations of any provision of this part and to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act.

(b) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 595.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents.*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 595.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 595.704 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director of the Office of Foreign Assets Control determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

§ 595.705 Administrative collection; referral to United States Department of Justice.

In the event that the person named does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 595.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in this part. All such licenses in effect on the date of publication are set forth in subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses.*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the

names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information or discuss or argue the application may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(7) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W.—Annex, Washington, D.C. 20220.

§ 595.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 595.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

§ 595.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 595.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12947 or any further Executive orders relating to the national emergency declared in Executive Order 12947 may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 595.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published at 31 CFR part 1.

(b) The records of the Office of Foreign Assets Control which are required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published at 31 CFR part 1.

(c) Any form issued for use in connection with this part may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W.—Annex, Washington, D.C. 20220, or by calling 202/622–2480.

Subpart I—Paperwork Reduction Act

§ 595.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 595.503, 595.504, subpart F, and §§ 595.703 and 595.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505-0156.

Dated: December 21, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 4, 1996.

John P. Simpson

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 96–2183 Filed 1–29–96; 5:06 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

OSD Privacy Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Office of the Joint Staff is adopting an exemption to the system of records JS004SECDIV, entitled Joint Staff Security Clearance Files. The exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records.

EFFECTIVE DATE: December 5, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'.

Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Investigative and other records needed to make the judgment of approval or denial of a security clearance may require that certain records in the system be protected using the specific exemption (k)(5), to insure that a source who furnished information to the Government under an express promise of confidentiality be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence will be afforded such protection. The exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records. The proposed rule was previously published on September 27, 1995, at 60 FR 49812.

List of Subjects in 32 CFR part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 311.7 is amended by adding paragraph (c)(9) as follows:

§ 311.7 Procedures for exemptions.

* * * * *

(c) *Specific exemptions.* * * *

(9) *System identifier and name*--JS004SECDIV, Joint Staff Security Clearance Files.

Exemption. Portions of this system of records are exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections 5 U.S.C. 552a(d)(1) through (d)(5).

Authority. 5 U.S.C. 552a(k)(5).

Reasons. From subsections (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it. This exemption is limited to disclosures that would reveal the identity of a confidential source. At the time of the request for a record, a determination will be made concerning whether a right, privilege, or benefit is denied or specific information would reveal the identity of a source.

* * * * *

Dated: January 29, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–2257 Filed 2–1–96; 8:45 am]

BILLING CODE 5000–04–F

Defense Investigative Service

32 CFR Part 321

Privacy Program

AGENCY: Defense Investigative Service, DOD.

ACTION: Final rule.

SUMMARY: The Defense Investigative Service is exempting a system of records identified as V5-04, entitled Counterintelligence Issues Database (CII-DB), from certain provisions of 5 U.S.C. 552a. Exemption is needed to comply with prohibitions against disclosure of information provided the government under a promise of confidentiality and to protect privacy rights of individuals identified in the system of records.

EFFECTIVE DATE: December 5, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Hartig at (703) 325–5324.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974. The proposed rule was previously published on October 3, 1995, at 60 FR 51764.

List of Subjects in 32 CFR Part 321

Privacy.

Accordingly, 32 CFR part 321 is amended as follows:

1. The authority citation for 32 CFR part 321 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C.552a).

2. Section 321.14, paragraph (g) is redesignated as (h) and a new paragraph (g) is added as follows:

§ 321.14 Exemptions.

* * * * *

(g) System identifier. V5–04.

(1) *System name.* Counterintelligence Issues Database (CII-DB).

(2) *Exemption.* Portions of this system of records that fall within the provisions of 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and

(k)(5) may be exempt from the following subsections (c)(3); (d)(1) through (d)(5); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5).

(4) *Reasons.* From subsection (c)(3) because giving the individual access to the disclosure accounting could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This would seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication, or destruction of evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

From subsection (d) because the application of these provisions could impede or compromise an investigation or prosecution if the subject of an investigation had access to the records or were able to use such rules to learn of the existence of an investigation before it would be completed. In addition, the mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

From subsection (e)(1) because during an investigation it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation. In addition, during the course of an investigation, the investigator may obtain information that related primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, DIS investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

From subsections (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) because this system is exempt from subsection (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that these records will be exempt from these subsections. However, DIS has published information concerning its notification and access procedures, and the records source categories because under certain circumstances, DIS could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

* * * * *

Dated: January 29, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–2256 Filed 2–1–96; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI41–1–6999a; FRL–5407–5]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: This document approves a State Implementation Plan (SIP) revision for the State of Michigan which was submitted pursuant to the USEPA general conformity rules set forth at 40 ozone maintenance part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. Section 51.851(a) of the general conformity rules requires each State to submit to USEPA a revision to its applicable SIP which contains criteria and procedures for assessing conformity of Federal actions to applicable SIPs. The general conformity rules, except for the 40 CFR 51.851(a) language requiring State submission of a SIP revision, are repeated at 40 CFR part 93, subpart B. Michigan's SIP revision incorporates verbatim the criteria and procedures set forth at 40 CFR part 93, subpart B. This general conformity SIP revision will enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment and maintenance areas at the State and local level.

This document of approval is limited only to the general conformity SIP revision submitted pursuant to 40 CFR part 51, subpart W. SIP revisions submitted under 40 CFR part 51, subpart T, relating to conformity of Federal transportation actions funded or approved under Title 23 U.S.C. or the Federal Transit Act, will be addressed in a separate document. This document provides the rationale for the proposed approval and other information.

DATES: This ''direct final'' rule is effective April 2, 1996 unless USEPA receives adverse or critical comments by March 4, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c) of the Clean Air Act (CAA), 42 U.S.C. § 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP that has been approved or promulgated pursuant to the CAA. Conformity is defined in section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the

frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Section 176(c)(4)(A) of the CAA requires USEPA to promulgate criteria and procedures for determining conformity of all Federal actions to applicable SIPs. Criteria and procedures for determining conformity of Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Act are set forth at 40 CFR part 51, subpart T. The criteria and procedures for determining conformity of other Federal actions, the ''general conformity'' rules, were published in the November 30, 1993, Federal Register and codified at 40 CFR part 51 subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to the USEPA not later than November 30, 1994.

II. Evaluation of the State's Submittal

Pursuant to the requirements under section 176(c)(4)(C) of the CAA the Michigan Department of Natural Resources (MDNR) submitted a SIP revision to the USEPA on November 29, 1994. The USEPA found this submittal to be complete on April 13, 1995. In its submittal, the State adopted the USEPA general conformity rule (40 CFR part 93, subpart B) verbatim.

General conformity is required for all areas which are designated nonattainment or maintenance for any NAAQS criteria pollutant. The State of Michigan currently has 25 areas designated ozone nonattainment, and one ozone maintenance area. The areas for which conformity determinations are required and which are included as part of this submittal include the following nonurbanized counties: Allegan, Barry, Branch, Cass, Gratiot, Hillsdale, Huron, Ionia, Lenawee, Lapeer, Montcalm, Saint Joesph, Sanilac, Shiwassee, Tuscola, Van Buren. Urbanized areas include: Battle Creek Metropolitan Statistical Area (MSA) (Calhoun County), Benton Harbor MSA (Berrien County), Detroit-Ann Arbor Consolidated MSA area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties which are ozone maintenance), Flint MSA (Genesee County), Grand Rapids MSA (Kent and Ottawa Counties), Jackson MSA (Jackson County), Kalamazoo MSA (Kalamazoo County), Lansing-East Lansing MSA (Clinton, Eaton, and Ingham Counties), Muskegon MSA (Muskegon County), and Saginaw-Bay City-Midland MSA (Bay, Midland, and Saginaw Counties). Portions of three counties (Wayne, Oakland, and Macomb) are designated carbon monoxide nonattainment. A portion of Wayne county is nonattainment for Particulate Matter-10. The State of Michigan is currently attaining the NAAQS for Nitrogen Dioxide and Sulfur Dioxide, and has not been designated nonattainment for lead.

The MDNR held a public hearing on the transportation conformity submittal on November 16, 1994. One comment was received by MDNR during the public comment period and that comment was addressed in the submittal.

III. USEPA Criteria on Submittal

The revision incorporated the provisions of the following sections of 40 CFR part 93, subpart B in verbatim form: §§ 93.150, 93.151, 93.152, 93.153, 93.154, 93.155, 93.156, 93.157, 93.158, 93.159, 93.160.

The MDNR, after consulting with the Michigan Attorney General, correctly concluded that this SIP revision will be enforceable pursuant to Michigan statutory law. Section 336.15 of the Michigan Compiled Laws (MCL), MSA § 14.58(5) (1965 Mich. Pub. Acts 348), authorizes MDNR: to promulgate rules to establish standards for ambient air quality and for emissions (including SIPs); to institute a civil action to compel compliance with such rules; to cooperate with USEPA with respect to the control of air pollution; and to take other actions necessary to enforce such rules. Section 336.26d of MCL, MSA § 14.58(16d) (1965 Mich. Pub. Acts 348), provides for the assessment of penalties by MDNR for SIP violations and Section 336.26e of MCL, MSA § 14.58(16e) (1965 Mich. Pub. Acts 348), authorizes the attorney general to seek both penalties and injunctive relief for such violations.

Additional enforcement authority is found in MCL § 691.1202, MSA § 14.528(202) (1970 PA 127), which authorizes the attorney general, any political subdivision of the State, any instrumentality or agency of the State, or any person or legal entity to bring a civil action for declaratory and equitable relief for the protection of the air from pollution, impairment or destruction. In determining whether a violation has occurred or is likely to occur, the court may adopt standards set forth in a SIP or may adopt another standard.

IV. USEPA Action

The USEPA is approving the general conformity SIP revision for the State of Michigan. The USEPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal general conformity rules set forth at 40 CFR part 93, subpart B. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision. Because USEPA considers this action to be noncontroversial and routine, USEPA is approving it without prior proposal. This action will become effective on April 2, 1996. However, if USEPA receives adverse comments by March 4, 1996. USEPA will publish a document that withdraws this action.

IV. Miscellaneous

A. Applicability to Future SIP Decisions.

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

B. Executive Order 12866

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

C. Regulatory Flexibility

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

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the

Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976).

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA 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, the USEPA 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 the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA 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.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 1996. 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) of the CAA).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: December 13, 1995.

Gail Ginsberg,

Acting Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1173 is amended by adding paragraph (e) to read as follows:

§ 52.1173 Control strategy: Particulates.

* * * * *

(e) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the particulate State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

3. Section 52.1174 is amended by adding paragraph (n) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(n) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

4. Section 52.1185 is added to read as follows:

§ 52.1185 Control strategy: Carbon Monoxide.

(a) Approval—On November 29, 1994, the Michigan Department of Natural Resources submitted a revision to the carbon monoxide State Implementation Plan for general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(b) Reserved.

[FR Doc. 96–1850 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[GA–28–1–6955a; GA–30–1–7009a; FRL–5318–3]

Approval and Promulgation of Implementation Plans; State: Georgia; Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves revisions to the Georgia State Implementation Plan (SIP) submitted by the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD) on June 24 and November 15, 1994, for the purpose of realphabetizing and updating definitions, updating volatile organic compounds (VOCs) reasonably available control technology (RACT) rules, stationary source monitoring and testing procedures, and regulations for the prevention of significant deterioration of air quality (PSD). The SIP revisions are consistent with requirements of the Clean Air Act as amended in 1990 (CAA).

DATES: This final rule is effective April 2, 1996, unless adverse or critical comments are received by March 4, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Laura Thielking at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural

Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Laura Thielking, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, X4210. Reference files GA–28–1–6955 and GA–30–1–7009.

SUPPLEMENTARY INFORMATION: On June 24, 1994, the State of Georgia through the Georgia Environmental Protection Division submitted SIP revisions to EPA Region 4, and additional revisions were submitted on November 15, 1994. These submittals contain changes pursuant to requirements of part D of Title I of the CAA with regard to nonattainment areas; part A, section 114, pertaining to source monitoring; and part C, regarding PSD.

Specifically, Georgia submitted, and EPA is approving, the following revisions.

391–3–1–.01 Definitions

Revised definition of Potential to Emit, (www); Opacity, (ss); Part 70 Permit, (ww); Reid Vapor Pressure, (iii); Synthetic Minor Permit, (cccc); and Total Reduced Sulfur (TRS), (eeee). Re-alphabetized all of the definitions to be consistent with EPA definitions, to correct errors, and to simplify finding definitions.

391–3–1–.02(2) Emission Standards

Subsection (2)(t), VOC Emissions from Automobile and Light-Duty Truck Manufacturing, has been revised and subsections (2)(ccc), VOC Emissions from Bulk Mixing Tanks, and (2)(eee), VOC Emissions from Expanded Polystyrene Products Manufacturing, have been added to include new VOC emission limitations to specify RACT for certain industrial categories. The reference given for the procedure for determining leaks in subsection (2)(hh), Petroleum Refinery Equipment Leaks, is revised to cite the present form of the test method. This will bring the reference up to date. These revisions are consistent with the CAA.

391–3–1–.02(3) Sampling and 391–3–1–.02(6) Source Monitoring

Subparagraphs (3)(a), (6)(a), and (6)(b) were revised to reference the methods specified in the Georgia Department of Natural Resources Manual of Procedures for Testing and Monitoring Sources of Air Pollutants, dated September 1, 1994. The revised manual has been reviewed and meets EPA requirements.

391–3–1–.02(7) Prevention of Significant Deterioration of Air Quality (PSD)

Paragraph (7) is amended to incorporate by reference the PSD rules in 40 CFR Part 52.21 as amended. This revision incorporates the changes to the rules published on June 3, 1993 [58 FR 31637] and July 20, 1993 [58 FR 38883]. The action effective on June 3, 1993, revised the maximum allowable increases (increments) for particulate matter (PM) under the requirements for PSD. The July 20, 1993, revision updated the 'Guideline on Air Quality Models (Revised)' (1986), as modified by Supplement A (1987) by adding new models, improving existing models and incorporating Supplement B (1993). This action also set the Guideline, revised by Supplements A and B, as appendix W to 40 CFR part 51.

Final Action

EPA is approving the plan revisions submitted by the State of Georgia on June 24 and November 15, 1994, listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

The EPA is publishing this action without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revisions should adverse or critical comments be filed. This action will be effective April 2, 1996, unless, by March 4, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 2, 1996.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607(b)(2)).

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

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

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules

that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the revisions provided for under section 114, part C, and part D of Title I of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements, since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 29, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671(q).

Subpart L—Georgia

2. Section 52.570, is amended by adding paragraph (c) (47) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(47) Chapter 391–3–1–.01, .02(2), and .02(7), of the Georgia Department of Natural Resources Rules for Air Quality Control, submitted on June 24, 1994, and November 15, 1994. Change to Chapters 391–3–1–.02(3) and 391–3–1–.02(6) to reference a new version of the Georgia Department of Natural Resources Manual of Procedures for Testing and Monitoring Sources of Air Pollutants, submitted on November 15, 1994.

(i) Incorporation by reference.

(A) The following revised Rules of the Georgia Department of Natural Resources, Chapter 391–3–1, Air Quality Control, became State effective on June 13, 1994:

391–3–1–.02(2)(hh)(iii);
391–3–1–.02(7);

(B) The following revised Rules of the Georgia Department of Natural Resources, Chapter 391–3–1, Air Quality Control, became State effective on November 20, 1994:

391–3–1–.01;
391–3–1–.02(2)(t);
391–3–1–.02(2)(ccc);
391–3–1–.02(2)(eee);
391–3–1–.02(3)(a);
391–3–1–.02(6)(a)2.(v)(I);
391–3–1–.02(6)(a)2.(vii)(I);
391–3–1–.02(6)(a)2.(vii)(II)I.;
391–3–1–.02(6)(b)1.(vi)

(ii) Other material. None.

* * * * *

[FR Doc. 96–1928 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[GA–21–3–6481a; FRL–5319–5]

Approval and Promulgation of Implementation Plans, Georgia: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves revisions to the Georgia State Implementation Plan (SIP) adopted by the Georgia Department of Natural Resources Environmental Protection Division (GA EPD) on September 9, 1992, for the purpose of implementing the following programs within the Atlanta ozone nonattainment area: emission statement program for stationary sources, Stage II Gasoline Vapor Control revisions with SIP narrative and transfer of the existing Georgia Department of Public Safety's Inspection and Maintenance (I/M) program regulations to the Georgia Department of Natural Resources. The submitted revisions meet the November 15, 1992, plan requirements for nonattainment areas of the Clean Air Act as amended in 1990 (CAA). The revisions were submitted for the Atlanta ozone nonattainment area.

DATES: This final rule is effective April 2, 1996 unless adverse or critical comments are received by March 4, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Alan Powell at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4209. Reference file GA–21–3–6481.

SUPPLEMENTARY INFORMATION: The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the CAA. Section 182 of the CAA sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in subsections (b), (c), (d), and (e) to all other ozone nonattainment areas. On November 13, 1992, Georgia submitted a SIP package to address these requirements. The submittal contained regulations relating to emissions statements, new source review, enhanced motor vehicle inspection committal SIP, Stage II vapor recovery, the small business assistance program (SBAP) and non-control technology guidance (non-CTG) Reasonably Available Control Techniques (RACT). The new source review, non-CTG RACT, SBAP and I/M committal SIP portions of this package will be processed as separate Federal

Register notices. The following summarize the applicable revisions addressing emission statements, revision to the I/M program which transfer authority to the Georgia Environmental Protection Division from the Georgia Department of Motor Vehicles and Stage II vapor recovery.

391–3–1–.02(6)(a)4.—Emission Statements. This is a new rule which requires annual emission statements from owners and operators of stationary sources of nitrogen oxides (NO_X) and/or VOCs which emit greater than or equal to 25 tons per calendar year of either pollutant in the Atlanta ozone nonattainment area. Among the requirements in section 182(a) is a program in paragraph (3) of that subsection for stationary sources to prepare and submit to the State each year emission statements showing actual emissions of VOC and NO_X. The emission statement must contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

The CAA requires applicable facilities (25 tons per year (tpy) and greater of VOC and NO_X) to submit the emission statements to the State within three years after November 15, 1990, and annually thereafter. The Georgia emission statement rule, submitted on November 13, 1992, requires applicable sources to submit an emissions statement to the GA EPD beginning March of 1993, and the emission statements submitted will be certified correct as required by the CAA. The emission statement rule submitted by GA EPD meets all applicable requirements of the CAA.

391–3–10—Inspection and Maintenance. This chapter adopts, with various minor changes, the Georgia Department of Public Safety's I/M rules as GA EPD rules, reflecting the transfer of responsibility for the program contained in the Georgia Motor Vehicle I/M Act. This rule will not significantly change the operation of the existing I/M program.

391–3–1–.02(2)(zz)—Gasoline Dispensing Facilities—Stage II. The provisions required for serious ozone nonattainment areas include a requirement for owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. The CAA specifies that the state regulations must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the CAA defines an ISBM. The State definition of ISBM is consistent with the definition in the CAA.

The CAA specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an ISBM, these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) by November 15, 1994, for all other facilities. For ISBM's, section 324(a) of the CAA provides that the time periods may be: (1) 33 percent of the facilities owned by an ISBM by the end of the first year after the regulations take effect; (2) 66 percent of such facilities by the end of the second year; and (3) 100 percent of such facilities after the third year.

Consistent with EPA's guidance, the State requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiently by using a system approved by the California Air Resources Board (CARB). The State requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change). The State has also established an inspection program consistent with that described in EPA's guidance and has established procedures for enforcing violations of the Stage II requirements.

Pursuant to the CAA, Georgia is required to adopt specific air quality control rules and incorporate them into the Georgia SIP. On November 13, 1992, the State of Georgia through the GA EPD submitted the required November 15, 1992, regulations to EPA for approval and incorporation into the Georgia SIP. EPA has evaluated the State's submittal for consistency with the CAA, EPA regulations, and EPA policy. EPA has determined that the rules addressed in this notice meet all of the CAA requirements and is approving under section 110(k)(3), the following regulations within Georgia's SIP Air Quality Control Rules, Chapter 391–3–1, and Rules for Inspection and Maintenance, Chapter 391–3–10. The regulations apply within the thirteen (13) county Atlanta ozone nonattainment area.

Recodification

EPA is additionally approving several minor recodification revisions in response to the recent amendments to the Georgia Air Quality Act. The Georgia Air Quality Act contains the necessary authority to adopt the Georgia SIP revisions pursuant to the requirements of the CAA.

EPA has not reviewed the substance of all of these regulations at this time. These rules were approved into the State implementation plan in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the State. The EPA's approval of the renumbering system, at this time, does not imply any position with respect to the approvability of the substantive rules. To the extent EPA has issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this recodification, EPA will continue to require the State to correct any such rule deficiencies despite EPA's approval of this recodification.

Final Action

EPA is approving these revisions because they meet the requirements of EPA and the CAA. This action is being taken without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments.

However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 2, 1996, unless, by March 4, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 2, 1996.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the Act, 42 U.S.C. 7607(b)(2).)

The OMB has exempted these actions from review under Executive Order 12866.

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

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

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action.

The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference, Lead, Ozone, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 18, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c) (44) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(44) Revisions to the Georgia State Implementation Plan; Chapter 391–3–1 and Chapter 391–3–10 of the Georgia Department of Natural Resources Administrative Code which were submitted to EPA on November 13, 1992.

(i) Incorporation by reference.

(A) Georgia Department of Natural Resources Air Quality Rules submitted by the Georgia Department of Natural Resources, Environmental Protection Division for inclusion in the Georgia state implementation plan which were adopted on October 28, 1992, are as follows:

391–3–1–.05, 391–3–1–.09, 391–3–1–.10, 391–3–1–.02(2)(zz), 391–3–1–.02(6)(a)4., 391–3–1–.03(5), 391–3–1–.03(6)(h), 391–3–10.01(d)(e), 391–3–10–.04(d), 391–3–10–.07(2), 391–3–10–.10(b), 391–3–10–.12, 391–3–10–.24(11), 391–3–10–.30(1), 391–3–10–.30(2).

(ii) Other material. None.

* * * * *

[FR Doc. 96–1845 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[GA–21–2–5930a; FRL–5321–6]

Approval and Promulgation of Implementation Plans; Georgia: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of Georgia through the Georgia Environmental Protection Division for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). This implementation plan was originally submitted by the State on November 13, 1992. On September 27, 1995, the State of Georgia resubmitted the SIP establishing the PROGRAM and formally requested to withdraw the November 13, 1992, submittal. This PROGRAM satisfies the federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act as amended in 1990 (CAA).

DATES: This action is effective April 2, 1996, unless notice is received March 4, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of Georgia may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 x4195.

SUPPLEMENTARY INFORMATION: Implementation of the CAA will require small businesses to comply with specific regulations in order for areas to attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the EPA to oversee the small business assistance program and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of

title V of the CAA and the EPA guidance document Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments. In order to gain full approval, the state submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a state Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP. The plan must also determine the eligibility of small business stationary sources for assistance in the PROGRAM. The plan includes the duties, funding and schedule of implementation for the three PROGRAM components.

Section 507(a) and (e) of the CAA set forth requirements the State must meet to have an approvable PROGRAM. The State of Georgia has addressed these requirements and established a PROGRAM as described below.

1. Small Business Assistance Program (SBAP)

The State of Georgia has established a mechanism to implement the following six requirements set forth in section 507 of title V of the CAA:

A. The establishment of adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further comply with the CAA;

B. The establishment of adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

C. The development of a compliance and technical assistance program for small business stationary sources which assist small businesses in determining applicable permit requirements and in receiving permits under the CAA in a timely and efficient manner;

D. The development of adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA;

E. The development of adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors, or at the option of the State, for providing audits of the operations of such sources to determine compliance with the CAA; and

F. The development of procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The State of Georgia acknowledges the heart of the PROGRAM is the Small Business Assistance Program (SBAP), which resides in the Air Protection Branch within the Environmental Protection Division. The SBAP will provide an information clearinghouse and refer small businesses to State technical experts within the Branch who are trained to handle specific questions relevant to achieving compliance with the CAA. In addition, the SBAP will provide for the collection and dissemination of information to small businesses on determining applicable requirements under the CAA, permit issuance, small businesses' rights and obligations, compliance methods, acceptable control technologies, pollution prevention, accidental release prevention and detection, audit programs and procedures, and other matters deemed useful or necessary by the Division. The specific mechanisms for collection and dissemination of information will be developed by the Ombudsman. The SBAP also will consider requests from small business stationary sources for modifications of work practices, technological methods of compliance, or compliance procedures and provide guidance as necessary. The SBAP will utilize, on an as needed basis, the services of other in-state entities with expertise in various aspects related to the PROGRAM.

The dissemination of information to small businesses in Georgia through the SBAP involves both a proactive and a reactive component. The SBAP will actively advertise the PROGRAM to ensure the regulated communities are aware of their obligations under the CAA. The reactive component takes place after the regulated community recognizes that there is or could be some obligation on their part to comply with the CAA. The Division is committed to supporting the proactive component of the program which includes, but is not limited to the following: utilizing the Georgia Department of Industry and Trade manufacturing directory; providing informational packets which describe in layman terms compliance and technical information relevant to small businesses as required by the Act; and holding meetings throughout the State with interested parties. Reactive components of the SBAP include: the designation of a trained technical specialist to handle inquiries from small businesses; a technical specialist to interface with the Air Protection Branch's engineering, permitting, and compliance programs for needed information; and an information clearinghouse of information from EPA's technical support services, other state ombudsman offices, and professional organizations.

The SBAP will assist small businesses in determining applicable requirements and will provide information on permit issuance, compliance methods, acceptable control technologies, pollution prevention, accidental release prevention and detection, and audit programs. The SBAP will inform small businesses about their rights under the CAA; assist in the preparation of guidance documents and ensure that technical and compliance information is available to the small business community and the general public; answer regulatory questions raised by small businesses and provide them with clean air compliance information; obtain information and counsel from other appropriate state agencies; and participate and sponsor meetings on air quality requirements, pollution prevention, and other regulatory issues.

A small business may petition the Division to modify work practices, compliance methods or implementation schedules in accordance with established procedures as described in the SIP.

2. Ombudsman

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources. Georgia has appointed a Small Business Ombudsman and established the Office of the Ombudsman within the Environmental Protection Division. Through that office, the Ombudsman will have access to the Governor, the Director of the Environmental Protection Division, the Chief of the Air Protection Branch, and other state and Federal agencies. The Ombudsman will

have the necessary autonomy to function independently of the air program.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses. Four members will be selected by the state legislature who are owners, or represent owners, of small businesses. The majority and minority leadership in both the house and the senate shall each appoint one member of the panel. One member will be selected by the Chief of the Air Protection Branch. The State of Georgia has established a CAP with a membership consistent with the aforementioned CAA requirements.

The duties of the CAP include: providing advisory opinions to the EPA regarding the effectiveness of the state PROGRAM, the difficulties encountered by small businesses, and the severity of enforcement; reviewing information for small business stationary air pollution sources to assure such information is understandable to the lay person; and to make periodic reports to the Administrator of the Environmental Protection Agency in accordance with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act. The SBAP will serve as the secretariat to the CAP in the development and dissemination of reports, advisory opinions, and other information.

4. Source Eligibility

Georgia has incorporated section 507(c)(1) of the CAA and defined a Small Business Stationary Source as a source that:

(1) Is owned or operated by a person who employs 100 or fewer individuals;

(2) is a small business concern as defined in the Small Business Act;

(3) is not a major stationary source; and

(4) does not emit 50 tons per year (tpy) of any regulated pollutant and emits less than 75 tpy of all regulated pollutants.

Georgia has established the following mechanisms as required by section 507: (1) A process for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA; (2) A process for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1) (C), (D), and (E) of the CAA, but do not emit more than 100 tpy of all regulated pollutants; and (3) a process for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the Division determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

Final Action

In this action, EPA is approving the SIP revision establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance program submitted by the State of Georgia through the Environmental Protection Division. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 2, 1996 unless, by March 4, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule published with this action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 2, 1996.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607(b)(2).)

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

By today's action, the USEPA is approving a State program created for the purpose of assisting small business stationary sources in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small business stationary sources; it is a program under which small business stationary sources may elect to take advantage of assistance provided by the State. Therefore, because the USEPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

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

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

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), P.L. 104–4, establishes requirements for the Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written

statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed 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.

Through submission of the SIP or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The submission approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the submission being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments in the aggregate, or on the private sector, in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 17, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(43) read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(43) The Georgia Environmental Protection Division has submitted revisions to the Georgia State Implementation Plan on September 27, 1995. These revisions address the requirements of section 507 of Title V of the Clean Air Act and establish the Small Business Stationary Source Technical and Environmental Program.

(i) Incorporation by reference.

(A) The submittal of the state of Georgia's Small Business Stationary Source Technical and Environmental Compliance Assistance Program which was adopted on July 20, 1995.

(ii) Additional Material. None.

* * * * *

[FR Doc. 96–1926 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[RI15–1–6954a; A–1–FRL–5329–3]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Control of Volatile Organic Chemicals from Automotive Refinishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes VOC emission standards for automotive refinishing operations. The intended effect of this action is to approve a revision to Rhode Island SIP which reduces VOC emissions from automotive refinishing. This action is being taken in accordance with Section 183(e) and Section 182(b)(1) of the Clean Air Act.

DATES: This action is effective April 2, 1996, unless notice is received by March 4, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: Under section 183(a) of the Clean Air Act, EPA was required to issue a control techniques guideline (CTG) for the category of autobody refinishing. However, EPA has instead issued guidance for this category in the form of an Alternative Control Technology (ACT) guideline. While the ACT does not define reasonably available control technology (RACT) standards for autobody refinishing, it does include three control options with estimates of costs and emission reductions for each option. In addition to the section 183(a) requirements, Section 183(e) of the CAA, requires EPA to issue national VOC emissions standards for consumer and commercial products, which include automotive refinishing coatings. EPA expects to propose the national rule for automotive refinishing coatings in early 1996. Rhode Island decided to adopt rules for autobody refinishing in advance of a federal rule, to get credit

for reductions from this category in its 15% plan.

Rhode Island was required to submit, by November 15, 1993, a SIP revision for Reasonable Further Progress (RFP) for 15% reduction of VOCs as necessary for moderate areas and above. The entire state of Rhode Island is classified as serious nonattainment area, therefore the 15% plan must cover the entire state.

On November 24, 1993, the Rhode Island DEP submitted to EPA for comment, proposed amendments to the SIP to address the RFP requirements including new Air Pollution Control Regulations No. 30, Control of Volatile Organic Compounds from Automobile Refinishing Operations.'' Rhode Island held public hearing on December 15, 1993 for its proposed automotive refinishing rule. EPA submitted written comments regarding the proposed regulation on December 14, 1993 and January 3, 1994. The regulation was adopted on March 11, 1994 and became effective on March 31, 1994. Rhode Island submitted their adopted regulation as a formal SIP submittal to EPA on March 17, 1994. On January 14, 1995, the Rhode Island DEM submitted to EPA for comment proposed revisions to Air Pollution Control Regulation 30, ''Control of Volatile Organic Compounds from Automobile Refinishing Operations.'' Rhode Island held a public hearing on the revised rule on April 17, 1995. EPA submitted written comments on the proposed revisions on April 17, 1995. The regulation became effective on July 17, 1995.

Subsequently, on June 27, 1995, the Rhode Island Department of Environmental Management (DEM) submitted an amended Air Pollution Control Regulation Number 30, ''Control of Volatile Organic Compounds from Automobile Refinishing Operations.'' as a revision to the Rhode Island SIP. The amended Regulation No. 30 in the June 27, 1995 submittal replaces Rhode Island's March 17, 1994 Regulation No. 30 submittal. The amended regulation changed the emission limit for primer/primer surfacer coatings applied to Group I vehicles from 3.8 pounds of VOC/gallon of coating applied to 4.8 pounds of VOC/gallon of coating applied.

The adopted Air Pollution Control Regulation Number 30, ''Control of Volatile Organic Compounds from Automobile Refinishing Operations'' regulates the VOC content of automotive refinishing products. The regulation applies to any person who owns, leases, operates or controls an automotive refinishing facility.

Summary of SIP Revision

The adopted Air Pollution Control Regulation Number 30, ''Control of Volatile Organic Compounds from Automobile Refinishing Operations, establishes Reasonably Available Control Technology for all automobile refinishing facilities. ''Automotive Refinishing'' is defined by Rhode Island as ''any coating of vehicles, their parts and components, or mobile equipment, including partial body collision repairs, for the purpose of protection or beautification and which is subsequent to the original coating applied at the plant coating assembly line.''

The rule establishes the following RACT emission limits, expressed as pounds of VOC per gallon of coating and grams of VOC per liter of coating, excluding water:

TABLE 1.—EMISSION LIMITATIONS FOR AUTOMOTIVE REFINISHING OPERATIONS FOR GROUP I VEHICLES

(Passenger Cars, Large/Heavy Duty Truck Cabs and Chassis, Light and Medium Duty Trucks, Vans, and Motorcycles)

Type of Coating	VOC Emission Limitation	
	lb VOC/gallon coating applied minus water	lb VOC/gallon solids applied (for facilities which use add on control)
Pretreatment	6.5	55.6
Primer/primer Surfacer	4.8	13.8
Primer Sealer	4.6	12.3
Topcoat	5.0	15.6
Three or Four-Stage Topcoat	5.2	17.7
Specialty Coating	7.0	143.1

TABLE 2.—EMISSION LIMITATIONS FOR AUTOMOTIVE REFINISHING OPERATIONS FOR GROUP II VEHICLES

(Public Transit Buses and Mobile Equipment)

Type of Coating	VOC Emission Limitation	
	lb VOC/gallon coating applied minus water	lb VOC/gallon solids applied (for facilities which use add on control)
Pretreatment	6.5	55.6
Primer/primer Surfacer	2.8	4.5
Primer Sealer	3.5	6.7
Topcoat	3.5	6.7
Extreme Performance Coating	6.2	39.3
Specialty Coating	7.0	143.1

The rule gives facilities the option of complying through the use of compliant coatings, or by installing a control system which reduces the total VOC emissions from the facility by 95% or greater as compared to uncontrolled VOC emissions, or by installing emission control systems that result in VOC emissions less than or equal to the limits specified in Tables 1 and 2. The rule also contains the following provisions:

1. Requirements to store solvent waste material in closed containers to minimize solvent evaporation;

2. Equipment Requirements that specify the use of High Volume Low Pressure spray equipment or electrostatic application equipment, or another type of application equipment that results in a transfer efficiency of at least 65% and has been approved by the RI DEM. Spray guns are to be cleaned and solvent is to be stored in a manner that limits solvent evaporation; and

3. Training, recordkeeping, reporting, registration, compliance demonstration, and testing requirements.

Facilities were required to comply with the regulation by July 1, 1995.

EPA's evaluation is detailed in a memorandum, entitled ''Technical Support Document for Rhode Island's Regulation 30, Control of Volatile Organic Compounds from Automobile Refinishing Operations''.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 2, 1996 unless adverse or critical comments are received by March 4, 1996.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent document that

will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 2, 1996.

Final Action

EPA is approving Air Pollution Control Regulation No. 30, ''Control of Volatile Organic Compounds from Automobile Refinishing Operations''.

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

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 183(e) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables.

The OMB has exempted this action from review under Executive Order 12866.

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

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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

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 April 2, 1996. 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, Reporting and recordkeeping requirements.

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

Dated: October 16, 1995.

John P. DeVillars,

Regional Administrator, EPA, New England.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart OO—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(44) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(44) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on June 27, 1995.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated June 27, 1995 submitting a revision to the Rhode Island State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the State of Rhode Island effective on July 17, 1995: Air Pollution Control Regulation No. 30, Control of Volatile Organic Compounds from Automotive Refinishing Operations.

3. In § 52.2081 Table 52.2081 is amended by adding an entry for state citation No. 30 to read as follows:

§ 52.2081 EPA-approved Rhode Island state regulations.

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/Unapproved sections
*	*	*	*	*	*	*
No. 30	Control of VOC from Automobile Refinishing Operations.	June 27, 1995	February 2, 1996 ...	[Insert *FR* citation from published date].	(c)(44)	Control of VOC From Automobile Refinishing Operations.
*	*	*	*	*	*	*

[FR Doc. 96–2228 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5405–5]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the Commonwealth of Massachusetts for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also approving the Commonwealth's authority to implement hazardous air pollutant requirements.

DATES: This action is effective April 2, 1996 unless notice is received by March 4, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be addressed to Ida E. Gagnon, Air Permits, APO, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211.

Copies of the State's submittal and other supporting information relevant to this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 10th floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits, APO, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial program and anticipates no adverse comments. However, in a separate document in the Federal Register publication, EPA is proposing interim approval of the Operating Permit Program submitted by the Commonwealth of Massachusetts should adverse or critical comments be filed. This action will be effective April 2, 1996 unless adverse or critical comments are received by March 4, 1996.

If EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 2, 1996.

B. Federal Oversight and Sanctions

When EPA promulgates this interim approval, it will extend for two years following the effective date, and cannot be renewed. During the interim approval period, the Commonwealth of Massachusetts is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the Commonwealth of Massachusetts. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources specified in section 503(c) of the Act begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.[1]

Following final interim approval, if the Commonwealth of Massachusetts fails to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If the Commonwealth of Massachusetts then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the Commonwealth of

[1] Note that states may require applications to be submitted earlier than required under section 503(c). See 310 CMR Appendix C(4)(a).

Massachusetts has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the Commonwealth of Massachusetts still has not submitted a corrective program that EPA finds complete, a second sanction will be required.

If, following final interim approval, EPA disapproves the Commonwealth of Massachusetts' complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the Commonwealth of Massachusetts has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the Commonwealth of Massachusetts has not submitted a revised program that EPA has determined corrected the deficiencies that prompted disapproval, a second sanction will be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if the Commonwealth of Massachusetts has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a Commonwealth of Massachusetts program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the Commonwealth of Massachusetts upon interim approval expiration.

II. Action and Implications

A. Analysis of State Submission

1. Support Materials

The Acting Commissioner of the Commonwealth of Massachusetts (Designee of the Governor) submitted an administratively complete title V Operating Permits Program (PROGRAM) on April 28, 1995. EPA deemed the PROGRAM administratively complete in a letter to the Commissioner dated on June 26, 1995. The PROGRAM submittal includes a description of how the Commonwealth intends to implement the PROGRAM and legal opinions from the Attorney General of Massachusetts stating that the laws of the Commonwealth provide adequate authority to carry out the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, permit application forms, a data management system and a fee adequacy demonstration.

2. Regulations and Program Implementation

The Commonwealth of Massachusetts has submitted 310 CMR 7.00 Appendix C entitled ''Operating Permit Program'' for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of procedurally correct adoption is included in part b of the submittal.

The Massachusetts operating permits regulations follow part 70 very closely. The following requirements, set out in EPA's part 70 operating permits program review are addressed in Part B of the Commonwealth's submittal.

The Massachusetts PROGRAM, including the operating permit regulations, substantially meets the requirements of 40 CFR 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5 and 70.6 with respect to permit content and operational flexibility; § 70.5 with respect to complete application forms and criteria which define insignificant activities; §§ 70.7 and 70.8 with respect to public participation, minor permit modifications, and review by affected states and EPA; and § 70.11 with respect to requirements for enforcement authority.

Part 70 of the operating permits regulation requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. The Commonwealth of Massachusetts has not defined ''prompt'' in its program with respect to reporting of deviations. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

EPA is granting interim approval for the Massachusetts program rather than full approval. Pursuant to section 502(g) of the Act, Massachusetts would be authorized to implement the interim program for a period of two years following EPA's final interim approval of the program. There are four technical mistakes in the PROGRAM regulation that could confuse the regulated community concerning DEP's intent in implementing the PROGRAM. When Massachusetts makes the following changes EPA will grant the PROGRAM full approval:

1. In Appendix C(8)(b)4., the program regulation extends the permit shield to all administrative amendments, including those that receive no public or EPA review. EPA's rule extends the permit shield only to those administrative amendments that have previously been reviewed in an ''enhanced'' new source review program with requirements substantially equivalent to the significant permit modification process. 40 CFR 70.7(d)(4). The permit shield should not extend to all administrative amendments. This is a technical error in the PROGRAM regulation and DEP has agreed to delete this section of their regulations.

2. In Appendix C(7)(b)3.e., the program regulation provides that a notice of an operational flexibility change made pursuant to an intra-facility emissions trading plan may include notice of ''[a]ny permit term or condition that is no longer applicable as a result of the change.'' Changes made pursuant to an intra-facility emissions trading plan must be provided for in the permit, and such plans provide no authority to render permit conditions inapplicable through a simple notice. 40 CFR 70.4(b)(12)(iii)(A). The DEP agrees with this interpretation. It does not intend during the interim program to allow sources to violate conditions of the permit using a notice under a trading plan. Therefore, DEP has agreed to remove this section of their regulation.

3. In Appendix C(4)(a)5., the program regulation requires ''new construction'' to apply for an operating permit within one year of commencing operation, but it does not clearly cover sources that become major without any new construction, for example by relaxing an emissions cap in a restricted emission status (RES) plan approval. EPA and DEP agree that such sources are subject to the program, and that it is the intent of DEP's regulations to require such facilities to apply within a year of becoming major sources during the

interim program. DEP has agreed to revise this provision to clarify the intent of this requirement.

4. In Appendix C(8)(a)2.b., the program regulation prohibits any *relaxation* of monitoring, reporting, or recordkeeping from qualifying as a minor permit modification. Additionally, in Appendix C(8)(a)3.c., the program regulation requires any *significant change* to such permit terms to be processed as a significant permit modification. EPA's rule prohibits all significant changes to monitoring, reporting, or recordkeeping, whether or not they are characterized as a relaxation, from being processed as a minor permit modification, because it is often impossible to tell in advance whether a proposed significant monitoring change is in fact a relaxation. 40 CFR 70.7(e)(2)(i)(2). DEP interprets the requirement in its significant permit modification procedures to be paramount and to require any significant change to monitoring, etc., to be handled as a significant permit modification, consistent with EPA's permit modification procedures. DEP has agreed to revise the operating permit regulations to clarify this matter.

The complete program submittal and the Technical Support Document (TSD) dated November 6, 1995 entitled ''Technical Support Document—Massachusetts Operating Permits Program'' are available in the docket for review. The TSD includes a detailed analysis, including a program checklist, of how the Commonwealth's program and regulations compare with EPA's requirements and regulations. The TSD also includes several important representations from DEP concerning its interpretation of the intent of their program regulations, on which EPA is relying in finding the Commonwealth's program substantially equivalent to federal requirements.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that the fees collected exceed $25 per ton of actual emissions per year, adjusted from the August, 1989 consumer price index. The $25 per ton was presumed by Congress to cover all reasonable direct and indirect costs to an operating permit program. This minimum amount is referred to as the ''presumptive minimum.''

Massachusetts has opted to make a presumptive minimum fee demonstration. In the fee regulation, the Commonwealth proposes a fee-for-service methodology for calculating the operating permit program fees for the first four years of the program. This fee is equivalent to at least the part 70 presumptive minimum fee of $25 per ton of regulated air pollutants, adjusted per the consumer price index (CPI). This rate is based on emissions of regulated pollutants excluding carbon monoxide (CO) capped at 4000 tons per year per pollutant. Using Massachusetts' fee-for-service approach, the Commonwealth will collect from $33.84 to $34.50 per ton annually via application and compliance assurance fees. Massachusetts' average rate is above the presumptive minimum adjusted by the CPI.

Therefore, Massachusetts has demonstrated that the state is collecting sufficient permit fees to meet EPA's presumptive minimum criteria. For more information, see part G of Massachusetts' title V program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. Massachusetts has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements for hazardous air pollutants through the title V permit. This legal authority is contained in Massachusetts' enabling legislation and in regulatory provisions defining ''applicable requirements'' and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Massachusetts to issue permits that assure compliance with all section 112 requirements.

Therefore, EPA will consider that the State of Massachusetts' legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document referenced above and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval. On February 14, 1995 EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g) Massachusetts must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA believes that Massachusetts can utilize its preconstruction permitting program to serve as a procedural vehicle for implementing section 112(g) rule and making these requirements Federally enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. For this reason, EPA is approving Massachusetts' preconstruction permitting program found in 310 CMR 7.02 ''Plan Approval and Emission Limitations'' under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations.

Since the approval would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval would be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Also, since the approval would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA is limiting the duration of the approval to 18 months following promulgation by EPA of its section 112(g) rule.

c. Program for Straight Delegation of Sections 111 and 112 Standards. Requirements for operating permit program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provision Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also granting approval under section 112(l)(5) and 40 CFR 63.91 of

the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated, and section 112 infrastructure programs such as those programs authorized under sections 112(i)(5), 112(g), 112(j) and 112(r) to the extent they apply to sources subject to 310 CMR 7.00 Appendix C. EPA is reconfirming the 40 CFR part 60 and 61 standards currently delegated to Massachusetts as indicated in Table I.[2] EPA is also reconfirming delegation of 40 CFR part 60 standards to the extent they apply to sources subject to 310 CMR 7.00 Appendix C as indicated in Table II. In addition, EPA is proposing to delegate all future 40 CFR parts 60, 61 and 63 standards to the extent they apply to sources subject to 310 CMR 7.00 Appendix C.[3] EPA is delegating the 40 CFR part 63 standards as indicated in Table III to the extent they apply to sources subject to 310 CMR 7.00 Appendix C.

Massachusetts has informed EPA that it intends to accept future delegation of section 111 and 112 standards by checking the appropriate boxes on a standardized checklist. The checklist will list applicable regulations and will be sent by the EPA Regional Office to Massachusetts. Massachusetts will accept delegation by checking the appropriate box and returning the checklist to EPA Region I. The details of this delegation mechanism are set forth in the November 28, 1995, Memorandum of Agreement between Massachusetts and EPA. This program applies to both existing and future standards but is limited to sources covered by the part 70 program. The original delegation agreement between EPA and Massachusetts was set forth in a letter from Kenneth Hagg dated June 25, 1982.

d. Commitment to implement title IV of the ACT. Massachusetts has committed to take action, following promulgation by EPA of regulations implementing section 407 and 410 of the Act, or revisions to either part 72, 74, or 76 or the regulations implementing section 407 or 410, to either incorporate by reference or submit, for EPA approval, Massachusetts Department of Environmental Protection (DEP) regulations implementing these provisions.

B. Final Action

The EPA is promulgating interim approval to the operating permits program submitted to EPA by the Commonwealth of Massachusetts on April 28, 1995. After promulgation, the Commonwealth must make the changes listed above to receive full approval. This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the Commonwealth is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the Commonwealth. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period under the Act for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

The scope of the Commonwealth of Massachusetts' part 70 program that EPA is approving in this notice would apply to all part 70 sources (as defined in the approved program) within the Commonwealth of Massachusetts, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, the EPA is also granting approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

III. Administrative Requirements

A. Opportunity for Public Comments

In a related notice in the Proposed Rule section the EPA is providing an opportunity for comments on all aspects of this final rule. Copies of the State's submittal and other information relied upon for the interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by March 4, 1996.

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 actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

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

EPA has determined that the action promulgated today does not include a Federal mandate that may result in

[2] Please note that federal rulemaking is not required for delegation of section 111 standards.

[3] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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: November 28, 1995.

John P. DeVillars,

Regional Administrator, Region I.

TABLE I.—RECONFIRMATION OF PART 60 AND 61 DELEGATIONS

PART 60 SUBPART CATEGORIES	
D	FOSSIL-FUEL FIRED STEAM GENERATORS.
Da	ELECTRIC UTILITY STEAM GENERATORS.
E	INCINERATORS.
F	PORTLAND CEMENT PLANTS.
G	NITRIC ACID PLANTS.
H	SULFURIC ACID PLANTS.
I	ASPHALT CONCRETE PLANTS.
J	PETROLEUM REFINERIES.
K	PETROLEUM LIQUID STORAGE VESSELS.
Ka	PETROLEUM LIQUID STORAGE VESSELS.
L	SECONDARY LEAD SMELTERS.
M	SECONDARY BRASS AND BRONZE PRODUCTION PLANTS.
N	BASIC OXYGEN PROCESS FURNACES PRIMARY EMISSIONS.
O	SEWAGE TREATMENT PLANTS.
P	PRIMARY COPPER SMELTERS.
Q	PRIMARY ZINC SMELTERS.
R	PRIMARY LEAD SMELTERS.
S	PRIMARY ALUMINUM REDUCTION.
T	PHOSPHATE FERTILIZER WET PROCESS.
U	PHOSPHATE FERTILIZER-SUPERPHOSPHORIC ACID.
V	PHOSPHATE FERTILIZER-DIAMMONIUM PHOSPHATE.
W	PHOSPHATE FERTILIZER TRIPLE SUPERPHOSPHATE.
X	PHOSPHATE FERTILIZER-GRANULAR TRIPLE SUPERPHOSPHATE STORAGE.
Y	COAL PREPARATION PLANTS.
Z	FERROALLOY PRODUCTION FACILITIES.
AA	STEEL PLANTS-ELECTRIC ARC FURNACES.
BB	KRAFT PULP MILLS.
CC	GLASS MANUFACTURING PLANTS.
DD	GRAIN ELEVATORS.
EE	SURFACE COATING OF METAL FURNITURE.
GG	STATIONARY GAS TURBINES.
HH	LIME MANUFACTURING PLANTS.
KK	LEAD-ACID BATTERY MANUFACTURING.
MM	AUTO & LIGHT TRUCK SURFACE COATING OPERATIONS.
NN	PHOSPHATE ROCK PLANTS.
PP	AMMONIUM SULFATE MANUFACTURING.
QQ	GRAPHIC ARTS-ROTOGRAVURE PRINTING.
RR	TAPE AND LABEL SURFACE COATINGS.
SS	SURFACE COATING: LARGE APPLIANCES.
TT	METAL COIL SURFACE COATING.
UU	ASPHALT PROCESSING ROOFING.
WW	BEVERAGE CAN SURFACE COATING.
XX	BULK GASOLINE TERMINALS.
FFF	FLEXIBLE VINYL AND URETHAN COATING AND PRINTING.
HHH	SYNTHETIC FIBER PRODUCTION.
JJJ	PETROLEUM DRY CLEANERS.
PART 61 SUBPART CATEGORIES	
C	BERYLLIUM.
D	BERYLLIUM-ROCKET MOTOR.
E	MERCURY.
F	VINYL CHLORIDE.
M	ASBESTOS.
N	ARSENIC-GLASS MANUFACTURING.

TABLE II.—RECONFIRMATION OF PART 60 DELEGATIONS AS THEY APPLY TO MASSACHUSETTS TITLE V OPERATING PERMITS PROGRAM

PART 60 SUBPART CATEGORIES	
Db	INDUSTRIAL- COMMERCIAL- INSTITUTIONAL STEAM GENERATING UNIT.
Dc	SMALL INDUSTRIAL-COMMERCIAL-INSTITUTIONAL STEAM GENERATING UNITS.
Ea	MUNICIPAL WASTE COMBUSTORS.

TABLE II.—RECONFIRMATION OF PART 60 DELEGATIONS AS THEY APPLY TO MASSACHUSETTS TITLE V OPERATING PERMITS PROGRAM—Continued

Kb	PETROLEUM LIQUID STORAGE VESSELS 7/23/84.
AAa	ELECTRIC ARC FURNACES AND ARGON-OXYGEN DECARBURIZATION.
VV	EQUIPMENT LEAKS OF VOC IN SOCMI.
DDD	VOC EMISSIONS FROM POLYMER MANUFACTURING INDUSTRY.
III	VOC FROM SOCMI AIR OXIDATION UNIT.
NNN	VOC FROM SOCMI DISTILLATION.
OOO	NONMETALLIC MINERAL PLANTS.
PPP	WOOL FIBERGLASS INSULATION.
RRR	VOC EMISSIONS FROM SOCMI PROCESS.
SSS	MAGNETIC TAPE COATING.
TTT	SURFACE COATING OF PLASTIC PARTS FOR BUSINESS MACHINES.
UUU	CALCINERS & DRYERS IN THE MINERAL INDUSTRY.
VVV	POLYMERIC COATING OF SUPPORTING SUBSTRATES.

TABLE III.—DELEGATION OF PART 63 STANDARDS AS THEY APPLY TO MASSACHUSETTS TITLE V OPERATING PERMITS PROGRAM

PART 63 SUBPART CATEGORIES	
A	General Provisions.
F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.
G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
N	National Emission Standards for Chromium Emissions from Hard and Decorative Electroplating and Chromium Anodizing Tanks.
O	Ethylene Oxide Emission Standards for Sterilization Facilities.
Q	National Emission Standards for Hazardous Air Pollutants for Industrial Cooling Towers.
R	National Emission Standards for Organic Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I).
T	National Emission Standards for Halogenated Solvent Cleaning.
W	National Emission Standards for Organic Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
X	National Emission Standards for Organic Hazardous Air Pollutants from Secondary Lead Smelting.
EE	National Emission Standards for Magnetic Tape Manufacturing Operations.

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 the entry for Massachusetts in alphabetical order to read as follows:

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

* * * * *

Massachusetts

(a) Department of Environmental Protection: submitted on April 28, 1995; interim approval effective on March 4, 1996; interim approval expires March 2, 1998.

(b) (Reserved)

* * * * *

[FR Doc. 96–2248 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 80

[FRL–5412–1]

RIN 2060–AD55

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Clean Air Act prohibits the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. In today's action, EPA revises its regulations regarding gasoline so as to prohibit the introduction of gasoline which is produced with the use of any lead additive, or contains more than 0.05 gram of lead per gallon, into commerce for use as motor vehicle fuel effective January 1, 1996, remove existing regulatory provisions which will no longer be necessary as a result of this ban, and modify other provisions to reflect the institution of this ban. Among the provisions deleted are recordkeeping and reporting requirements for refiners and importers, and the requirement that motor vehicle manufacturers place ''unleaded fuel only'' labels on the dashboard and on or around the fuel filler inlet area of each motor vehicle produced. EPA believes that continuance of the provisions deleted by this rule would pose needless costs on industry in light of the ban.

In the proposed rules Section of today's Federal Register, EPA is proposing to issue a regulatory ban on the introduction of gasoline which is produced with the use of any lead additive, or contains more than 0.05 gram of lead per gallon, into commerce for use as a motor vehicle fuel effective January 1, 1996, and to remove existing regulatory provisions which will no longer be necessary as a result of this ban, and modify other provisions to reflect the institution of this ban. If adverse comment or a request for an opportunity for a public hearing is

received on this direct final rule, EPA will withdraw the direct final rule and address the comments received in a subsequent final rule on the related proposed rule. No additional opportunity for public comment on the leaded gasoline prohibition and related regulatory changes will be provided.

The statutory ban goes into effect as of January 1, 1996, whether or not EPA amends its regulations by January 1, 1996 to incorporate the statutory ban on the introduction of gasoline containing lead or lead additivies into commerce for use as motor vehicle fuel.

DATES: This action will become effective on March 4, 1996 unless notice is received by February 20, 1996 from someone who wishes to submit adverse comment or request an opportunity for a public hearing. If such notice is received, EPA will withdraw this direct final rule, and a timely notice will be published in the Federal Register to indicate the withdrawal.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–95–13. The docket is located at the U.S. Environmental Protection Agency, Air Docket Section, 401 M Street, SW., Washington, DC 20460 in Room M–1500 of Waterside Mall. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material. Those wishing to notify EPA of their intent to submit adverse comment or request an opportunity for a public hearing on this action should contact Paulina Chen, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9031.

FOR FURTHER INFORMATION CONTACT: Paulina Chen, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9031.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, 14.4K, or 28.8K baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(8) Leaded fuel and engine bans

Today's action will be in the form of a ZIP file and can be identified by the following title: LEADBAN.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer: <D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip.

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Introduction

A. Background

In the early 1970s, EPA issued regulations regarding lead in gasoline in order to accomplish two purposes. First, EPA issued regulations designed to ensure the availability of unleaded gasoline for use in motor vehicles equipped with emission control systems such as catalytic converters. EPA had determined that lead additives would impair to a significant degree the performance of emission control systems. 38 FR 1254 (Jan. 10, 1973). Second, EPA issued regulations designed to gradually reduce the content of lead in leaded gasoline, because EPA found that lead particle emissions from motor vehicles presented a significant risk of harm to the health of urban populations, especially children. 38 FR 33734 (Dec. 6, 1973).

The first category of regulations, which were designed to ensure the availability of unleaded gasoline, defined unleaded gasoline as gasoline containing not more than 0.05 gram of lead per gallon and not more than 0.005 gram of phosphorus per gallon. 38 FR at 1255. The Agency allowed up to 0.05 gram of lead per gallon in unleaded gasoline because it determined this maximum trace level would provide adequate protection for catalyst emission control devices and would be practicable for the petroleum industry. 38 FR 1254. The current definition of unleaded gasoline still allows for trace amounts of lead up to 0.05 gram per gallon but expressly prohibits the use of any lead additive in the production of unleaded gasoline. 40 C.F.R. 80.2(g).

The same 1973 regulations also limited phosphorus in unleaded gasoline to 0.005 gram per gallon or less, because the Agency found this maximum, set at trace levels, was necessary to prevent catalyst deterioration in emission control systems. 38 FR 1254–55. The current definition of unleaded gasoline still limits phosphorus to no more than 0.005 gram per gallon. 40 C.F.R. 80.2(g).

In 1973, EPA also instituted the lead phasedown program designed to minimize the lead content of leaded gasoline. Through an orderly phase out, including banking and trading of lead credits, and through aggressive enforcement, the lead phasedown program was successful. By 1988, it was estimated that total lead usage in gasoline had been reduced to less than one percent of the amount of lead used in the peak year of 1970.[1] The remaining uses of leaded gasoline in motor vehicles are predominantly in rural areas.

B. Statutory Authority

In 1990 Congress added section 211(n) to the Clean Air Act, which provides as follows:

After December 31, 1995, it shall be unlawful for any person to sell, offer for sale, supply, offer for supply, dispense, transport,

[1] Persons interested in detailed historical information may refer to the following Federal Register notices: ''Regulation of Fuel Additives—Advanced Notice of Proposed Rulemaking,'' 36 FR 1486 (January 30, 1971); ''Regulation of Fuels and Fuel Additives—Notice of Proposed Rulemaking,'' 37 FR 3882 (February 23, 1972); ''Regulation of Fuels and Fuel Additives—Notice of Proposed Rulemaking,'' 38 FR 1254 (January 10, 1973); ''Proposed Rulemaking Concerning Availability of Unleaded Gas,'' 38 FR 28301 (October 12, 1973); ''Control of Lead Additives in Gasoline,'' 38 FR 33734 (December 6, 1973); ''Fuels and Fuel Additives—Suspension of Enforcement of Regulations for Control of Lead Additives in Gasoline,'' 40 FR 7480 (February 20, 1975); ''Fuels and Fuel Additives—Lifting of Suspension of Enforcement of Regulations for Control of Lead Additives in Gasoline,'' 41 FR 13984 (April 1, 1976); ''Regulation of Fuel and Fuel Additives—Lifting of Suspension of Enforcement of Regulation Additives in Gasoline,'' 41 FR 28352 (July 9, 1976); ''Regulation of Fuels and Fuel Additives—Control of Lead Additives in Gasoline,'' 41 FR 42675 (September 28, 1976); ''Lead Additives in Gasoline: Controls on Refiners, Clarifications and Response to Public Comments,'' 41 FR 55646 (December 21, 1976); ''Regulation of Fuels and Fuel Additives: Small Refinery Amendment—Final Rulemaking,'' 44 FR 46275 (August 7, 1979); ''Controls Applicable to Gasoline Refiners; Lead Phase-Down Regulations—Notice of Proposed Rulemaking,'' 45 FR 3722. Also see: ''Regulation of Fuels and Fuel Additives—Proposed Rule,'' 47 FR 7812 (February 22, 1982); ''Regulation of Fuels and Fuel Additives—Withdrawal of Proposed Rule,'' 47 FR 38070 (August 27, 1982); ''Regulation of Fuels and Fuel Additives—Final Rule,'' 47 FR 49322 (October 29, 1982).

or introduce into commerce, for use as fuel in any motor vehicle (as defined in section 7554(2) of this title) any gasoline which contains lead or lead additives.

42 U.S.C. 7545(n). The term ''motor vehicle'' is defined to include any self-propelled vehicle designed for transporting persons or property on a street or highway. 42 U.S.C. 7550(2).[2]

Section 211(n)'s prohibition will become effective January 1, 1996. By this action, EPA is incorporating the statutory ban into the agency's existing regulations on the lead content of gasoline, and is simplifying the existing regulations accordingly. In so doing, EPA had to determine whether Congress specifically intended in section 211(n) to ban the introduction into commerce for use in motor vehicles of gasoline which contains even a trace amount of lead, or whether this prohibition could reasonably be interpreted as authorizing the continued sale of unleaded gasoline which includes the trace amount of lead currently allowed under EPA's regulations.

As EPA interprets the statutory ban, it prohibits the sale of gasoline which is produced with the use of any lead additive or contains more than a trace amount of lead, but allows the continued sale of gasoline which meets EPA's current definition of unleaded gasoline. EPA has historically defined unleaded gasoline as gasoline that is produced without the use of any lead additive and that contains no more than 0.05 gram of lead per gallon.[3] EPA interprets section 211(n) this way for the following reasons.

Unleaded gasoline that was produced without lead additives may pick up trace amounts of lead as it passes through refinery and transport systems that had previously contained leaded gasoline. The language of section 211(n) indicates no clear Congressional intent regarding such trace amounts of lead that unintentionally exist in gasoline which was produced without the use of lead additives. Had Congress wanted to ban even unintentional, trace amounts of lead, it could have made its intent clear with, for example, statutory language banning gasoline that ''contains *any* lead or lead additives.''

While the text of section 211(n) is ambiguous, its heading and the heading of section 220 of the 1990 amendments, which added section 211(n) to the Clean Air Act, suggest that Congress intended to ban the use in motor vehicles of leaded gasoline, which EPA has historically defined as gasoline that is produced with the use of a lead additive or that contains more than 0.05 gram of lead per gallon. *See* 40 CFR 80.2(f). Where headings are enacted by Congress in conjunction with the statutory text and the meaning of the text is ambiguous, headings may help elucidate congressional intent. *E.g., United States* v. *Wallington*, 889 F.2d 573, 577 (5th Cir. 1989). In this instance, the heading of section 220 of the 1990 amendments reads ''Lead Phasedown'' while the heading of section 211(n) reads ''Prohibition on Leaded Gasoline for Highway Use.'' Clean Air Act Amendments of 1990, Pub. L. No. 101–549, § 220, 104 Stat. ____, 2500 (1990). Since it is presumed that Congress was familiar with EPA's existing regulations implementing the phasedown of lead in leaded gasoline,[4] these headings suggest that Congress intended to complete the lead phasedown program by banning the use in motor vehicles after 1995 of gasoline that is produced with the use of a lead additive or that contains more than 0.05 gram of lead per gallon.

The legislative history of the Clean Air Act Amendments of 1990 supports this interpretation of Congress's intent in adding section 211(n) to the Clean Air Act. While the conference report for the 1990 amendments contains no explanation of section 220, the ''Chafee-Baucus Statement of Senate Managers,'' which was included in the Congressional Record at the request of Senators Chafee and Baucus to supplement the conference report, describes the provision as banning ''the sale of leaded gasoline * * *.'' 136 Cong. Rec. S16,938 (Oct. 27, 1990). This evidence supports EPA's conclusion that section 211(n) may reasonably be interpreted as banning in 1996 the introduction into commerce for use as a motor vehicle fuel all gasoline that is produced with the use of any lead additive or that contains more than 0.05 gram lead per gallon. *See Chevron, USA* v. *NRDC*, 467 U.S. 837 (1984).

EPA originally issued regulations mandating the availability of unleaded gasoline for use in motor vehicles containing catalytic converters or similar emission control devices under section 211(c) of the Clean Air Act, which authorizes the Administrator to control the manufacture, introduction into commerce, offering for sale, or sale of any fuel additive for use in a motor vehicle if the emission products of such additive will impair to a significant degree the performance of any emission control device. 42 U.S.C. 7545(c)(1). The definition of ''unleaded gasoline'' which EPA finalized at that time and which remains in effect today includes a phosphorus cap of not more than 0.005 gram per gallon because phosphorus above this trace level could cause catalyst deterioration in emission control systems. EPA's actions in this rule do not change its prior exercise of authority under section 211(c) to control the amount of phosphorus in gasoline.

EPA also promulgates this final rule pursuant to its authority under section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a).

C. Availability of Gasoline Containing Lead or Lead Additives for Uses Other Than as Motor Vehicle Fuel

Section 211(n) bans the use of gasoline containing lead or lead additives for use as a motor vehicle fuel but does not restrict other potential uses of gasoline containing lead or lead additives. The definition of motor vehicle is limited to self-propelled vehicles designed for transporting persons or property on a street or highway. 42 U.S.C. 7550(2). The regulations of 40 CFR Part 80, which are amended by this rule, apply only to fuel that is sold for use in motor vehicles. *See* 40 CFR 80.2(c). The petroleum industry may continue to make and market gasoline produced with lead additives for all remaining uses, including use as fuel in aircraft, racing cars, and nonroad engines such as farm equipment engines and marine engines, to the extent otherwise allowed by law.

II. Description of Today's Rule

Today's direct final rule amends 40 CFR Part 80 to prohibit the introduction into commerce for use as a motor vehicle fuel after December 31, 1995 of gasoline which is produced with the use of any lead additive, or contains more than 0.05 gram of lead per gallon, in accordance with section 211(n) of the Clean Air Act. Because the existing regulations at 40 CFR Part 80 currently allow the sale of leaded gasoline for use as a motor vehicle fuel, and the prohibition in Section 211(n) makes some of Part 80's requirements unnecessary, this rule also deletes the provisions which are no longer needed, and modifies other provisions to reflect the institution of the ban.

[2] Section 211(n) of the Clean Air Act refers to the definition of motor vehicle in 42 U.S.C. 7554(2), but the definition appears in section 7550(2) (section 7554 pertains to urban bus standards). EPA believes that section 211(n) contains a typographical error and that Congress intended to refer to the definition of motor vehicle that appears in 42 U.S.C. 7550(2).

[3] The regulatory definition of ''unleaded gasoline'' also contains a cap on the amount of phosphorus, *see* 40 CFR 80.2(g), but the phosphorus cap is not relevant to the discussion of section 211(n).

[4] Congress is presumed to be familiar with an agency's construction of the existing provisions of a statute when Congress amends the statute. N. Singer, Sutherland Statutes and Statutory Construction, § 22.35 (5th Ed. 1992).

A detailed description of this rule's changes to 40 CFR Part 80 is offered below. This rule becomes effective on March 4, 1996 and all changes discussed below become effective on that date.

A. Prohibition on the Sale of Gasoline Which is Produced With the Use of Any Lead Additive or Contains More Than 0.05 Gram of Lead Per Gallon

In accordance with the statutory ban set forth in section 211(n) of the Clean Air Act, this rule adds a paragraph (b) to section 80.22 that prohibits introducing into commerce for use as fuel in motor vehicles gasoline which is produced with the use of any lead additive or contains more than 0.05 gram of lead per gallon. As explained above, EPA will permit an unintentional trace level of lead in motor vehicle fuel. Also, the term ''lead additive'' as defined in section 80.2(e) encompasses pure lead as well as lead compounds, so that the ban in section 80.22(b) will cover gasoline produced with the use of pure lead as well as lead compounds.

B. Related Changes

Several of Part 80's existing provisions will become unnecessary once the statutory ban on the use of gasoline containing lead or lead additives as a motor vehicle fuel goes into effect on January 1, 1996. Accordingly, this rule deletes or revises the following provisions effective March 4, 1996.

Section 80.2(f). Section 80.2(f) currently contains the definition of leaded gasoline and is deleted. The definition of leaded gasoline is no longer necessary in regulations relating to motor vehicle fuels once the statute's ban on using gasoline containing lead or lead additives as motor vehicle fuel goes into effect.

Section 80.7. Section 80.7 currently explains the extent to which EPA may require persons to provide information to EPA when EPA has reason to believe that a violation of section 211(c) of the Clean Air Act and the regulations thereunder has occurred. This rule amends section 80.7 to include a reference to violations of section 211(n) of the Clean Air Act and the regulations thereunder. It also deletes the reference to labels and signs in section 80.7(c), because these items will no longer be required under section 80.22 (see discussion of section 80.22).

Section 80.20. This rule deletes section 80.20 in its entirety. Section 80.20 contains provisions related to the phasedown of lead content in gasoline produced for use in motor vehicles which will become obsolete once the sale of gasoline containing lead or lead additives for use in motor vehicles is banned. The provisions specify interim phases of lead reduction, reporting requirements for refiners and importers to show compliance with the lead content restrictions, and provisions allowing inter-refinery averaging and banking of lead usage rights.

Section 80.21. This rule deletes section 80.21 in its entirety. Section 80.21 contains controls applicable to gasoline distributors similar to the provisions in 80.22. For simplification, these provisions will be consolidated in the general controls and prohibitions under 80.22.

Section 80.22. This rule changes the title of section 80.22 to reflect the consolidation of sections 80.21 and 80.22. The title will be changed from ''Controls applicable to gasoline retailers and wholesale purchaser-consumers'' to ''Controls and prohibitions.''

Section 80.22(a). This rule modifies section 80.22(a) to reflect the simultaneous removal of both the definition of leaded gasoline (see discussion of section 80.2(f)) and the requirement to label motor vehicles ''unleaded gasoline only'' (see discussion of section 80.24).

Section 80.22(d) and (e). This rule deletes section 80.22(d), which requires notices at each gasoline pump stand prohibiting the introduction of leaded gasoline into motor vehicles designed for unleaded gasoline. This rule also deletes section 80.22(e), which requires that gasoline pumps be labelled to identify whether they contain leaded or unleaded gasoline.

EPA believes that these requirements are no longer necessary to prevent misfueling. Leaded gasoline has been largely phased out and now accounts for less than one percent of gasoline sold in urban areas. EPA's discussions with the gasoline refiners which produced leaded gasoline in 1995 have revealed that all but one refiner have already ceased to produce gasoline with the use of lead additives. One refiner continues to produce leaded fuel for nonroad uses. Many fuel pumps dispensing gasoline used in nonroad applications are not located at retailers and wholesale purchaser-consumers, although some fuel pumps dispensing racing fuel may be located at retailers and wholesale puchaser-consumers. EPA believes it unlikely that misfueling of motor vehicles with gasoline which is produced with the use of any lead additive, or contains more than 0.05 gram of lead per gallon, will occur at these locations, because such gasoline costs significantly more than unleaded gasoline. For example, racing fuel currently costs around five dollars per gallon.

Section 80.22(f). Section 80.22(f) regulates nozzle spout sizes of pumps dispensing gasoline. First, the dates in this section are modified to reflect the institution of this ban. Second, paragraph 80.22(f)(1) contains the requirement for the nozzle size of pumps dispensing leaded gasoline, and this requirement will no longer be necessary because gasoline containing lead or lead additives will no longer be permitted to be dispensed into motor vehicles as a result of the statutory ban. Although leaded fuel will still be available for nonroad uses, EPA currently does not regulate the nozzle sizes on pumps dispensing such fuel. Therefore, this rule deletes paragraph 80.22(f)(1). EPA is retaining a nozzle size requirement for dispensing unleaded gasoline in paragraph 80.22(f)(2) in order to ensure that nozzles function properly in conjunction with the motor vehicle fuel inlet restrictors, which must be of a certain size per the requirement of section 80.24(b).

Sections 80.22(g) and (h). Sections 80.22(g) and (h) refer to compliance with sections 80.22(e) and (f) for multiple grades of gasoline. These sections' references to 80.22(e) are irrelevant because this rule deletes that subsection. With respect to paragraph (f), section 80.22(g) permits the Administrator to grant an exception to the requirement of paragraph (f) upon demonstration that alternate equipment will comply with the objectives of paragraph (f). EPA is not aware of any exceptions granted under paragraph (g) at this time and believes the exception authority provided by 80.22(g) is not needed. According to section 80.22(h), compliance with paragraph (f) is required for only one grade where there is more than one grade of unleaded gasoline offered for sale. EPA believes that, to ensure that the statute's ban is implemented properly, the requirements of paragraph (f) should apply to each pump dispensing unleaded gasoline. Therefore, sections 80.22(g) and 80.22(h) are deleted.

Section 80.22(i). Section 80.22(i), which refers to an exemption from the requirements of section 80.22(b), is deleted. Section 80.22(i) was inadvertently retained when section 80.22(b) was deleted in a prior rulemaking and is currently obsolete. The new section 80.22(b) added by this rule bears no relation to section 80.22(i), and therefore section 80.22(i) must be deleted to avoid confusion.

Section 80.23. This rule makes three changes to section 80.23, which currently imposes liability for violations of section 80.22(a).

First, the rule changes the introductory text of section 80.23 to include liability for violations of the new section 80.22(b), which is the general provision prohibiting the introduction into commerce for use as motor vehicle fuel of gasoline which is produced with the use of any lead additive or contains more than 0.05 grams of lead per gallon.

Second, the rule deletes subparagraph (e)(2) of section 80.23. Subparagraph (e)(2) offered an ''emergency exemption'' to allow a retailer or wholesale purchaser-consumer to provide leaded gasoline for use in a motor vehicle designed to use unleaded gasoline in emergency situations, such as when a vehicle has an empty tank and no unleaded gasoline is available within a several mile radius. EPA believes the continued availability of this exemption not only would be unnecessary given the scarce availability of gasoline containing lead or lead additives in comparison to that of unleaded gasoline, but also would be inconsistent with the intent of section 211(n) to prohibit the introduction into commerce for use as motor vehicle fuel of gasoline containing lead or lead additives.

Third, the rule modifies sections 80.23(b)(2)(ii) and (e)(1) to reflect the simultaneous removal of the definition of leaded gasoline.

Section 80.24. This rule simplifies section 80.24, which contains requirements applicable to motor vehicles. EPA has determined that portions of section 80.24 are no longer needed to prevent misfueling (see discussion of sections 80.22 (d) and (e) above). Accordingly, this rule deletes section 80.24(a), which requires that ''unleaded gasoline only'' labels be affixed to the dashboard and fuel filler inlet of each motor vehicle with an emission control device which will be significantly impaired by the use of gasoline containing lead or lead additives. The labels will no longer be necessary once the ban on fueling motor vehicles with gasoline which is produced with the use of any lead additive, or contains more than 0.05 grams of lead per gallon, becomes effective January 1, 1996.

Similarly, section 80.24(b)(1) currently requires that a pump nozzle dispensing gasoline other than unleaded gasoline must automatically shut off during attempted refueling into a motor vehicle equipped with a fuel filler inlet for unleaded gasoline. It is appropriate to remove this requirement because the requirement was intended to prevent misfueling and, as stated above (see discussion of sections 80.22 (d) and (e)) EPA now believes misfueling is unlikely, making this safeguard against misfueling unnecessary. Section 80.24(b)(2) explains the scope of section 80.24(b)(1). Once section 80.24(b)(1) is removed, it is appropriate to remove section 80.24(b)(2) as well.

The introductory text of section 80.24 is deleted and the remaining text of section 80.24(b) is modified so that section 80.24(b)'s tank filler inlet size requirements apply to all new motor vehicles, and not just those equipped with an emission control device that would be significantly impaired by the use of gasoline containing lead or lead additives. This modification comports with the statutory ban prohibiting the use of gasoline containing lead or lead additives as a motor vehicle fuel, by requiring that all new motor vehicles are equipped with tank filler inlets matching the size of the nozzle on pumps dispensing unleaded gasoline.

Finally, section 80.24(c) is deleted, because the paragraph clarifies the term ''emission control device which will be significantly impaired by the use of leaded gasoline.'' This term is currently used in the introductory text of section 80.24, but is being removed as explained above. Therefore, section 80.24(c) no longer serves any purpose and will be deleted.

Section 80.25. Section 80.25, which requires lead additive manufacturers to report the amount of lead shipped to refineries, is deleted in its entirety. These reports are currently utilized to verify reports submitted by refineries in the lead phasedown program summarizing the amount of lead used in the production of gasoline. Section 80.20, which contains provisions related to the lead phasedown program, is being deleted in today's action (see discussion of section 80.20), making the requirements of section 80.25 unnecessary.

III. Environmental Impact

This rule is expected to have a positive environmental effect by facilitating smooth implementation of the Clean Air Act prohibition on gasoline containing lead or lead additives for use in motor vehicles, which becomes effective after December 31, 1995. This rule marks the completion of a lead phasedown program which EPA began in 1973 upon determining that lead particle emissions from motor vehicles presented a significant risk of harm to the health of urban populations, especially in children.

IV. Economic Impact

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal Agencies examine the impacts of their regulations on small entities. The act requires an Agency to prepare a regulatory flexibility analysis in conjunction with notice and comment rulemaking, unless the Agency head certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b). The Administrator certifies that this rule will not have a significant impact on a substantial number of small entities. This rule is not expected to result in any additional compliance cost to regulated parties and, in fact, is expected to decrease compliance costs for some regulated parties. This decrease in compliance costs is largely due to the deletion of regulatory requirements no longer necessary given the Clean Air Act statutory ban on gasoline containing lead or lead additives for use in motor vehicles. This rule will reduce compliance costs due to the removal of several reporting, labeling, and equipment requirements. Owners of vehicles which are designed to operate on leaded gasoline will not be subject to additional costs as a result of this ban. Many vehicles designed to use leaded gasoline currently use unleaded gasoline, which costs significantly less than leaded gasoline. Lead substitute additives are available for vehicles which operate under higher loads and require additional protection against valve seat wear.

V. Effective Date

This action will become effective March 4, 1996, unless EPA receives notice by February 20, 1996 from someone who wishes to submit adverse comments or request an opportunity for a public hearing. If EPA receives such notice, EPA will withdraw this rule and publish timely notice in the Federal Register of such withdrawal.

VI. Executive Order 12866

Under Executive Order 12866,[5] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the

[5] 58 FR 51735 (October 4, 1993).

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[6]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which 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, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that the final rule promulgated today does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

VIII. Judicial Review

Because this action promulgates a prohibition in Section 211 of the Clean Air Act and is nationally applicable, under Section 307(b)(1) of the Clean Air Act judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the D.C. Circuit within sixty days of publication of this action in the Federal Register, unless EPA withdraws this rule in response to notice of intent to file adverse comment or request the opportunity for a public hearing.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Leaded gasoline, Unleaded gasoline, and Motor vehicle pollution.

Dated: January 29, 1996.

Carol M. Browner,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

§ 80.2 [Amended]

2. Section 80.2 is amended by removing and reserving paragraph (f).

3. Section 80.7 is amended by revising paragraph (a) introductory text and the first sentence of paragraph (c) to read as follows:

§ 80.7 Requests for information.

(a) When the Administrator, the Regional Administrator, or their delegates have reason to believe that a violation of section 211(c) or section 211(n) of the Act and the regulations thereunder has occurred, they may require any refiner, distributor, wholesale purchaser-consumer, or retailer to report the following information regarding receipt, transfer, delivery, or sale of gasoline represented to be unleaded gasoline and to allow the reproduction of such information at all reasonable times.

* * * * *

(b) * * *

(c) Any refiner, distributor, wholesale purchaser-consumer, retailer, or importer shall provide such other information as the Administrator or his authorized representative may reasonably require to enable him to determine whether such refiner, distributor, wholesale purchaser-consumer, retailer, or importer has acted or is acting in compliance with sections 211(c) and 211(n) of the Act and the regulations thereunder and shall, upon request of the Administrator or his authorized representative, produce and allow reproduction of any relevant records at all reasonable times. * * *

§§ 80.20 and 80.21 [Removed and reserved]

4. Sections 80.20 and 80.21 are removed and reserved.

5. Section 80.22 is amended by revising the title and paragraphs (a), (f) introductory text, and (f)(2) introductory text by adding paragraph (b), and by removing and reserving paragraphs (d), (e), (f)(1), (g), (h) and (i) to read as follows:

§ 80.22 Controls and prohibitions.

(a) After December 31, 1995, no person shall sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce gasoline represented to be unleaded gasoline unless such gasoline meets the defined requirements for unleaded gasoline in § 80.2(g); nor shall he dispense, or cause or allow the gasoline other than unleaded gasoline to be dispensed into any motor vehicle which is equipped with a gasoline tank filler inlet which is designed for the introduction of unleaded gasoline.

(b) After December 31, 1995, no person shall sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce for use as fuel in any motor vehicle (as defined in Section 216(2) of the Clean Air Act, 42 U.S.C. 7550(2)), any gasoline which is produced with the use of lead additives or which contains more than 0.05 gram of lead per gallon.

(c) * * *

* * * * *

(f) Beginning January 1, 1996, every retailer and wholesale purchaser-consumer shall equip all gasoline pumps as follows:

(1) [Reserved]

(2) Each pump from which unleaded gasoline is dispensed into motor vehicles shall be equipped with a nozzle spout which meets the following specifications:

* * * * *

6. Section 80.23 is amended by revising the introductory text and paragraphs (b)(2)(ii) and (e)(1), and by removing and reserving paragraph (e)(2) to read as follows:

§ 80.23 Liability for violations.

Liability for violations of paragraphs (a) and (b) of § 80.22 shall be determined as follows:

* * * * *

(b)(1) * * *

(2) * * *

(ii) That the violation was caused by an act in violation of law (other than the Act or this part), or an act of sabotage, vandalism, or deliberate commingling of gasoline which is produced with the use of lead additives or phosphorus additives with unleaded gasoline, whether or not such acts are violations of law in the jurisdiction where the

[6] Id. at section 3(f)(1)–(4).

violation of the requirements of this part occurred, or

* * * * *

(e)(1) In any case in which a retailer or his employee or agent or a wholesale purchase-consumer or his employee or agent introduced gasoline other than unleaded gasoline into a motor vehicle which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, only the retailer or wholesale purchaser-consumer shall be deemed in violation.

(2) [Reserved].

7. Section 80.24 is amended by removing the introductory text and by removing and reserving paragraph (a), and removing paragraph (c), and by revising paragraph (b) to read as follows:

§ 80.24 Controls applicable to motor vehicle manufacturers.

(a) [Reserved].

(b) The manufacturer of any motor vehicle powered with gasoline shall equip such vehicle with a gasoline tank filler inlet having a restriction which allows the insertion of a nozzle with a spout meeting the specifications in § 80.22(f)(2) and which prevents the insertion of a nozzle of greater size than prescribed in § 80.22(f)(2).

§ 80.25 [Removed and reserved]

8. Section 80.25 is removed and reserved.

[FR Doc. 96–2231 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 46]

RIN 3090–AF78

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 1996 RIT allowance to be paid to relocating Federal employees.

DATES: *Effective date:* This final rule is effective January 1, 1996.

Applicability date: The new tables in this final rule apply for RIT allowance payments made on or after January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: This amendment provides the tax tables necessary to compute the relocation income tax (RIT) allowance for employees who are taxed in 1996 on moving expense reimbursements.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **FEDERAL REGISTER** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302–11 is amended to read as follows:

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302–11 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586; E.O. 12466, 49 FR 7349, 3 CFR, 1984 Comp., p. 165.

2. Appendixes A, B, C, and D to part 302–11 are amended by adding the following tables at the end of each appendix, respectively:

APPENDIX A TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1995

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1995.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,643	$30,783	$11,937	$44,304	$16,387	$57,249	$8,171	$28,637
28	30,783	68,684	44,304	102,201	57,249	119,362	28,637	59,017
31	68,684	139,546	102,201	163,966	119,362	173,514	59,017	88,341
36	139,546	283,746	163,966	294,200	173,514	286,217	88,341	147,650
39.6	283,746	.....	294,200	.....	286,217	.....	147,650	.....

APPENDIX B TO PART 302–11—STATE TAX TABLES FOR RIT ALLOWANCE

* * * * *

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1995

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1995.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1 2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	3.25	4	5.05	6.9
If single status [3]	4	5.05	6.4	6.9
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	4	8	11
If single status [3]	4	9.3	9.3	11
6. Colorado	5	5	5	5
7. Connecticut	4.5	4.5	4.5	4.5
8. Delaware	6	7.6	7.7	7.7
9. District of Columbia	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8	9.5	10	10
If single status [3]	9.5	10	10	10
13. Idaho	7.5	7.8	8.2	8.2
14. Illinois	3	3	3	3
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	6.8	7.55	9.98	9.98
If single status [3]	7.2	8.8	9.98	9.98
17. Kansas	3.5	6.25	6.25	6.45
If single status [3]	4.4	7.75	7.75	7.75
18. Kentucky	6	6	6	6
19. Louisiana	2	4	4	6
If single status [3]	4	4	6	6
20. Maine	4.5	7	8.5	8.5
If single status [3]	8.5	8.5	8.5	8.5
21. Maryland	5	5	5	5
22. Massachusetts	5.95	5.95	5.95	5.95
23. Michigan	4.4	4.4	4.4	4.4
24. Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27. Montana	6	9	10	11
28. Nebraska	3.65	5.60	7.35	7.75
If single status [3]	5.60	7.35	7.60	7.75
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	1.7	2.125	2.975	6.58
If single status [3]	1.7	4.25	6.013	6.58
32. New Mexico	3.2	6	7.1	8.5
If single status [3]	6	7.1	7.9	8.5
33. New York	4.55	7.594	7.594	7.594
If single status [3]	7.594	7.594	7.594	7.594
34. North Carolina	6	7	7	7.75
35. North Dakota	14	14	14	14
		(See footnote 4)		
36. Ohio	2.972	4.457	5.201	7.5
37. Oklahoma	4	7	7	7
If single status [3]	7	7	7	7
38. Oregon	9	9	9	9
39. Pennsylvania	2.8	2.8	2.8	2.8
40. Rhode Island	27.5	27.5	27.5	27.5
		(See footnote 5)		
41. South Carolina	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.2	7.2	7.2	7.2
46. Vermont		(See footnote 6)		
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6	6.5
50. Wisconsin	6.55	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for North Dakota is 14 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Rhode Island is 27.5 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[6] The income tax rate for Vermont is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

APPENDIX C TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE—YEAR 2

* * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1996

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, or 1995.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,885	$31,807	$12,295	$45,572	$17,027	$59,055	$8,229	$29,600
28	31,807	70,867	45,572	105,805	59,055	123,190	29,600	61,245
31	70,867	144,170	105,805	168,990	123,190	179,414	61,245	90,611
36	144,170	292,883	168,990	301,968	179,414	295,681	90,611	150,779
39.6	292,883	.....	301,968	.....	295,681	.....	150,779	.....

APPENDIX D TO PART 302–11—PUERTO RICO TAX TABLES FOR RIT ALLOWANCE

* * * * *

PUERTO RICO MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1995

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
12	.....	.....	.....	$25,000
18	.....	$25,000	.....	.....
31	.....	.....	$25,000	$50,000
33	$25,000	.....	$50,000	.....

Dated: January 5, 1996.

Roger W. Johnson,

Administrator of General Services.

[FR Doc 96–2154 Filed 2–1–96;8:45am]

BILLING CODE 6820–24–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89–552, GN Docket No. 93–252; FCC 96–27]

Wireless Telecommunications Services; Private Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a procedure that will enable 220 MHz licensees to modify their licenses to relocate their authorized base stations at currently unauthorized locations. The Commission also extends the current February 2, 1996, construction deadline to March 11, 1996, for all non-nationwide 220 MHz licensees that elect to construct their base station at their currently authorized location, and to August 15, 1996, for all licensees granted authority to modify their licenses to relocate their base station. The action adopted in this *Second Report and Order* is needed to provide existing 220 MHz licensees with the flexibility they need to complete construction of their systems and provide service. This *Second Report and Order* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

EFFECTIVE DATE: The extensions of the construction deadline is effective January 26, 1996. The rule amendmentes are effective March 4, 1996. Letters of intent and modification applications may be filed after March 4, 1996. Written comments by the public on the proposed and/or modified information collections are due by February 23, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 1, 1996.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, 202–418–1310, or Mary Woytek, 202–418–1066. For additional information concerning the information collections contained in this *Second Report and Order* contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Report and Order* in PR Docket No. 89–552 and GN Docket No. 93–252, FCC 96–27, adopted January 26, 1996, and released January 26, 1996. The complete text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Second Report and Order

The Commission adopts a procedure that will enable 220 MHz licensees to modify their licenses to relocate their authorized base stations to currently unauthorized locations. Under this procedure, licensees with base stations authorized inside any Designated Filing Area (DFA) will be permitted to relocate their base stations up to one-half the distance over 120 kilometers (km) toward any authorized co-channel base station, to a maximum distance of 8 km. Licensees with base stations authorized outside the boundaries of any DFA will be permitted to relocate their base stations up to one-half the distance over 120 km toward any authorized co-channel base station, to a maximum distance of 25 km, so long as they do not locate their base station more than 8 km inside the boundaries of any DFA. A licensee will be permitted to relocate its base station less than 120 km from the base station of a co-channel licensee or more than one-half the distance over 120 km toward the base station of a co-channel licensee only with the consent of that licensee.

The Commission also extends the current February 2, 1996, construction deadline to March 11, 1996, for all non-nationwide 220 MHz licensees that elect to construct their base station at their currently authorized location, and to August 15, 1996, for all licensees granted authority to modify their licenses to relocate their base stations. Licensees seeking authority to modify their authorizations to relocate their base stations may file, by March 11, 1996, a statement of their intention to file an application requesting such modification, and will be required to file a modification application by no later than May 1, 1996. The Commission believes that the procedures adopted in this Order will provide existing 220 MHz licensees flexibility to complete construction of their systems and provide service. At the same time, the Commission believes its decision will not unreasonably impair the opportunity of potential licensees to obtain licenses in the 220 MHz service.

The Commission began accepting applications for 220 MHz licenses on May 1, 1991, and on May 24, 1991, after receiving over 59,000 applications, imposed a freeze on the filing of all initial and modification applications for the 220 MHz service—a freeze that remains in effect today. Since then, the Commission has issued authorizations to approximately 3,800 licensees to operate ''non-nationwide'' 220 MHz stations. A number of 220 MHz licensees have asked to be permitted to file modification applications to relocate their stations to currently unauthorized sites. In response, the Commission released, on August 29, 1995, the *Fourth Notice of Proposed Rulemaking* in this proceeding (*Fourth NPRM*), 60 FR 46566, September 7, 1995) proposing a procedure to enable existing licensees in the 220 MHz service to seek modification of their authorizations to relocate their base stations.

While the Commission is ordinarily reluctant to open a ''license modification only'' filing window, where the applications of initial applicants would not be accepted, it recognizes that the 220 MHz service is unique. *Evans* v. *Federal Communications Commission, Order,* per curiam, Case No. 92–1317 (D.C. Cir. March 18, 1994), effectively placed all of the more than 3,000 authorizations the Commission granted in the 220 MHz service in doubt for nearly a two-year period, and caused many licensees to refrain from constructing their stations. Following the settlement of the case, the deadline for licensees to construct their systems and place them in operation was extended on four separate occasions to allow licensees sufficient time to construct their systems. However, with several years having passed since 220 MHz licensees filed their applications, many licensees have found that, for various reasons, they are unable to construct at their authorized locations. In light of these circumstances, the Commission is adopting a modification

procedure which will provide these licensees an opportunity to construct their radio stations and offer mobile communications service to the public. The Commission believes that this modification procedure will also increase the number of potential users of the 5 kHz narrowband radio equipment and thus help to promote the development and implementation of this spectrally efficient technology.

The Commission will afford non-nationwide 220 MHz licensees the opportunity to relocate their authorized base stations by filing modification applications under the following procedure:

(1) A licensee with an authorized base station located in a DFA will be permitted to relocate its base station up to one-half the distance over 120 km toward any co-channel licensee's initially authorized base station, to a maximum distance of 8 km.

(2) A licensee with an authorized base station not located in a DFA may relocate its base station up to one-half the distance over 120 km toward any co-channel licensee's initially authorized base station, to a maximum distance of 25 km, so long as it does not locate its base station more than 8 km inside of any DFA (i.e., not more than 8 km from the nearest DFA boundary line).

(3) The application of a licensee proposing a modification to relocate its base station at least 120 km from each co-channel licensee's initially authorized base station but more than one-half the distance over 120 km toward the base station of a co-channel licensee will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a letter submitted concurrently with the modification application.

(4) The application of a licensee proposing a modification resulting in less than 120 km separation from a co-channel licensee's initially authorized base station will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a letter submitted concurrently with the modification application.

(5) Any modification application that does not meet these standards will be considered defective and dismissed.

All licensees applying for modification of their authorization must also ensure that they comply with all applicable technical and operational rules (e.g., Section 90.723(d) and Section 90.729 of the Commission's Rules).

While the Commission believes that this decision will accommodate the needs of most 220 MHz licensees to relocate their base stations, we recognize that in certain areas of the Nation it is possible that the technical characteristics of base station sites available under our relocation procedure may be considerably inferior to the technical characteristics of currently licensed sites and sites that may exist at nearby, more elevated locations. Because of their unique terrain features, the Commission has historically treated licensees authorized to serve these areas differently than licensees authorized elsewhere in the Nation. The Commission therefore believes that it would be appropriate to entertain waiver requests by licensees authorized in any urban areas with such unique terrain features, to relocate their stations to sites at higher elevations that may be situated more than 8 km (or 25 km, for licensees authorized outside DFAs) from their authorized location. A licensee seeking such a waiver of Section 90.753 of the Commission's Rules must provide: (1) A showing that the terrain in question does, in fact, present unique technical and operational problems; and (2) a technical analysis demonstrating that in relocating its base station to its desired location at a higher elevation, the licensee will provide service to substantially the same geographic area it was authorized to serve pursuant to its initial application.

The Commission notes that there are five groups of applications (totalling 34 applications) that were filed on the last day 220 MHz applications were accepted in May 1991, and that remain pending before the Commission. These applications are mutually exclusive with one another and, in each of the five groups, the applicants have requested the same base station locations. How these 34 applications are to be ultimately processed is a matter raised in the context of the *Third Notice of Proposed Rulemaking (Third NPRM)* in this Docket (60 FR 46564, September 17, 1995). Prior to reaching decisions in that proceeding, the Commission will not take any action in this *Second R&O* that would affect the rights of these applicants, either positively or negatively, to be licensed or, once licensed, to take advantage of the relocation options being afforded to other existing 220 MHz licensees. The Commission's analysis indicates that if we were to allow certain existing 220 MHz licensees, located between 120 km and 170 km from one of the five base station locations, to relocate under the modification procedure as though these pending applications did not exist, the licensees granted licenses at these locations, once authorized, would not be able to relocate their base stations under the procedure. The Commission will therefore require the following licensees to ensure that, in seeking relocation of their base stations pursuant to this *Second R&O,* they comply with our modification procedure by protecting a possible co-channel station at the following locations.

The following licensees must protect a possible co-channel licensee at coordinates N 30.5221, W 083.2036:

Licensee (Call Sign)	*Distance to Coordinates (km)*
WPCB732	163.87
WPCW990	163.87

The following licensees must protect a possible co-channel licensee at coordinates N 36.3628, W 121.0951:

Licensee (Call Sign)	*Distance to Coordinates (km)*
WPCY266	140.77
WPCA288	140.77
WPCV737	140.90
WPCX490	140.77
WPCW812	140.90
WPCX487	140.77
WPBU519	140.77
WPBZ605	154.53
WPCW456	154.53
WPCX473	163.16
WPCY621	123.67
WPCK365	123.67
WPCR214	123.67
WPCX477	165.01
WPCW482	156.40
WPCJ969	168.09
WPCX469	157.27

The following licensees must protect a possible co-channel licensee at coordinates N 42.1551, W 089.0155:

Licensee (Call Sign)	*Distance to Coordinates (km)*
WPBU711	123.19
WPCM336	123.19
WPCX791	123.19
WPCD923	123.45
WPCA452	120.23
WPCT282	126.45
WPCK616	130.69
WPCA720	125.51
WPCA717	125.51
WPCA301	152.08
WPDG617	143.76
WPCV785	152.08
WPDH432	143.76
WPCB933	143.76
WPDR932	123.19

The following licensees must protect a possible co-channel licensee at coordinates N 33.2753, W 080.5642:

Licensee (Call Sign)	*Distance to Coordinates (km)*
WPCC592	126.82
WPCQ606	126.82
WPBR454	137.48

WPCK496 .....158.29
WPCP569.....158.29
WPDG323 .....163.37

The following licensees must protect a possible co-channel licensee at coordinates N 35.0658, W 078.5558:

Licensee (Call Sign) Distance to Coordinates (km)

WPCD332 .....138.40
WPCV776 .....136.08
WPCW524 .....131.16

Licensees with authorized base stations identified above as being located more than 136 km from a protected base station site and located in a DFA are still restricted to relocations of no greater than 8 km.

The *Second R&O* next determines that licensees with Special Temporary Authority (STA) to operate base stations at alternative locations, who certify, in accordance with this *Second R&O* that it has constructed its base station and has placed it in operation, or commenced service at that site by the adoption date of this decision, will be permitted to seek permanent authorization at the site, in accordance with the procedures for filing modification applications established the full text of this *Second R&O*, regardless of whether locating at its STA site is in strict conformance with the relocation distance limitations prescribed in the Commission's modification procedure.

For the same reasons, the Commission will provide similar relief to licensees that are in the process of constructing their base station at their STA site. Such licensees will be permitted to seek permanent authorization at their STA site, in accordance with the procedures for filing modification applications established in the full text of this *Second R&O*, regardless of whether locating their station at its STA site is in strict conformance with the relocation distance limitations prescribed in our modification procedure, if they certify that they had taken delivery of their base station transceiver on or before the adoption date of this decision. A licensee seeking permanent authorization at its STA site under either of these conditions must ensure that it complies with all applicable technical and operational rules (e.g., Section 90.723 and Section 90.729 of the Commission's Rules).

The current deadline for non-nationwide 220 MHz licensees to construct and operate their base station is February 2, 1996. With the adoption and release of this *Second R&O* occurring close to this February date, the Commission believes that it is appropriate to give licensees sufficient time to decide whether they want to relocate their base station under our modification procedure, and then to construct their base station and begin operation. The Commission will therefore extend the construction deadline for all non-nationwide 220 MHz licensees that intend to construct their base station at their currently authorized location to March 11, 1996. For licensees that elect to modify their authorization to relocate their base station, the deadline shall be August 15, 1996.

The Commission will begin to accept modification applications from licensees seeking to relocate their base stations 30 days after publication of the summary of this *Second R&O* in the Federal Register. The deadline for filing modification applications will be May 1, 1996. If a licensee does not construct its base station and place it in operation, or commence service, at its currently authorized location on or before March 11, 1996, and, instead, chooses to seek modification of its authorization to relocate its base station, it must inform the Commission on or before March 11, 1996, of its intention to seek a license modification. Otherwise its authorization will cancel automatically at the close of March 11, 1996. Because the Commission recognizes that the relatively short time period between the release of this *Second R&O* and the March 11, 1996 date may not be sufficient to enable licensees to evaluate the decisions reached in this *Second R&O*, acquire an alternative base station site, and perform the necessary technical analysis needed to file a modification application, the Commission will permit licensees to submit a letter during the period beginning 30 days after publication of the summary of this *Second R&O* in the Federal Register, but no later than March 11, 1996, certifying to the Commission their intent to file an application to modify their authorization to relocate their base station. This letter will serve to extend a licensee's authorization past March 11, 1996, even if the licensee has not yet identified and secured an alternate site. The Commission will then allow licensees to file their modification applications requesting relocation of their base station any time after this date, but no later than May 1, 1996. If a licensee files a letter indicating its intent to file a modification application and does not file such an application on or before May 1, 1996, the licensee's existing authorization will cancel automatically unless the licensee had constructed its base station at its initially authorized location and placed it in operation, or commenced service, on or before March 11, 1996. To ensure that licensees are provided an adequate construction period, the Commission will extend the deadline for a licensee to construct its station and place it in operation, or commence service, beyond August 15, 1996, by the number of days after June 1, 1996, that pass before a licensee's timely filed modification application is actually granted.

If a licensee elects to construct its base station and place it in operation, or commence service, at its initially authorized location on or before March 11, 1996, and also seeks to modify its authorization to relocate the station, its construction deadline will be considered to be met if it constructs its base station and places it in operation, or commences service, on or before March 11, 1996, and it will be given until August 15, 1996, to construct and place in operation its base station, or commence service, at its new station location. If the application for modification of any licensee seeking relocation of its base station is denied for any reason, that licensee's existing authorization will cancel automatically unless the licensee has constructed its base station at its initially authorized location and placed it in operation, or commenced service, by March 11, 1996.

The application of a licensee seeking relocation of its base station should include the following:

(1) A Form 600 requesting station modification, and providing all applicable information.

(2) Certification that the location of the proposed base station is in conformance with the modification procedures adopted in this proceeding, or a letter evidencing consent of a co-channel licensee that the licensee may be authorized less than 120 km from the co-channel licensee or more than one-half the distance over 120 km toward the base station of a co-channel licensee.

(3) For licensees with STAs (if applicable, and as provided in the *Second Report and Order*), certification that (a) the licensee has constructed its base station and placed it in operation, or commenced service, at its STA site on or before the adoption date of this *Second R&O*; or (b) the licensee had taken delivery of its base station transceiver on or before the adoption date of this *Second R&O*.

(4) Certification that the licensee has constructed its base station and placed it in operation, or commenced service, at its initially authorized location on or before March 11, 1996 (if applicable).

The *Second R&O* considers the issue of meeting the construction and operation requirement, and determines that ''grandfathered'' CMRS licensees and PMRS licensees would be required to meet their ''placed in operation'' requirement by satisfying the provisions of Section 90.155 of the Commission Rules and all ''non-grandfathered'' CMRS licensees would be required to meet the ''commencement of service'' requirement as provided under Section 90.167 of the Commission's Rules. However, to eliminate any confusion on the part of 220 MHz licensees as to which station construction and operation requirement they must follow, the Commission will allow all 220 MHz licensees to meet their applicable deadline (*i.e.*, March 11, 1996, for licensees constructing their base station at their initially authorized location, and August 15, 1996, for licensees granted license modification to relocate their base station) by constructing their base station and satisfying either the ''placed in operation'' provisions of Section 90.155 or the ''commencement of service'' provisions of Section 90.167.

Fred Daniel d/b/a Orion Telecom (Orion) asks that the Commission modify Section 90.723(d) of the Rules to require that base station transmitters utilizing channels assigned from Sub-Band A be geographically separated from AMTS base station receivers utilizing channels within 200 kHz of the Sub-Band A channel. The Commission does not believe that the current record is adequate to determine the merits of Orion's request, and finds it would be more appropriate to consider it as part of a separate proceeding. The Commission invites Orion to submit its request for relief in the form of a Petition for Rulemaking.

Finally, in the *Third NPRM*, the Commission extended the construction deadline for Phase I 220 MHz licensees located within Line A of the Canadian border until 12 months after the signing of an agreement with Canada on the sharing of 220–222 MHz channels near the border. Since the Commission did not amend the appropriate rules at the time of the adoption of the *Third NPRM*, we will take the opportunity to do so in this proceeding.

Procedural Matters; Ordering Clauses

Final Regulatory Flexibility Analysis.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small 220 MHz operators. As detailed in the full text of the *Second Report and Order*, the actions taken in this decision were initiated in response to requests by 220 MHz licensees to establish a flexible license modification procedure that will end a freeze on the acceptance of modification applications and will give existing 220 MHz licensees the ability to relocate their authorized base stations to currently unauthorized sites. This action will enhance the competitive potential of 220 MHz services in the commercial radio service marketplace. The Commission believes the alternative adopted in this decision represents the best balance of providing licensees, many of whom may be considered small businesses, with the most flexibility and the least regulatory burden possible. The full text of the Commission's final regulatory flexibility analysis may be found in Appendix B of the full text of this *Second R&O*.

Paperwork Reduction Act

This *Second Report and Order* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *Second Report and Order*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due February 23, 1996; OMB comments are due March 1, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: _____

Title: Private Land Mobile Radio Services Part 90.

Form No.: _____

Type of Review: New collection.

Respondents: 220 MHz licensees seeking to modify their authorizations to relocate their base stations.

Number of Respondents: 500.

Estimated Time Per Response: 3.8 hours.

Total Annual Burden: 1,900.

Needs and Uses: The information collected will be used by the Commission to verify licensee compliance with Commission rules and regulations, to ensure the integrity of the 220 MHz service and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934.

It is ordered that the Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act, and as set forth in Appendix B of the full text of this decision, is adopted.

It is further ordered that pursuant to the authority of Sections 4(i), 303(d), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303 (d), 303(r) and 332, Part 90 of the Commission's Rules, 47 CFR Part 90, is amended as set forth below effective 30 days after publication of the summary of this *Second Report and Order* in the Federal Register.

It is further ordered that non-nationwide 220 MHz licensees may file a letter with the Acting Secretary of the Commission indicating their intent to file an application to modify their authorizations to relocate their base stations 30 days after publication of the summary of this *Second Report and Order* in the Federal Register, but no later than March 11, 1996.

It is further ordered that non-nationwide 220 MHz licensees may file applications to modify their authorizations to relocate their base stations 30 days after publication of the summary of this *Second Report and Order* in the Federal Register, but no later than May 1, 1996.

It is further ordered that the deadline for non-nationwide 220 MHz licensees to construct their base station and place it in operation, or commence service, is extended from February 2, 1996, to March 11, 1996, and that the effective date of this extension is the adoption date of this *Second Report and Order*. The current deadline for non-nationwide 220 MHz licensees to construct and operate their base stations is February 2, 1996. With the adoption and release of the *Second Report and Order* occurring within 30 days of that date, there is good cause to order this rule change to take effect upon the adoption of this *Second Report and Order*.

It is further ordered that non-nationwide 220 MHz licensees that file a modification application on or before March 11, 1996, or a letter in accordance with this Order indicating an intent to modify their authorization to relocate their base station shall be granted an extension of the deadline to construct their base station and place it in operation, or commence service, until August 15, 1996, if the modification application is ultimately granted.

It is further ordered that the request by the American Mobile Telecommunications Association to

extend the current February 2, 1996, deadline for non-nationwide 220 MHz licensees to construct their stations and place them in operation to a date 120 days after the effective date of this *Second R&O* is denied.

It is further ordered that the Acting Secretary shall transmit a copy of this *Second Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Revisions to Commission Rules

47 CFR Part 90 is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.723(f) is revised to read as follows:

§ 90.723 Selection and assignment of frequencies.

* * * * *

(f) Except for nationwide assignments, the separation of co-channel base stations shall be 120 kilometers. Except for licensees seeking license modification in accordance with the provisions of Sections 90.751 and 90.753, shorter separations will be considered on a case-by-case basis upon submission of a technical analysis indicating that at least 10 dB protection will be provided to an existing station's 38 dBu signal level contour.

3. Section 90.751 is added to read as follows:

§ 90.751 Minor modifications of non-nationwide licenses.

Licensees granted non-nationwide authorizations from among applications filed on or before May 24, 1991 (Phase I licensees) will be given an opportunity to seek modification of their license to relocate their initially authorized base station, i.e., locate their base station at a site other than its initially authorized location. The conditions under which modifications will be granted and the procedures for applying for license modifications are described in Sections 90.753, 90.755, and 90.757. For CMRS licensees, these modifications will be treated as minor modifications in accordance with Section 90.164.

4. Section 90.753 is added to read as follows:

§ 90.753 Conditions of license modification.

(a) Except as provided in paragraphs (b), and (c) of this section, a Phase I non nationwide licensee may modify its authorization to relocate its authorized base station up to one-half the distance over 120 km toward any co-channel licensee's initially authorized base station, to a maximum distance of 8 km.

(b) A Phase I non-nationwide licensee with an authorized base station located outside a Designated Filing Area (DFA) (see Public Notice, DA 86–173, 52 FR 1302 (January 12, 1987)) may modify its authorization to relocate its authorized base station up to one-half the distance over 120 km toward any co-channel licensee's initially authorized base station, to a maximum distance of 25 km, so long as the base station is relocated no more than 8 km inside of any DFA (i.e., no more than 8 km from the nearest DFA boundary line).

(c) A Phase I non-nationwide licensee that has been granted Special Temporary Authority (STA) to operate at an alternative base station location may modify its authorization to seek permanent authorization at that location, regardless of whether locating the station at the STA site is in strict conformance with the provisions of paragraphs (a) and (b) of this section, if the licensee certifies that such a modification is in conformance with Sections 90.723 and 90.729 and:

(1) It has constructed its base station and has placed it in operation, or commenced service, at the STA site on or before January 26, 1996; or

(2) It has taken delivery of its base station transceiver on or before January 26, 1996.

(d) The application of a Phase I non-nationwide licensee proposing a base station modification resulting in less than 120 km separation from a co-channel licensee's initially authorized base station will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a letter submitted concurrently with the licensee's application.

(e) The application of a Phase I non-nationwide licensee proposing a base station modification resulting in at least a 120 km separation from each co-channel licensee's initially authorized base station but more than one-half the distance over 120 km toward any co-channel licensee's initially authorized base station will be accepted by the Commission only with the consent of that co-channel licensee, as evidenced in a letter submitted concurrently with the licensee's application.

5. Section 90.755 is added to read as follows:

§ 90.755 Procedures for License Modification.

(a) A Phase I non-nationwide licensee seeking modification of its authorization to relocate its authorized base station in accordance with the provisions of Section 90.753 must file the following on or before May 1, 1996:

(1) Form 600 requesting license modification, and providing all applicable information;

(2) Certification that the location of its proposed base station is in conformance with the provisions of Section 90.753, or, as provided in Section 90.753(d), a letter evidencing consent of a co-channel licensee that the licensee may be authorized less than 120 km from the co-channel licensee;

(3) If applicable, the required certification by a licensee with a Special Temporary Authority, in accordance with Section 90.753(c);

(4) If applicable, certification that the licensee has constructed its base station and placed it in operation, or commenced service, at its initially authorized location on or before March 11, 1996.

(b) A licensee seeking modification of its authorization to relocate its base station in accordance with the provisions of Section 90.753, should file, on or before March 11, 1996, either a modification application, as provided in paragraph (a) of this section, or a letter certifying to the Commission its intent to file an application to modify its authorization to relocate its base station. For a licensee that has not constructed its authorized base station and placed it in operation, or commenced service, by March 11, 1996, this filing will serve to extend the licensee's construction requirement in accordance with the provisions of Section 90.757.

6. Section 90.757 is added to read as follows:

§ 90.757 Construction requirements.

(a) Except as provided in paragraph (b) of this section, a Phase I non-nationwide licensee that is granted modification of its authorization to relocate its base station must construct its base station and place it in operation, or commence service, on all authorized channels on or before August 15, 1996, or within 12 months of initial grant date, whichever is later. The authorization of a licensee that does not construct its base station and place it in operation, or commence service, by this date, cancels automatically and must be returned to the Commission.

(b) A Phase I non-nationwide licensee with a base station authorized at a location north of Line A must construct its base station and place it in operation,

or commence service, on all authorized channels within 12 months of initial grant date, or within 12 months of the date of the release of the terms of an agreement between the United States and Canadian governments on the sharing of 220–222 MHz spectrum between the two countries, whichever is later. The authorization of a licensee that does not construct its base station and place it in operation, or commence service, by this date, cancels automatically and must be returned to the Commission.

[FR Doc. 96–2324 Filed 2–1–96; 8:45 am]
BILLING CODE 6712–01–P

PANAMA CANAL COMMISSION

48 CFR Part 3509

RIN: 3207–AA30

Panama Canal Commission Acquisition Regulation; Debarment, Suspension and Ineligibility

AGENCY: Panama Canal Commission.

ACTION: Interim final rule with request for comments.

SUMMARY: The Panama Canal Commission is today amending its regulations in Subpart 3509.4 of Title 48, Code of Federal Regulations (CFR), concerning the debarment, suspension and ineligibility of contractors or potential contractors to conform with changes in the Federal Acquisition Regulation (FAR) and to improve the agency's notice and administrative procedures pertaining to debarment, suspension or ineligibility.

DATES: Effective February 2, 1996. Comments must be received by April 2, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to John A. Mills, Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050, Washington, DC 20006–5402 (Telephone: (202) 634–6441; Facsimile: (202) 634–6439), or Theodore G. Lucas, Deputy General Counsel, Office of General Counsel, Panama Canal Commission, Unit 2300, APO AA 34011–2300 (Telephone in Republic of Panama: 011 (507) 272–7511; Facsimile: 011 (507) 272–3748).

FOR FURTHER INFORMATION CONTACT: Theodore G. Lucas, Deputy General Counsel, Office of General Counsel, Panama Canal Commission, or Barbara Fuller, Assistant to the Secretary for Commission Affairs, Office of the Secretary, Panama Canal Commission, 1825 I Street NW., Suite 1050, Washington, DC 20006–5402 (Telephone: (202) 634–6441; Facsimile: (202) 634–6439).

SUPPLEMENTARY INFORMATION: Subpart 3509.4 forms part of the Panama Canal Commission Acquisition Regulation (PAR) located at Part 3509 of CFR Title 48. The subpart is being revised at this time to conform with recent changes to this subpart in the FAR and to improve the agency's notice and administrative procedures that govern actions pertaining to debarment, suspension and ineligibility determinations.

The changes substitute ''Procurement Executive'' for ''Chairman of the Debarment Committee'' in section 3509.404(c), remove paragraph (a) from section 3509.406–1, the substance of which is now incorporated in new section 3509.403, add paragraph (c) under section 3509.406–1 to name the Procurement Executive as the agency head's designee with respect to the action authorized by FAR 9.406–1(c), and improve the procedures in section 3509.406–3 by providing a more comprehensive and efficient system including the use of an independent, non-Government fact-finding official where fact-finding is required and by improving the internal processes of investigation, review and recommendation.

Several new sections are added to the subpart. Section 3509.403 is added to identify the Administrator of the Panama Canal Commission as the agency's *Debarring Official* and *Suspending Official* unless there is a conflict of interest or a previously established recusal statement in which case it is the Deputy Administrator. The new section also introduces and defines the term *Fact-finding Official*. The appointment and duties of a *Fact-finding Official* are developed fully at section 3509.406–3. Sections 3509.405, 3509.405–1 and 3509.405–2 are added to name the Procurement Executive as the agency head's designee with respect to the requirements of FAR 9.405 (a) and (d) (2) and (3), 9.405–1 (a) and (c) and 9.405–2(a). Section 3509.406–2 is unchanged. Sections 3509.406–70, ''Settlement,'' and 3509.406–71, ''Voluntary Exclusion,'' are added to enable the debarring official to, at his discretion, resolve a potential debarment without engaging in the complete debarment process. New sections 3509.407–2, 3509.407–70 and 3509.407–71 are added and section 3509.407–3 is revised to establish that most of the subpart's provisions concerning debarment apply equally to suspension. New section 3509.470 is substantively identical to the existing 3509.406–3(b)(7) and new section 3509.471 is substantively identical to the existing 3509.406–3(b)(6).

The section and paragraph numbers of this PAR subpart continue to conform with the corresponding section and paragraph numbers of the FAR.

The Commission has been exempted from Executive Order 12866 and, accordingly, the provisions of that directive do not apply to this rule. Even if the Order were applicable, this rule would not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. Only a very small percentage of contractors or prospective contractors doing business with the Commission are debarred or suspended.

The agency has additionally determined the Paperwork Reduction Act does not apply because these changes to the PAR do not impose recordkeeping or information collection requirements or collections of information from offerors, contractors or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Further, the agency has determined implementation of the rule will have no adverse effect on competition, employment, investment, productivity or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Finally, the Administrator of the Panama Canal Commission certifies these regulatory changes meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 48 CFR Part 3509

Government procurement.

For the reasons set forth in the preamble, 48 CFR Part 3509 is amended as follows:

PART 3509—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 3509 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Part 3509 is amended by revising Subpart 3509.4 to read as follows:

Subpart 3509.4—Debarment, Suspension and Ineligibility

Sec. 3509.400 Scope of subpart.
3509.403 Definitions.
3509.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
3509.405 Effect of listing.
3509.405–1 Continuation of current contracts.

3509.405–2 Restrictions on subcontracting.
3509.406 Debarment.
3509.406–1 General.
3509.406–2 Causes for debarment.
3509.406–3 Procedures.
3509.406–70 Settlement.
3509.406–71 Voluntary exclusion.
3509.407 Suspension.
3509.407–2 Causes for suspension.
3509.407–3 Procedures.
3509.407–70 Settlement.
3509.407–71 Voluntary exclusion.
3509.470 Special notice.
3509.471 Equal application.

Subpart 3509.4—Debarment, Suspension and Ineligibility

3509.400 Scope of subpart.

This subpart supplements, and shall be applied in conformity with, FAR subpart 9.4.

3509.403 Definitions.

Debarring official means the Administrator of the Panama Canal Commission (hereinafter ''Commission''). In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed debarment due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the debarring official.

Fact-finding official means a person not employed by the Commission or any agency of the U.S. Government retained at Commission expense to conduct fact-finding under this subpart. The individual must have no prior knowledge of the particular subject matter and no conflict of interest with respect to any of the parties involved in the debarment or suspension action. He shall have knowledge of the laws and regulations governing the federal procurement system, and shall have experience in receiving evidence and formulating findings of fact.

Suspending official means the Commission Administrator. In the event the Administrator is ineligible from participating personally in Commission actions with respect to the particular contractor, named individual or affiliate subject to the proposed suspension due to a conflict of interest or in view of a previously established recusal statement, the Commission Deputy Administrator shall be the suspending official.

3509.404 List of parties excluded from Federal procurement and nonprocurement programs.

(c) The Commission Procurement Executive (hereinafter ''PE'') shall perform the actions required by FAR 9.404(c).

3509.405 Effect of listing.

The PE is the designee of the agency head for the purposes of FAR 9.405(a) and (d)(2) and (3) and may, upon the written recommendation of the pertinent Head of the Contracting Activity (hereinafter ''HCA''), make the determinations referenced therein.

3509.405–1 Continuation of current contracts.

The PE is the designee of the agency head for the purposes of FAR 9.405–1(a) and (c) and may, upon the written recommendation of the pertinent HCA, take the actions referenced therein.

3509.405–2 Restrictions on subcontracting.

(a) The PE is the designee of the agency head for the purposes of FAR 9.405–2(a) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

3509.406 Debarment.

3509.406–1 General.

(c) The PE is the designee of the agency head for the purposes of FAR 9.406–1(c) and may, upon the written recommendation of the pertinent HCA, take the action referenced therein.

3509.406–2 Causes for debarment.

In addition to the causes listed in FAR 9.406–2, the use of a Panama Canal Commission employee or a member of the Commission's Board of Directors as an agent or advocate for a Commission contractor, or prospective contractor, shall be a cause for debarment.

3509.406–3 Procedures.

(a) *Investigation and referral.*

(1)(i) Any Commission official or employee who suspects or has knowledge of any conduct, statement, act, or omission of, or attributable to, a Commission contractor or a potential Commission contractor which could justify debarment under FAR subpart 9.4 or this subpart shall immediately report this information to the Commission General Counsel (hereinafter ''GC'') or to the appropriate contracting officer.

(ii) Any Commission official or employee who suspects or has knowledge that a debarred individual or company has reestablished itself under a new name shall immediately report this information to the GC or to the appropriate contracting officer.

(2) When the GC receives such information he shall refer the matter to the appropriate contracting officer for investigation and shall notify the PE and the pertinent HCA. When the contracting officer receives such information he shall notify the PE and the pertinent HCA.

(3) The contracting officer shall, in coordination with the pertinent HCA, promptly investigate the matter, assemble all relevant information and prepare a written report containing all available evidentiary material, including copies of indictments and conviction notices when applicable, and the names of the owners and officers, as well as any affiliates, of the contractor in question. The written report shall include a recommendation whether a debarment action should be commenced and, if so, shall identify the causes for debarment, see FAR 9.406–2 and 3509.406–2 of this subpart, and identify each company and individual, including divisions of companies and affiliates, which the contracting officer recommends should be specifically named in the action.

(4) The contracting officer shall submit his report to the pertinent HCA and a copy thereof to the PE and the GC. The HCA shall study the report and promptly advise the PE, in writing, whether or not he concurs in the contracting officer's recommendation and shall explain the reasons for his concurrence or nonconcurrence.

(5) The PE shall study the contracting officer's report and the recommendation of the HCA. If the HCA and the PE agree that a debarment action should not be commenced, the PE shall so inform the debarring official and shall prepare a memorandum for record describing and closing the matter. If, however, either the HCA or the PE recommend that a debarment action should be commenced, the PE shall forward the contracting officer's report to the debarring official, together with the recommendation of the HCA as well as the PE's own written recommendation.

(b) *Decisionmaking process.*

(1) If the debarring official, after reviewing the contracting officer's report and the recommendations of the HCA and the PE, considering fully the provisions of FAR 9.402 and 9.406–1(a), and consulting with the GC, determines there is a reasonable basis to commence a debarment action, the debarring official shall instruct the PE to sign and send to each specifically named company, individual or affiliate to which the action is to apply, via certified mail, return receipt requested, either:

(i) An informal notice of the Commission's intention to propose debarment, *see* 3509.406–3(b)(2) of this subpart; or

(ii) A formal notice of the Commission's proposal to debar under FAR 9.406–3(c).

(2) An informal notice of the Commission's intention to propose debarment shall advise the addressee, in writing, of the following:

(i) The issuance under FAR 9.406–3(c) of a formal notice of proposal to debar the addressee is seriously being considered by the Commission;

(ii) The basic factual reasons for the contemplated debarment;

(iii) The causes relied upon under FAR 9.406–2 and 3509.406–2 of this subpart;

(iv) The Commission's procedures governing the debarment process;

(v) The addressee's right to reply to the PE in writing within 21 calendar days of receipt of the informal notice, and show cause why the Commission should not issue, to the addressee, a formal notice of proposal to debar under FAR 9.406–3(c) for the reasons and causes cited by the Commission;

(vi) That, if the PE does not receive a reply from the addressee to the informal notice within 21 calendar days of the addressee's receipt of the informal notice, the Commission will issue to the addressee a formal notice of proposal to debar;

(vii) The effect of the issuance of a formal notice of proposal to debar;

(viii) The potential effect of an actual debarment; and

(ix) That, while the Commission will carefully consider the content of a timely reply to the informal notice, the Commission reserves the right to issue a formal notice of proposal to debar without additional discussion or correspondence.

(3) The PE shall study the timely reply of an addressee to an informal notice and shall forward the reply to the GC and the debarring official with the PE's evaluation and recommendation.

(4) If, after reviewing a timely reply to an informal notice, as well as the views of the PE and the GC, the debarring official determines, considering fully the provisions of FAR 9.402 and 9.406–1(a), that a formal debarment action should commence, the debarring official shall instruct the PE to sign and send a formal notice of proposal to debar to the addressee.

(c) *Notice of proposal to debar.* In addition to the matters listed at FAR 9.406–3(c), a formal notice of proposal to debar shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the proposed debarment.

(d) *Debarring official's decision.*

(1) A submission in opposition to the Commission's formal notice of proposal to debar presented by a contractor, or any named individual or affiliate, shall include information and argument in opposition to the proposed debarment, including any additional specific information or documents that raise a genuine dispute over material facts. The submission shall be addressed to the PE.

(2) If a timely submission in opposition to a formal notice of proposal to debar is not presented by a named contractor, individual or affiliate to whom a formal notice was sent, the PE shall, with respect only to each such contractor, individual or affiliate that failed to present a timely submission, study all the information in the administrative record and shall forward the entire record to the debarring official with an evaluation and recommendation whether to debar the nonresponding contractor, individual or affiliate and, if so, for what period of time.

(3) If a timely submission in opposition to a formal notice of proposal to debar is submitted in actions based upon a conviction or civil judgment, the PE shall evaluate all the information in the administrative record, including the submission in opposition, and shall forward these materials to the debarring official with a recommendation whether to debar and, if so, for what period of time.

(4)(i) If a timely submission in opposition to a formal notice of proposal to debar is presented in actions not based upon a conviction or civil judgment, the PE shall evaluate the formal notice of proposal to debar and the submission in opposition and shall determine, with the advice of the GC, if the submission raises a genuine dispute over any facts material to the proposed debarment. If it does not, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(ii) If, however, the PE determines, in consultation with the GC, that a timely submission in opposition to a formal notice of proposal to debar in actions not based upon a conviction or civil judgment raises a genuine dispute over any fact material to the proposed debarment, the PE shall so advise the contractor, named individual or affiliate, and shall inquire whether a fact-finding hearing is desired. If a fact-finding hearing is not requested by the contractor, named individual or affiliate, the PE shall forward the entire administrative record, including the submission in opposition, to the debarring official with an evaluation and a recommendation whether to debar and, if so, for what period of time.

(iii) If a fact-finding hearing is requested, the PE shall appoint a fact-finding official to whom all matters involving disputed material facts shall be referred. The PE will provide the fact-finding official with a copy of the entire administrative record including the submission in opposition. The fact-finding official shall study the Commission's notice(s) of proposal to debar and the submission(s) in opposition, and shall identify specifically the material facts in genuine dispute and so advise the pertinent contractor, named individual or affiliate, as well as the Commission's designated advocate in the Office of General Counsel. A fact-finding hearing shall be scheduled and conducted by the fact-finding official, and shall take place in a Commission facility in Panama unless the fact-finding official determines that fundamental fairness compels the use of another location. The rules governing the fact-finding hearing shall be established by the fact-finding official but shall conform fully with FAR 9.406–3(b)(2) and (d)(2) and (3).

(5) The fact-finding official shall present written findings of fact and the transcribed record of the hearing, if made, to the debarring official within 21 calendar days from his receipt of the transcript or from the final day of the hearing if no transcript is ordered. The findings shall resolve each material fact previously determined to be in genuine dispute based on a preponderance of the evidence presented.

(6) Upon receiving the complete administrative record and the evaluation and recommendation of the PE or, if there was a fact-finding hearing, upon receiving the hearing record and the findings of fact of the fact-finding official and the evaluation and recommendation of the PE, the debarring official shall, considering fully the provisions of FAR 9.402 and 9.406–1(a), make a final decision whether to impose debarment. If debarment is chosen, the debarring official shall also determine the period of debarment.

(e) *Notice of debarring official's decision.* The debarring official shall promptly notify the contractor and any named individual or affiliate of the final decision in writing by certified mail, return receipt requested.

3509.406–70 Settlement.

(a) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S.

Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to perform, accomplish or implement such remedial measures or mitigating factors as are listed at FAR 9.406–1(a). The contractor, individual or affiliate shall also agree that its failure to observe any term or condition of the agreement shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a settlement agreement if the proposed debarment is based on a conviction of or civil judgment for any of the causes in FAR 9.406–2(a).

3509.406–71 Voluntary exclusion.

(a)(1) At any time prior to the debarring official's issuance of a final decision whether to debar, the debarring official may, in the best interests of the U.S. Government, forgo or withdraw a proposed debarment by entering into a written agreement with the contractor, named individual or affiliate, in which the contractor, individual or affiliate agrees to voluntarily refrain, for a specified period of time, from attempting to obtain, and from entering into, any contract, purchase agreement or other form of contractual relationship, regardless of dollar amount, with, as the debarring official may determine, either: (i) the Commission; or (ii) the Commission and one or more, or all, other agencies, departments or entities of the U.S. Government.

(2) A voluntary exclusion will not be reported to the GSA nor appear in the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs,'' and if the contractor, individual or affiliate is currently listed due to a Commission notice of proposal to debar the PE will advise the GSA of the voluntary exclusion and request the immediate cessation of the listing. The contractor, individual or affiliate shall agree that its failure to observe any term or condition of the voluntary exclusion shall constitute sufficient cause for the immediate imposition of debarment by the debarring official without entitlement to a fact-finding hearing.

(b) The debarring official shall not enter into a voluntary exclusion agreement if the proposed debarment is based on a conviction of or civil judgment for any of the causes in FAR 9.406–2(a).

3509.407 Suspension.

3509.407–2 Causes for suspension.

In addition to the causes listed in FAR 9.407–2, the cause for debarment identified in 48 CFR (PAR) 3509.406–2 also applies to suspension actions.

3509.407–3 Procedures.

(a) The procedures set forth in 48 CFR (PAR) 3509.406–3 for debarment also apply, insofar as they are compatible with the procedures set forth in FAR 9.407–3, to suspension actions except those procedures identified in paragraph (b) of this subsection.

(b) The following procedures in 48 CFR (PAR) 3509.406–3 do *not* apply to suspension actions: 3509.406–3(b)(1)(i), 3509.406–3(b) (2) through (4) and 3509.406–3(c).

(c) *Notice of suspension.* In addition to the matters listed at FAR 9.407–3(c), in actions not based on an indictment, a notice of suspension shall advise the contractor and any specifically named individual or affiliate of the specific, fundamental allegations of material fact supporting the suspension.

3509.407–70 Settlement.

Where a suspension is being considered, the suspending official may enter into a settlement agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406–70.

3509.407–71 Voluntary exclusion.

Where a suspension is being considered, the suspending official may enter into a voluntary exclusion agreement in the same manner and under the same terms as are provided in 48 CFR (PAR) 3509.406–71.

3509.470 Special notice.

The Commander in Chief, United States Southern Command, shall be notified by the Procurement Executive of the issuance of any Commission notice of proposal to debar and of any debarment or suspension decision made by the debarring or suspending official.

3509.471 Equal application.

These procedures for debarment and suspension apply equally to all firms, individuals and affiliates doing business with the Panama Canal Commission regardless of their nationality, residence or location.

Dated: January 24, 1996.

Gilberto Guardia F.,

Administrator, Panama Canal Commission.

[FR Doc. 96–2044 Filed 2–1–96; 8:45 am]

BILLING CODE 3640–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AD33

Conferring Designated Port Status on Atlanta, GA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service confers designated port status on Atlanta, Georgia, pursuant to section 9(f) of the Endangered Species Act of 1973. Designated port status will allow the direct importation and exportation of fish and wildlife, including parts and products, through Atlanta, Georgia, a growing international port. Under this final rule, 50 CFR 14.12 will be amended to add Atlanta, Georgia, to the list of Customs ports of entry designated for the importation and exportation of wildlife. A public hearing has been held on this proposal.

EFFECTIVE DATE: This rule is effective March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Special Agent Thomas Striegler, [(703) 358–1949], or Special Agent Cecil M. Halcomb, Assistant Regional Director, U.S. Fish and Wildlife Service, P.O. Box 49226, Atlanta, Georgia 30359, [(404) 679–7057].

SUPPLEMENTARY INFORMATION:

Background

Designated ports are the cornerstones of the process by which the Fish and Wildlife Service (Service) regulates the importation and exportation of wildlife in the United States. With limited exceptions, all fish or wildlife must be imported and exported through such ports as required by section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f). The Secretary of the Interior is responsible for designating these ports by regulation, with the approval of the Secretary of the Treasury after notice and the opportunity for public hearing.

Under Service regulations, wildlife must be imported and exported through one of the designated ports unless the importer/exporter meets one of the exceptions in the regulations. The most common exception is through a permit issued by the Service authorizing an importer or exporter to ship through a nondesignated port. The Service maintains a staff of Wildlife Inspectors at each designated port to inspect and clear wildlife shipments.

The Service presently has twelve designated Customs ports of entry for the importation and exportation of wildlife; these include: the ports of Los Angeles, California; San Francisco, California; Miami, Florida; Honolulu, Hawaii; Chicago, Illinois; New Orleans, Louisiana; New York, New York; Seattle, Washington; Dallas/Fort Worth, Texas; Portland, Oregon; Baltimore, Maryland; and Boston, Massachusetts.

Summary of Comments and Information Received

On October 20, 1995, between 10 a.m. and 12 p.m., the Fish and Wildlife Service held a public meeting at the Airport Manager's Office, Hartsfield International Airport, Atlanta, Georgia. The Service received comments from individuals in the wildlife import/export business, from individuals involved in the brokerage and freight forwarding business, and from individuals representing the city of Atlanta. All comments received during the public meeting supported the designation of Atlanta as a designated port for wildlife and wildlife products.

One participant of the public meeting representing Hartsfield International Airport commented on the fact that the city of Atlanta and the Georgia Congressional delegation have supported the designation of Atlanta for several years. Atlanta is the second busiest airport in the world, according to the commenter, and is considered the aviation gateway to the southeast United States. The commenter stated that Hartsfield International Airport has experienced significant growth in cargo shipments over the past several years and for Atlanta to realize its full potential and take advantage of expanding world trade, Service designation as a designated port is important. A commenter at the public meeting representing brokers and freight forwarders, as well as the ''international community'' in Atlanta, stated that several businesses in the Atlanta area have quit importing wildlife products through Atlanta (by using Designated Port exception permits issued by the Service) because of the unavailability of Wildlife Inspectors to process importations on a timely basis. The commenter told the meeting that he has received numerous inquiries from those involved in the wildlife import/export business about using Atlanta to receive or ship wildlife internationally, but has told them they could not use Atlanta due to the lack of designation by the Service. The commenter stated that he sees designation of Atlanta as an ''ingredient to economic growth'' in the area.

Another commenter formally representing the Association of Brokers and Freight Forwarders in Atlanta was fully supportive of designation by the Service of Atlanta as a port of entry for wildlife and wildlife products. A commenter representing a Congressman from Georgia told the meeting that the Congressman had worked for several years for the designation of Atlanta by the Service and was very pleased to see the proposed rule. A tropical fish importer told the meeting that he deals in such a highly perishable product that importing directly into Atlanta will mean his customers do not have to go to California for tropical fish, and that his business depends upon Atlanta being designated a wildlife port of entry. The commenter wishes to see the rulemaking process proceed towards designation of Atlanta. The Service has received one written comment on the proposed rule. That commenter, from the shipping industry, stated that it supports the designation of Atlanta as a designated port. This commenter also requested the Service to consider Memphis, Tennessee, as a designated port in the future.

Service Response

The Service appreciates public comments and support for designation of Atlanta as a designated port. At this time the Service has no plans to make Memphis, Tennessee, a designated port.

Need for Final Rulemaking

Containerized air and ocean cargo has become the paramount means by which both live wildlife and wildlife products are transported into and out of the United States. The use of containerized cargo by the airline and shipping industries has compounded the problems encountered by the Service and by wildlife importers and exporters in the Atlanta area. In many instances, foreign suppliers will containerize entire shipments and route them directly by air to Atlanta. If, upon arrival, the shipment contains any wildlife, those items must be shipped under Customs bond to a designated port for clearance. In most cases, this has involved shipping wildlife products to either Miami, Florida; Chicago, Illinois; New York, New York; Baltimore, Maryland; or New Orleans, Louisiana, the nearest designated ports, but reshipment has been both time consuming and expensive. In other cases containerized maritime cargo is transhipped overland for post entry inspection at Atlanta. Atlanta is one of the Nation's busiest inland seaports, with an estimate of greater than 25,000 ocean containers arriving annually by rail on Atlanta ocean bills of lading. In addition there has been a steady increase in mail inspections being conducted at Atlanta.

Atlanta area importers and exporters have attempted to direct entire shipments to a designated port prior to their arrival at Atlanta to alleviate problems, even though such shipments may contain only a small number of wildlife items. This method of shipment meets the current regulatory requirements of the Service; however, this is also time consuming and entails additional expense. It is also contrary to the increasing tendency of foreign suppliers to ship consignments directly to regional ports such as Atlanta. In addition, time is a key element when transporting live wildlife and perishable wildlife products. Without designated port status, businesses in Atlanta cannot import and export wildlife products directly, and consequently may be unable to compete economically with merchants in other international trading centers located in designated ports.

With airborne shipments, mail, and transhipped maritime containerized cargo into and out of Atlanta steadily increasing, the Service has concluded that the port should be designated for wildlife imports and exports. A tremendous increase in the volume of shipments has made Atlanta the second largest port of entry in the Southeast. The Service's figures for fiscal year 1994 for the present nondesignated port of Atlanta indicate a total of 397 shipments occurred representing an estimated total value worth $3,801,043 of wildlife and wildlife products. The Service projects that with the establishment of Atlanta as a designated port that the number of shipments through the port would triple over the first 3 to 5 years. This projection is based upon the Service's previous experience at other newly designated ports such as Dallas/Fort Worth and Portland. As Atlanta prepares to host the 1996 Summer Olympics, the Service expects even greater demands to be placed on its inspection capabilities. Conferring the status of a designated port on Atlanta, therefore, would serve not only the interests of businesses in the region, but would also facilitate the mission of the Service.

The Service is making the decision to confer designated port status upon Atlanta, Georgia, contingent upon the continued funding of adequate Service inspection and administrative personnel to properly staff the port. The Hartsfield Atlanta International Airport, City of Atlanta, Department of Aviation (Airport), has agreed in principle to fund the operational costs of the port,

subject to a dollar cap, to the extent that those costs exceed the fees collected at the port for inspection services. This arrangement has been set forth in a Memorandum of Agreement between the Airport and the Service, to be executed within 30 days of the publication of this final rule. The Airport will provide such funds to the Service through a contributed fund mechanism. *See* 16 U.S.C. 742f(b). This agreement provides for $150,000, sufficient operational funding for the port, initially to include two Wildlife Inspectors and one clerical/administrative support position.

Required Determinations

This rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. The Department of the Interior (Department) has determined that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will have a positive incidental effect upon small entities by reducing overland transportation costs.

The Service anticipates that the addition of the Port of Atlanta to the list of Service Designated Ports for the importation and exportation of wildlife to have no adverse affects upon individual industries and cause no demographic changes in populations. In addition, the Service anticipates that this rule will not have the effect of increasing the direct costs of small entities. The Service, in light of the above analysis, has determined that the final rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

This final rule has no private property takings implications as defined in Executive Order 12630. The only effect of this rule will be to make it easier for businesses to import and export wildlife directly through Atlanta, Georgia. This action does not contain any federalism impacts as described in Executive Order 12612. This final rule does not contain any information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995. These changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 Department Manual; the changes have no Environmental Justice implications under Executive Order 12898. A determination has been made pursuant to Section 7 of the Endangered Species Act that the revision of Part 14 will not affect federally listed species. The Department has certified that these regulations meet the applicable standards provided in Section 2(a) and 2(b)(2) of Executive Order 12778.

Author

The originator of this final rule is John M. Neal, Senior Special Agent, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C.

List of Subjects in 50 CFR Part 14

Animal welfare, Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Service amends Title 50, Chapter I, Subchapter B of the Code of Federal Regulations as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 is revised to read as follows:

Authority: 16 U.S.C. 704, 712, 1382, 1538(d)–(f), 1540(f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 483(a).

§ 14.12 [Amended]

2. Section 14.12(k) is amended by removing the word ''and''.

3. Section 14.12(l) is amended by removing the period and adding the word ''and'' preceded by a semicolon.

4. Section 14.12 is amended by adding the following new paragraph (m):

§ 14.12 Designated ports.

* * * * *

(m) Atlanta, Georgia.

Dated: January 22, 1996.

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–1880 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 950605147–5288–03; I.D. 112895A]

RIN 0648–AH33

Delay of the Effective Date of the 1996 Marine Mammal Protection Act Final List of Fisheries

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

ACTION: Final rule; delay of effective date.

SUMMARY: NMFS published its Marine Mammal Protection Act of 1972 (MMPA) final List of Fisheries (LOF) for 1996 on December 28, 1995. In that rule, the effective period for the 1995 LOF was extended until March 1, 1996. The recent government shutdown delayed NMFS from mailing out registration packets to commercial fishers for the Marine Mammal Authorization Program. Therefore, NMFS is delaying the effective date of the 1996 final LOF from March 1, 1996 to April 1, 1996.

EFFECTIVE DATE: February 2, 1996. The effective date of the MMPA final LOF for 1996 is delayed from March 1, 1996 to April 1, 1996.

ADDRESSES: Information and registration material for the region in which a fishery occurs may be obtained from the following addresses: NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Sandra Arvilla; NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702; NMFS, MMAP, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office; NMFS - PMRD, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99082.

FOR FURTHER INFORMATION CONTACT: Victoria Cornish, Office of Protected Resources, 301–713–2322; Douglas Beach, Northeast Region, 508–281–9254; Charles Oravetz, Southeast Region, 813–570–5312; James Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Steven Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION:

In accordance with section 118 of the MMPA of 1972, and 50 CFR 229.4,

commercial fishers in Category I and II fisheries must register with NMFS for authorization to seriously injure or kill marine mammals incidental to fishing operations. On December 28, 1995, NMFS published its MMPA final List of Fisheries (LOF) for 1996 (60 FR 67063), which classified fisheries according to frequency of serious injury or mortality of marine mammals. The preamble to the final regulations implementing section 118 (60 FR 45086, August 30, 1995) stated that vessel owners holding a valid Exemption Certificate under section 114 will be deemed by NMFS to have registered under section 118 through December 31, 1995. Because it took longer than expected to publish the MMPA final LOF for 1996, NMFS extended the MMPA LOF for 1995 to remain in effect until March 1, 1996 (60 FR 67063, December 28, 1995). Vessel owners holding a valid Exemption Certificate under section 114 were deemed to have registered under section 118 until March 1, 1996. The extension was intended to allow vessel owners sufficient time to register under section 118 of the MMPA.

The recent government shutdown delayed NMFS from mailing registration packets to commercial fishers for the Marine Mammal Authorization Program. Therefore, NMFS is extending the effective date of the 1996 LOF from March 1, 1996 to April 1, 1996. In conjunction with this action, NMFS is extending the effective period for the 1995 LOF through March 31, 1996, and vessel owners holding a valid Exemption Certificate under section 114 will be deemed to have registered under section 118 through March 31, 1996. Owners or authorized representatives of fishing vessels or non-vessel fishing gear that will participate in a Category I or II fishery as of April 1, 1996 must register for and obtain a valid section 118 Authorization Certificate before April 1, 1996. Owners or authorized representatives of fishing vessels or non-vessel fishing gear that will participate in a Category I or II fishery after April 1, 1996 must register for and obtain a valid section 118 Authorization Certificate before fishing activity starts.

NMFS expects to mail registration packets to commercial fishers during the second week of February, 1996. Commercial fishers who plan to participate in Category I and II fisheries during the spring of 1996 should submit their completed registration forms and $25 fee to NMFS by March 1, 1996 to allow NMFS at least 30 days to process the forms. Commercial fishers who will be participating in affected fisheries that begin later in the year should submit their completed registration form and $25 fee at least 30 days before they expect to begin fishing.

Dated: January 26, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–2145 Filed 2–1–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 23
Friday, February 2, 1996

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4287

RIN 0570–AA09

Business and Industrial Loan Program

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is the successor to the Rural Business and Cooperative Development Service, which was the successor to the Rural Development Administration (RDA), which was the successor to the Farmers Home Administration (FmHA).

RBS is issuing new Business and Industry Guaranteed Loan Program regulations to replace the FmHA regulations for the program. This action is needed to streamline and update the program. The intended effect is to shorten, simplify, and clarify the regulation, shift some responsibility for loan documentation and analysis from the Government to the lenders, make the program more responsive to the needs of lenders and businesses, and provide for smoother and faster processing of applications.

DATES: Written comments must be received on or before April 2, 1996.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations, Analysis, and Control Branch, Rural Economic and Community Development, U.S. Department of Agriculture, Ag Box 0743, 14th and Independence SW., Washington, DC 20250–0743. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Senior Loan Specialist, RBS, U.S. Department of Agriculture, Ag-Box 3221, 14th & Independence Avenue SW., Washington, DC 20250–3221, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be a ''significant regulatory action'' and was reviewed by OMB under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. RBS conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration Programs and Activities.''

Civil Justice Reform

The proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the agency at 7 CFR part 1900, subpart B or those regulations published by the Department of Agriculture to implement the provisions of the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the Proposed Rule

This action replaces the Business and Industrial loan program administered under 7 CFR part 1980 with a program to be administered under 7 CFR parts 4279 and 4287 which significantly departs from the previous program of loan guarantees for businesses in rural areas. The new Business and Industrial Guaranteed Loan Program will be more flexible and will place more reliance on lenders. There are fewer specific requirements for lenders and businesses. Eligible loan purposes are broader. The lender has added responsibility for analyzing credit quality, and for making, securing, and servicing the loan and monitoring construction. The priority system will give increased priority to underserved communities. Application processing procedures will be more efficient, less burdensome for borrowers, lenders, and RBS staff, and will provide for more rapid decisions.

The Business and Industry (B&I) guaranteed loan program was authorized by the Rural Development Act of 1972. The loans are made by private lenders to rural businesses for the purpose of creating new businesses, expanding existing businesses, and for other purposes that create employment opportunities in rural areas. Eligibility for this program includes businesses located in cities of up to 50,000 population, but priority is given to areas outside cities of 25,000 or more population.

Since 1974, more than 5,120 businesses have received loans totaling nearly $5 billion guaranteed through the B&I program. These loans have helped to create or save over 460,000 jobs. The program level peaked in 1979 at just over $1 billion, then was reduced to $100 million annually through much of the 1980's. The program level for FY 1994 was about $249 million and for FY

1995 it was about $500 million. The FY 1996 budget is approximately $700 million, which required only $6.5 million in budget authority to be appropriated by Congress.

Loans can be made for a variety of purposes including business acquisition, expansion, or improvement; purchase of land, easements, or buildings; purchase of equipment, machinery, or supplies; repair and modernization; pollution control; transportation services; start up and working capital; and feasibility studies. The rate and term of the loan is negotiated between the business and the lender.

The Rural Business-Cooperative Service proposes to replace the regulations for the B&I program with a compete set of new regulations. This is a high priority effort to streamline the administration and operation of the program, responding to the requests of users of the program and the field staff administering the program. The revised regulations are shorter, simpler, clearer, and more logically organized. The volume of material in the new regulations is about one-half that of the current regulation.

The revisions are not required by statute. However, the senate report on the FY 1995 Appropriations Act did contain a directive for the department to streamline the B&I regulations and application procedures, reduce loan application processing time by relying on in-state resources, allow more management flexibility and decision making capacity at the state office level, and expand eligible loan purposes to include recreation and tourism.

Recognizing the need to streamline the regulations, the Agency established a task force of State Directors and B&I program chiefs from state offices to examine changes that needed to be made in the program to attract additional lenders and to make the program more user friendly and customer oriented. Task force recommendations and drafts have been further developed by national office staff. In addition, the Department's Office of inspector General (OIG) agreed to work in conjunction with the Agency in competing an evaluation of the program and to assist the agency in determining areas that could be changed to assist in making the program more effective and more efficiently administered. The OIG evaluation determined that (1) RBS needs to better promote the program and encourage lender and borrower participation, (2) lenders have little experience with the B&I program, (3) some of the requirements of the program are too costly to be attractive to borrowers wanting a relatively small loan, and (4) RBS needs to employ its resources more efficiently by relying more on lenders to analyze and monitor smaller loans. OIG surveyed 800 lenders and, based on the responses to the survey, projected that only 5.2 percent of the universe of lenders have had any experience with the program, but of those that did the experience was favorable. Further, the Agency determined that of the lenders participating in the program, the average number of times they did participate was 1.2. In a few states, the program has been used more frequently by lenders, but according to task force members and others familiar with the program this has been true only because Agency officials in those states took the time and effort to make the program more widely known.

OIG also determined that smaller borrowers refused to participate in the program because they feel that meeting some of the requirements is too costly to make a loan feasible. For example, the requirement to submit annual audited financial statements is believed to be too costly and OIG found that private lenders do not always request audited financial statements from smaller commercial borrowers. The General Accounting Office, in a 1992 report, also found that the cost of feasibility studies and the annual audit requirements coupled with appraisal fees and credit reports may impede participation.

Presently State office personnel analyze financial information provided by the lenders and the borrowers regardless of the size of the loan and regardless of the fact the lender has performed an analysis of the borrower's financial condition. In order to increase the level of lending activity as called for in the 1996 and 1997 budgets, and improve the effectiveness of the program and the efficiency with which it is delivered, RBS must rely more on the capabilities of the lending community to deliver the program.

Based on the recommendations of the task force and other reviews, the Agency has proposed these revisions to make the program more usable by the lenders and the borrowers. More importantly, the Agency recognizes the changes are necessary to make the program more effective in creating jobs and stimulating economic activity, particularly in chronically low income rural areas. Under the proposed new B&I regulations, the material that must be submitted to and reviewed by the Agency before approval of the guarantee is reduced and responsibilities for credit analysis and application processing tasks will be shifted from the Agency national office to field offices and from the Agency to the lender where feasible. Following is a discussion of some of the most significant policy revisions included in the proposed new regulations.

Currently, most lenders participating in the B&I program are commercial banks and eligibility to be a lender under the program is limited to certain types of organizations. This proposal allows the Agency to approve additional lenders when determined by the Administrator to have sufficient legal authority, lending expertise, and financial strength.

The Agency proposes to reduce the loan guarantee fee if it is determined that the business seeking the guarantee provides high-impact business development and is located in a community experiencing long-term population decline and job deterioration, a community that has remained persistently poor over the past 60 years, or a community experiencing economic trauma due to natural disaster or fundamental economic structural change. The intent of this provision is to encourage businesses to locate in areas with persistent economic problems.

Presently, individual borrowers must be citizens of the United States or reside in the United States after being legally admitted for permanent residence and organization borrowers must be at least 51 percent owned by citizens or persons legally admitted. The proposed regulations would allow guaranteed loans to businesses that do not meet that requirement if the facility being financed will create or save jobs for rural United States residents, adequate management is available, and loan funds are used only for fixed assets that will remain in the United States. The intent of this provision is to have the flexibility to create jobs in rural areas even if the company is owned by foreign interests. The Agency has experienced requests for guarantees in such situations in border states.

Presently, agricultural production loans are not eligible for B&I guarantees. RBS proposes to provide guarantees for agricultural production, but limit eligibility to integrated businesses involved in both production and processing.

Current regulations will not allow a lender to bring loans it has previously made under a guarantee through refinancing unless the percentage of guarantee is adjusted to maintain the previous unguaranteed exposure. The new regulations will allow the previous exposure to be guaranteed, provided the

refinancing is a secondary part of the loan and will allow the lender to restructure the rates and terms.

The Agency is particularly interested in public comments on a new priority system, designed to target loan guarantees to locations of greatest need and businesses that will have the most impact. High impact considers factors that effect such things as job quality, potential to stimulate the local economy other than just through the direct jobs provided, and potential for long term presence in the community and future expansion. For example, businesses in industries in the top half of the industrial life cycle are likely to be successful for a longer period of time than those in an industry that is declining. Businesses tied in some way to the community are less likely to move on in a few years to a more favorable location outside the community. A business in an industry new to the community provides economic diversification. Businesses that will need new suppliers or customers are likely to have a ripple effect, causing other new businesses to be formed nearby. Priority points are also given for lenders that will structure the loan at favorable rates to the borrower or less risk for the Government.

Eligible loan purposes would be expanded to include hotels, motels, and other tourism and recreational facilities, which have been ineligible for the past several years. Loans for such facilities would be evaluated on the merits and financial feasibility of each proposal, except for racetracks, golf courses, and gambling facilities, which would remain ineligible. The Agency is particularly requesting comments on whether there is a significant need for loan guarantees for tourism and recreation businesses and whether offering loan guarantees for such businesses will significantly increase the risk to the Government and satisfy otherwise unmet needs for financing of such businesses.

Current regulations limit the size of loans considered for guarantee to $10 million. The proposed regulations would give the Administrator the authority to approve exceptions for high priority projects of up to $25 million.

The proposed regulations limit the guarantee percentage to 80 percent for loans of $5 million or less and 70 percent for loans exceeding $5 million, but provide authority for the Administrator to approve exceptions up to 90 percent when the higher percentage is necessary to allow a high priority project to proceed.

In conjunction with implementation of the new regulations, the Agency intends to provide a new application form that will serve the function of 10 forms now in use. The application form will, of course, be supplemented by additional information provided by the lender.

The proposed regulations also provide for experienced lenders to apply for status as certified lenders. Certified lenders will submit about one-half as much application material for agency review as regular lenders. Consideration was given to creating another classification of lender determined to be very reliable and familiar with the program that would be able to obtain guarantees with little or no review of individual projects by the Agency. However, it was determined that the Agency does not have sufficient legal authority to implement that alternative.

Agency staff will be authorized to rely on a written credit analysis prepared by the lender rather than the Agency completing its own complete credit analysis.

For the most part, the lender will determine the frequency of financial statements to be required from the business after the loan is closed and whether or not the statements must be audited.

The lender and its legal counsel will be responsible for loan closing, without a required review by the Office of General Counsel.

Loan servicing will also be simplified and shifted toward the lender. Loans will classified by the lender. Lenders will be able to release collateral with a cumulative value of up to 20 percent of the loan if the proceeds will be used to reduce the loan or buy replacement collateral. Lenders may make protective advances of up to $5,000 without prior agency approval. If unsecured personal or corporate guarantees cannot be settled promptly, a final loss report may be filed and paid and the guarantees treated as future recovery.

RBS believes the streamlining of the regulations for this program will enhance the use of the program in improving the future prosperity of rural residents through targeted investments that enhance rural competitiveness, facilitate industrial conversion, and enable rural residents to profit from private sector activity. The proposed revisions are consistent with the Administration's efforts to streamline government functions, improve efficiency and the effectiveness of government activities, and be more customer friendly. The changes proposed will enable the Agency to deliver a larger program with less staff resources, and simultaneously meet the objectives of the National Performance review regarding improved customer service, less regulation and streamlined Agency operations.

Incorporation of the proposed changes will provide more flexibility for both lenders and agency staff. Many errors will be reduced because the guidelines and requirements are much more clear and items are more easily found in a reduced and better organized volume of regulations. Lenders will be more interested in using the program because the procedures are more simple and direct. The ultimate benefit to be realized is increased lending activity resulting in the expansion of business opportunities and the creation of more jobs in rural areas, particularly in those areas that have experienced historical economic distress.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Rural Business-Cooperative Service (RBS) announces its intention to seek OMB approval of the reporting/recordkeeping requirements contained in these new regulations.

The purpose of the B&I loan program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of loans which will provide lasting community benefits. Loans to rural businesses are made by private lenders, primarily commercial banks, and guaranteed by RBS. These proposed regulations include various requirements for information from the lenders and borrowers. The information requested is vital for RBS to be able to process applications for loan guarantees in a responsible manner, make prudent credit and program decisions, and effectively monitor the lenders' servicing activities to protect the Government's financial interest. It includes information to identify the lender and borrower, describe the business and use of loan funds, indicate the rates and terms of the loan, allow for credit quality analysis, and other information necessary for prudent program and credit decisions. The lender or borrower may need to provide information regarding some special assistance or consideration, such as when a lender requests a change in specific conditions cited by the Agency for approval of a guarantee. Additional information is necessary to ensure a loan is adequately serviced and continues to perform as expected, or, if necessary, properly liquidated.

Currently, the regulations for the B&I Loan Program are contained in 7 CFR 1980, subpart E. The information collection associated with 7 CFR 1980–E has been previously approved by the Office of Management and Budget (OMB) and assigned control number 0575–0029. RBS is now proposing new regulations for the B&I program to replace 7 CFR 1980–E. RBS's primary reason for proposing new regulations is to simplify the requirements and streamline the application and loanmaking process. The total public reporting burden under these regulations is expected to be significantly reduced, as compared to the burden contained in the current regulation. The average public reporting burden for the collections of information contained in these regulations is expected to range from .75 to 54 hours per response. Lending institutions and rural businesses are the primary respondents for this data collection. The number of respondents for the various collections of information contained in these regulations is expected to range from 15 to 1240 per year. The number of annual responses per respondent is expected to range from less than 1 to 4 per year. Total annual burden on respondents is estimated at 67,456 hours. This is based on an estimated volume of activity of 500 preapplications, 425 applications, and 360 new loan guarantees. The estimated total annual burden for 7 CFR 1980, subpart E, was 78,318 hours. However, the larger estimated burden for 7 CFR 1980, subpart E, was based on a lower estimated volume of activity of only 350 preapplications, 275 applications, and 220 new loan guarantees.

In conjunction with implementation of the proposed new regulations, RBS plans to initiate use of a new application form. The new form should not be more difficult or time consuming to complete than the current application but it will facilitate the elimination of 10 other forms currently in use. Some items of information required by the agency have been made easier to provide, such as the material incorporated into the new application. Some has been eliminated by changing program requirements and providing more flexibility to lenders. An example of this is the documentation regarding refinancing required by 7 CFR 1980, section 1980.452 Administrative C (1). Under the proposed rule there are less restrictions on refinancing so there is no need for the specific documentation. Some information will be collected less frequently, as in the case of feasibility studies. Feasibility studies will be required for new businesses at the discretion of the loan approval official, rather than for all new businesses. Financial statements will still be required at least annually, but whether they are required more often than annually and whether they must be audited statements will be decided by the lender.

Some new items of burden have also been created. For the most part, however, these are the result of new options being made available. For example, requesting status as a certified lender is a burden upon the lenders that choose to make a request. That burden has not existed previously because there were no certified lenders. To become certified a lender must submit an executed Lender's Agreement (if it does not already have a valid Lender's Agreement), a new form called ''Certified Lender, Business and Industry,'' and a written request summarizing its history of commercial lending activity with information on delinquencies and losses. Loan officers of certified lenders must receive training from RBS on the B&I program. The burden for completing a request for certification has been estimated at 2.5 hours.

Certified lenders will submit less material for agency review for each individual loan application proposed for guarantee. A complete application for guarantee from a certified lender will include the application form, a Form FmHA 1940–20, ''Request for Environmental Information,'' the lender's written financial analysis with spreadsheets, a proposed Loan Agreement or list of conditions for a Loan agreement, and intergovernmental review comments. A complete application for guarantee from an eligible lender that is not certified will include all of those items plus the business's historical and projected financial statements, financial statements of personal or corporate guarantors, personal credit reports on the principals, appraisals, commercial credit report on the business, and a business plan or feasibility study.

Although it is not reflected in the proposed rule or the estimates of burden, RBS is also working on a project to automate forms. It is intended that most of the forms used in connection with an application will be made available on computer disk so the form can be brought up on a screen, the appropriate information typed in, and the entire completed form printed. When completed, the appropriate disks will be made available to the public as well as to Agency staff.

The complete text of the subject regulations is published herein for public review and comment. Additional copies of the proposed regulations or copies of the referenced forms may be obtained from Jack Holston, Agency Information Collection Coordinator, at (202) 720–9736.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspects of this collection of information, to: Jack Holston, Agency Information Collection Coordinator, U.S. Department of Agriculture, RECD, Ag. Box 0743, Washington, DC 20250. These comments must be received on or before April 2, 1996 to be assured of consideration. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

List of Subjects

7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development, Loan programs—Community programs—Rural development assistance, Rural areas.

7 CFR Part 4279

Loan programs—Business and industry—Rural development assistance, Rural areas.

7 CFR Part 4287

Loan programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, chapters XVIII and XLII, title 7 of the Code of Federal Regulations are proposed to be amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General

2. Section 1980.6(a) is amended by: removing the definitions for ''Borrower,'' ''Disaster Assistance for Rural Business Enterprises,'' and

''Drought and Disaster Guaranteed loans;'' in the heading for the definition of ''Assignment Guarantee Agreement,'' removing '', 1980–70 or 1980–73;'' revising the definition of ''Guaranteed loan,'' to read as set forth below; in the third sentence of the definition of ''Holder,'' removing the parenthetical phrase ''(or 1980–70 or 1980–73);'' in the heading for the definition of ''Lender's Agreement,'' removing the comma and adding the word ''or'' in its place immediately following ''449–35'' and removing '', 1980–68, or 1980–71'' immediately following ''1980–38;'' in the heading for the definition of ''Loan Note Guarantee,'' removing the parenthetical phrase ''(or 1980–69 or 1980–72)''.

§ 1980.6 Definitions and abbreviations.

(a) * * *

Guaranteed loan. A loan made and serviced by a lender for which FmHA or its successor agency under Public Law 103–354 has entered into a Form FmHA 449–35 or Form FmHA 1980–38, ''Lender's Agreement,'' and for which FmHA or its successor agency under Public Law 103–354 has issued a Form FmHA 449–34, ''Loan Note Guarantee.''

* * * * *

3. Section 1980.6 (b) is amended by removing the entries for ''B&I,'' ''DARBE,'' and ''D&D'' from the list of abbreviations.

§ 1980.13 [Amended]

4–5. Section 1980.13 is amended in the second sentence of paragraph (a) introductory text by revising the reference ''paragraphs (a) (1), (2) and (3)'' to read ''paragraphs (a) (1) and (2);'' in paragraph (a)(2) by removing ';or'' and adding a period at the end of the paragraph; by removing paragraph (a)(3); and in paragraph (c) by removing the parenthetical phrase ''(See subpart E of this part.)''.

§ 1980.20 [Amended]

6. Section 1980.20 is amended in paragraph (a) introductory text by removing the third and forth sentences in their entirety; in the fifth sentence, by removing the words ''for all other loans covered by this section;'' and in the sixth sentence by removing the words ''except in regards to D&D and DARBE guaranteed loans (see Subpart E of this part),''.

§ 1980.41 [Amended]

7. Section 1980.41 is amended in the first sentence of paragraph (b)(3)(iii)(A) by removing the parenthetical phrase ''(State Director for B&I)''.

§ 1980.46 [Amended]

8. Section 1980.46 is amended in paragraph (a)(2) by removing the parenthetical phrase ''(State Director for B&I)'' at the end of the paragraph.

§ 1980.47 [Amended]

9. Section 1980.47 is amended in the first sentence of paragraph (d) by removing the words ''and Business''.

10. Section 1980.60 is amended by revising paragraph (a) (2) to read as follows:

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) * * *

(1) * * *

(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans and specifications. All costs have not exceeded the amounts approved by the lender and FmHA or its successor agency under Public Law 103–354.

* * * * *

§ 1980.61 [Amended]

11. Section 1980.61 is amended in the first sentence of paragraph (b)(3) by revising ''Forms FmHA or its successor agency under Public Law 103–354 449–35,'' to read ''Form FmHA 449–35'' and removing ''FmHA or its successor agency under Public Law 103–354 1980–68, and FmHA or its successor agency under Public Law 103–354 1980–71;'' in paragraph (b)(4) by revising the word ''request'' to read ''requests,'' revising ''Forms FmHA or its successor agency under Public Law 103–354 449–35,'' to read ''Form FmHA 449–35'' removing, ''FmHA or its successor agency under Public Law 103–354 1980–68, and FmHA or its successor agency under Public Law 103–354 1980–71,'' and removing the parenthetical phrase ''(State Director for B&I);'' and in paragraph (h) by removing the words ',except for B&I where the State Director and State B&I or C&BP Chief will execute these forms.''

§ 1980.63 [Amended]

12. Section 1980.63 is amended in paragraph (b) by removing the parenthetical phrase ''(State Director for B&I)'' from the second and fourth sentences and removing the parenthetical phrase ''(except for B&I)'' from the third sentence.

§ 1980.67 [Amended]

13. Section 1980.67 is amended in the first sentence of paragraph (a) by removing the reference ''E,''.

§ 1980.68 [Amended]

14. Section 1980.68 is amended by revising the reference ''paragraph 5'' to read ''paragraph 6'' in the second sentence and removing the parenthetical phrase ''(State Director for B&I)'' from the third and fourth sentences.

§ 1980.83 [Amended]

15. Section 1980.83 is amended in the table of forms in paragraph (b) by removing the entries beginning with ''1980–68,'' ''1980–69,'' ''1980–70,'' ''1980–71,'' ''1980–72,'' and ''1980–73.''

Subpart E—Business and Industrial Loan Program

16. Section 1980.401 is amended by revising paragraph (a) to read as follows:

§ 1980.401 Introduction.

(a) This subpart contains the regulations for direct Business and Industrial (B&I) loans disbursed by the Agency. All references to guaranteed loan processing or servicing are not applicable. B&I loan guarantees are to be processed and serviced under the provisions of subparts A and B of part 4279 of this title and subpart B of part 4287 of this title. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with any Agency employee.

* * * * *

CHAPTER XLII—RURAL BUSINESS—COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

17. A new part 4279 is added to chapter XLII to read as follows:

PART 4279—GUARANTEED LOANMAKING

Subpart A—General

Sec.

4279.1 Purpose.
4279.2 Definitions.
4279.3–4279.14 [Reserved]
4279.15 Exception authority.
4279.16 Appeals.
4279.17–4279.28 [Reserved]
4279.29 Eligible lenders.
4279.30 Lenders' functions and responsibilities.
4279.31–4279.42 [Reserved]
4279.43 Certified Lender Program.
4279.44 Access to records.
4279.45–4279.57 [Reserved]
4279.58 Equal Credit Opportunity Act.
4279.59–4279.70 [Reserved]
4279.71 Public bodies and nonprofit corporations.

4279.72 Conditions of guarantee.
4279.73–4279.74 [Reserved]
4279.75 Sale or assignment of guaranteed loan.
4279.76 Participation.
4279.77 Minimum retention.
4279.78 Repurchase from holder.
4279.79–4279.83 [Reserved]
4279.84 Replacement of document.
4279.85–4279.100 [Reserved]

Subpart B—Business and Industry Loans

4279.101 Introduction.
4279.102 Definitions.
4279.103–4279.106 [Reserved]
4279.107 Guarantee fee.
4279.108 Eligible borrowers.
4279.109–4279.112 [Reserved]
4279.113 Eligible loan purposes.
4279.114 Ineligible purposes.
4279.115 Prohibition under Agency programs.
4279.116–4279.118 [Reserved]
4279.119 Loan guarantee limits.
4279.120 Fees and charges.
4279.121–4279.124 [Reserved]
4279.125 Interest rates.
4279.126 Loan terms.
4279.127–4279.130 [Reserved]
4279.131 Credit quality.
4279.132–4279.136 [Reserved]
4279.137 Financial statements.
4279.138–4279.142 [Reserved]
4279.143 Insurance.
4279.144 Appraisals.
4279.145–4279.148 [Reserved]
4279.149 Personal and corporate guarantees.
4279.150 Feasibility studies.
4279.151–4279.154 [Reserved]
4279.155 Loan priorities.
4279.156 Planning and performing development.
4279.157–4279.160 [Reserved]
4279.161 Filing preapplications and applications.
4279.162–4279.164 [Reserved]
4279.165 Evaluation of application.
4279.166–4279.172 [Reserved]
4279.173 Loan approval and obligating funds.
4279.174 Transfer of lenders.
4279.175–4279.179 [Reserved]
4279.180 Changes in borrower.
4279.181 Conditions precedent to issuance of Loan Note Guarantee.
4279.182–4279.185 [Reserved]
4279.186 Issuance of the guarantee.
4279.187 Refusal to execute Loan Note Guarantee.
4279.188–4279.200 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—General

§ 4279.1 Purpose.

(a) This subpart contains general regulations for making and servicing Business and Industry (B&I) loans guaranteed by the Agency and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) It is the responsibility of the lender to ascertain that all requirements for making, securing, servicing, and collecting the loan are met.

(c) Copies of all forms, regulations, and instructions referenced in this subpart are available in any state or district office or the National office.

§ 4279.2 Definitions.

Agency. The Federal agency within the United States Department of Agriculture (USDA) with responsibility assigned by the Secretary of Agriculture to administer the B&I program.

Arm's-length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement. The signed agreement among the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system. Such agreement will be documented using Form RECD 4279–6, ''Assignment Guarantee Agreement.''

Borrower. All parties liable for the loan except for guarantors.

Conditional Commitment. Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency. The commitment will be documented on Form RECD 4279–3, ''Conditional Commitment.''

Deficiency balance. The balance remaining on a loan after all collateral, including the personal guarantees, has been liquidated.

Deficiency judgment. A money judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Existing lender debt. A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arms-length transaction between a willing buyer and a willing seller in ordinary economic and business conditions.

Farmers Home Administration (''FmHA''). The former agency of the United States Department of Agriculture (''USDA'') that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Finance office. The office which maintains the Agency financial accounting records and is located at 1520 Market Street, St. Louis, Missouri 63103.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through use of Form RECD 4279–6, ''Assignment Guarantee Agreement.''

Interim Financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The organization making, servicing, and collecting the loan which is guaranteed under the provisions of the appropriate subpart.

Lender's Agreement. The agreement between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued. The agreement is Form RECD 4279–4, ''Lender's Agreement.''

Loan Agreement. The agreement between the borrower and lender setting out the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan Note Guarantee. The signed instrument issued by the Agency setting out the terms and conditions of the guarantee. The guarantee is Form RECD 4279–5, ''Loan Note Guarantee.''

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral for the loan.

Negligent Servicing. The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on a proportional basis.

Participation. Sale of an interest by the lender in a loan wherein the lender retains the note, collateral securing the

note, and all responsibility for loan servicing and liquidation.

Poor. A community or area is considered poor if, based on the most recent decennial census data, either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the nonmetropolitan median household income for the state; or has a population of which 25 percent or more have income at or below the poverty line.

Promissory Note. An evidence of debt. ''Note'' or ''Promissory Note'' shall also be construed to include ''Bond'' or other evidence of debt where appropriate.

RECD. The Under Secretary for Rural Economic and Community Development (''RECD'') has policy and operational oversight responsibilities for the Rural Housing Service (''RHCDS''), Rural Business-Cooperative Service (''RBS''), and the Rural Utilities Service (''RUS'').

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 states, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordination. An agreement between the lender and borrower whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the Agency borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Veteran. For the purposes of assigning priority points, a veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable and who served on active duty in such forces:

(1) During the period of April 6, 1917, through March 31, 1921;

(2) During the period of December 7, 1941, through December 31, 1946;

(3) During the period of June 27, 1950, through January 31, 1955; or

(4) For a period of more than 180 days, any part of which occurred after January 31, 1955; but on or before May 17, 1975.

§§ 4279.3–4279.14 [Reserved]

§ 4279.15 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this part or part 4287 which is not inconsistent with any applicable law; provided that: the Administrator determines that application of the requirement or provision would adversely affect the Government's financial interest.

§ 4279.16 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision made under this part or part 4287. Except as set forth in this section, the borrower and lender must jointly execute the written request for review or appeal of an adverse decision made by the Agency. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the departmental appeal regulations.

§§ 4279.17–4279.28 [Reserved]

§ 4279.29 Eligible lenders.

(a) An eligible lender is any Federal or state chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a state. Eligible lenders may also include credit unions, provided they are subject to credit examination and supervision by either the National Credit Union Administration or a state agency, and insurance companies provided they are regulated by a state or National insurance regulatory agency. Eligible lenders include the National Rural Utilities Cooperative Finance Corporation.

(b) Rural Utilities Service borrowers and other lenders not meeting the criteria of paragraph (a) of this section may be considered by the Agency for eligibility to become a guaranteed lender provided the Agency determines that they have the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program.

(1) Such a lender must:

(i) Have a record of successfully making at least three commercial loans for at least the most recent 3 years, with delinquent loans not exceeding 10 percent of loans outstanding and historic losses not exceeding 10 percent of dollars loaned; and

(ii) Have tangible balance sheet equity of at least 7 percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender.

(2) A lender not covered under paragraph (a) of this section that wishes consideration to become a guaranteed lender must submit a request in writing to the state office for the state where the lender's lending and servicing activity takes place. The National office will notify the prospective lender, through the state director, whether the lender's request for eligibility is approved or rejected. If rejected, the reasons for the rejection will be indicated to the prospective lender in writing, and appeal rights will be provided in accordance with departmental appeal regulations. The lender's written request must include:

(i) Evidence showing that the lender has the necessary capital and resources to successfully meet its responsibilities.

(ii) Copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and loan servicing activity. If licensing by the state is not required, an attorney's opinion to this effect must be submitted.

(iii) Information on lending experience, including length of time in the lending business, range and volume of lending and servicing activity, and status of loan portfolio including delinquency rate, loss rate as a percentage of loan amounts, and other measures of success; experience of management and loan officers; audited financial statements not more than 1 year old; sources of funds for the proposed loans; office location and proposed lending area; and proposed rates and fees, including loan origination, loan preparation, and servicing fees. Such fees must not be greater than those charged by similarly located commercial lenders in the ordinary course of business.

(iv) An estimate of the number and size of guaranteed loan applications the lender will develop.

(c) Expertise. Loan guarantees will only be approved for lenders with adequate experience and expertise to adequately make, secure, service, and collect B&I loans.

§ 4279.30 Lenders' functions and responsibilities.

(a) *General.* Lenders have the primary responsibility for the successful delivery of the B&I loan program. All lenders obtaining or requesting a B&I loan guarantee are responsible for processing applications for guaranteed loans, developing and maintaining adequately documented loan files, recommending only loan proposals that are eligible and financially feasible, obtaining valid evidence of debt and collateral in accordance with sound lending practices, supervising construction and distribution of loan funds, servicing guaranteed loans in a prudent manner, including liquidation if necessary, following Agency regulations, and obtaining Agency approvals or concurrence as required. This subpart, along with subpart B of this part and subpart B of part 4287 sets out the regulations for this program, including the lenders' responsibilities.

(b) *Credit evaluation.* This is a key function of all lenders during the loan processing phase. The lender must analyze all credit factors associated with each proposed loan and apply their professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender should have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures.

(c) *Environmental assessment.* All lenders should alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lenders should help the borrower prepare Form FmHA 1940–20, ''Request for Environmental Information,'' and attachments when required by FmHA Instruction 1940–G.

(d) *Loan closing.* The lender will conduct loan closings at its discretion.

§§ 4279.31–4279.42 [Reserved]

§ 4279.43 Certified Lender Program.

(a) *General.* This section provides policies and procedures for the Certified Lender Program (''CLP'') for loans guaranteed under this part. The objectives are to expedite loan approval for those lenders with a proven ability, in accordance with paragraph (b) of this section, to process, service, and collect loans.

(b) *CLP eligibility criteria.* The lender must meet established eligibility criteria prior to being considered for CLP status as follows:

(1) Be an ''eligible lender'' as defined in § 4279.29 and authorized to do business in the state in which CLP status is desired.

(2) Demonstrate to the Agency's satisfaction that it has a thorough knowledge of commercial lending. The lender will demonstrate such knowledge by providing a summary of its guaranteed and unguaranteed business lending activity. At a minimum, the summary should include the dollar amount and number of loans in the lender's portfolio, unguaranteed and guaranteed by any Federal agency, with information on delinquencies and losses and, if applicable, the performance of the lender as an SBA certified or preferred lender. A certified lender should be recognized throughout the state as a commercial lender and have a track record of successfully making at least five commercial loans per year for at least the most recent 5 years, with delinquent loans not exceeding 6 percent of loans outstanding and historic losses not exceeding 6 percent of dollars loaned. The lender will provide a written certification to this effect along with a statistical analysis of its loan portfolio for the last 3 of its fiscal years.

(3) If a bank or savings and loan, have a financial strength rating in the upper half of possible ratings as reported by a lender rating service selected by the Administrator.

(4) Possess loan officers and other appropriate personnel who have received training conducted by the Agency. Additional training may be required if the lender's contact person changes or if the Agency feels further instruction is needed.

(5) Have committed no action within the most recent 2 years prior to requesting CLP status which would be considered cause for revoking CLP status under § 4279.43(e).

(c) *CLP approval.* The Agency may grant CLP status for a period not to exceed 5 years by executing Form RECD 4279–8, ''Certified Lender, Business and Industry Program,'' with the lender. The Form RECD 4279–8 will not apply to branches or suboffices of the lender unless so specified in the agreement. Such branches or suboffices may submit loans as regular lenders or apply for their own CLP status. Any lender who desires CLP status must prepare a written request to the state director for the state in which it desires status. The request should address each of the required criteria outlined in paragraph (b) of this section except for paragraph (b)(3) and may be accompanied by any other information the lender believes will be helpful. The request will also include Form RECD 4279–8 completed and executed by the lender and an executed Lender's Agreement, if it does not already have a valid Lender's Agreement on file with the Agency. Loans made by the lender and guaranteed by the Agency prior to the lender receiving CLP status shall continue to be governed by the forms and agreements executed between the lender and the Agency for those loans.

(d) *Renewal of CLP status.* Renewal of CLP status is not automatic. CLP status will lapse upon the expiration date of Form RECD 4279–8 unless the lender obtains a renewal. A lender whose CLP status has lapsed may continue to submit loan guarantee requests, but only as a regular lender. The lender must provide a new Form RECD 4279–8 completed and executed by the lender, along with a written update of the eligibility criteria required in this section for CLP approval. This information should be supplied at least 60 days prior to the expiration of the existing agreement to be processed for uninterrupted status. The information should address how the lender is complying with each of the required criteria described in paragraph (b) of this section. It should include any proposed changes in the designated persons for processing guaranteed loans or operating methods used in processing and servicing Agency guaranteed loans.

(e) *Revocation of CLP status.* The lender's CLP status may be revoked at any time for cause. The debarment of a lender is an additional alternative the Agency may consider. A lender which has lost its CLP status, but has not been debarred and still meets the requirements of § 4279.29 may continue to submit loan guarantee requests as a regular lender. Cause for revoking CLP status includes:

(1) Failure to maintain status as an eligible lender as set forth in § 4279.29.

(2) Knowingly submitting false information when requesting a guarantee or basing a guarantee request on information known to be false or upon information which the lender should have known to be false.

(3) Making an Agency guaranteed loan with deficiencies which may cause losses under the Loan Note Guarantee not to be covered by the Loan Note Guarantee.

(4) Conviction for acts in connection with any loan transaction, regardless of whether the loan was guaranteed by the Agency.

(5) Violation of usury laws in connection with any loan guaranteed by the Agency.

(6) Failure to obtain the required security for any loan guaranteed by the Agency.

(7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commitment.

(8) Violation of any terms of the Lender's Agreement.

(9) Failure to correct any cited deficiency in loan documents in a timely manner.

(10) Failure to submit reports required by the Agency in a timely manner.

(11) Failure to process Agency guaranteed loans in a reasonably prudent manner.

(12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed within the available funds and, once completed, will be suitable for the borrower's needs.

(13) Repetitive recommendations for guaranteed loans with marginal or substandard credit quality or that do not comply with Agency requirements.

(14) Repetitive recommendations for servicing actions that do not comply with Agency requirements.

(15) Negligent servicing.

(16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan.

(f) *General loan processing and servicing guidelines.* All requests for guaranteed loans will be processed and serviced under subparts A and B of this part and subpart B of part 4287 except as modified by this section. When determining whether or not to request a guarantee for a proposed loan, lenders must consider the priorities set forth in § 4279.155.

(1) Prior to processing an application, the CLP lender may give written notice to the state director of its intention to submit an application. Upon receipt of such written notice, the Agency will notify the CLP lender whether or not there is sufficient guarantee authority for the loan. Such guarantee authority will be held for 30 days pending receipt of the application. If a complete application for which guarantee authority is being held is not received within 30 days of the notice of intent to file, or is rejected, the guarantee authority for this application will no longer be held in reserve.

(2) Refinancing of existing lender debt in accordance with § 4279.113(q) will not be permitted without prior Agency approval.

(3) CLP lenders will process all guaranteed loans as a ''complete application'' by obtaining and completing all items required by § 4279.161(b). The CLP lender must maintain all information required by § 4279.161(b) in its loan file, and determine that such material complies with all requirements.

(4) CLP lenders will make all material relating to any guarantee application available to the Agency upon request.

(5) At the time of the Agency's issuance of the Loan Note Guarantee, the CLP lender will provide the Agency with copies of the following documents:

(i) Executed Loan Agreement.

(ii) Executed Promissory Notes.

(iii) Executed copies of security documents including personal and corporate guarantees.

(g) *Unique characteristics of the CLP.* A proposed loan by a CLP lender requires only a review by the Agency of the information submitted by the lender. The Agency may rely on the lender's credit analysis.

(1) The following will constitute a complete application submitted by a CLP lender:

(i) Form RECD 4279–1, ''Application for Loan Guarantee (Business and Industry),'' (marked with the letters ''CLP'' at the top) completed in its entirety and executed by the borrower and CLP lender.

(ii) Copy of the proposed Loan Agreement or a list of proposed requirements.

(iii) Form FmHA 1940–20, completed and signed, with attachments.

(iv) The lender's complete written analysis of the proposal, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industry standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender's credit analysis must address the borrower's management, repayment ability, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary.

(v) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V.

(vi) If the loan will exceed $1 million and will increase direct employment by more than 50 employees, Form RECD 4279–2, ''Certification of Non-Relocation and Market Capacity Information Report,'' must be completed by the lender. For such loans, the Agency will submit Form RECD 4279–2 to the Department of Labor and obtain clearance before a Conditional Commitment may be issued.

(2) The Agency will make the final credit decision based primarily on a review of the credit analysis submitted by the lender except that refinancing of existing lender debt in accordance with § 4279.113(q) will not be approved without review of the borrower's complete financial statements and complete credit analysis by the Agency. The Agency may request additional information to clarify or complete the submission.

(h) *Lender loan servicing responsibilities.* CLP lenders will be fully responsible for all aspects of loan servicing and, if necessary, liquidation as described in subpart B of part 4287.

§ 4279.44 Access to records.

The lender will permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to the Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency.

§§ 4279.45–4279.57 [Reserved]

§ 4279.58 Equal Credit Opportunity Act.

In accordance with Title V of Pub.L. 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender will comply with the requirements of the Equal Credit Opportunity Act as set out in the Federal Reserve Board's Regulation implementing this Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

§§ 4279.59–4279.70 [Reserved]

§ 4279.71 Public bodies and nonprofit corporations.

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by Office of Management and Budget (OMB) Circulars A–128 or A–133 or successor circulars must provide an audit in accordance with the applicable OMB Circular for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circulars A–128 or A–133 or their successsors will be considered adequate to meet the audit requirements of the B&I program for that year.

§ 4279.72 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee. The provisions of this subpart, other appropriate subparts of this part, and part 4287 of this chapter will apply to all outstanding guarantees unless directly in conflict with the Loan Note Guarantee or Lender's Agreement issued for the guarantee. In the event of such a conflict, the lender may elect to have the loan serviced in accordance with these regulations. The lender must notify the Agency of such election in writing. Without such written election, the provisions of the Loan Note Guarantee and Lender's Agreement will control.

(a) *Full faith and credit.* A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment. The Agency will guarantee payment as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(b) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which holder participates or condones. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any holder.

(c) *Payments.* A lender will receive all payments of principal and interest on account of the entire loan and will promptly remit to the holder its pro rata share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

§§ 4279.73–4279.74 [Reserved]

§ 4279.75 Sale or assignment of guaranteed loan.

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender shall not sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Loans made with the proceeds of any obligation the interest on which is excludable from income under Section 103 of the Internal Revenue Code of 1954, as amended, will not be guaranteed.

(a) *Single note system.* The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using Agency's Assignment Guarantee Agreement. The holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notification and completion of the assignment through the use of Form RECD 4279–6, ''Assignment Guarantee Agreement,'' the assignee shall succeed to all rights and obligations of the holder thereunder. If this option is selected, the lender may not at a later date cause any additional notes to be issued.

(b) *Multinote system.* Under this option the lender may provide one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. When this option is selected by the lender, the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to the note. An Assignment Guarantee Agreement will not be used when the multinote option is utilized.

(c) *After loan closing.* If a loan is closed using the multinote option and at a later date additional notes are desired, the lender may cause a series of new notes, not to exceed the total number provided for in paragraph (b) of this section, to be issued as replacement for previously issued guaranteed notes, provided:

(1) Written approval of the Agency is obtained;

(2) The borrower agrees and executes the new notes;

(3) The interest rate does not exceed the interest rate in effect when the loan was closed;

(4) The maturity of the loan is not changed;

(5) The Agency will not bear or guarantee any expenses that may be incurred in reference to such reissuances of notes;

(6) There is adequate collateral securing the notes;

(7) No intervening liens have arisen or have been perfected and the secured lien priority remains the same; and

(8) All holders agree.

(d) The lender's servicing fee will stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee may be charged to the Agency and all loan payments and collateral proceeds received will be applied first to the guaranteed loan and when applied to the guaranteed loan, will be applied on a pro rata basis.

(e) When the Agency purchases the guaranteed portion, the loan shall not be sold with recourse. The purchased loans may be sold on a nonrecourse basis only, i.e., without a Loan Note Guarantee attached and without recourse.

§ 4279.76 Participation.

The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the notes if any of them are unguaranteed and retain the lender's interest in the collateral.

§ 4279.77 Minimum retention.

The lender is required to hold in its own portfolio a minimum of 5 percent of the total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.

§ 4279.78 Repurchase from holder.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of its receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder will concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and permit the default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) *Agency purchase.* (1) If the lender does not repurchase as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. (This is in addition to the copy of the written demand on the lender.) The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30-day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

(c) *Purchase for servicing.* If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter of the lender or the Agency to the holder requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency's written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§§ 4279.79–4279.83 [Reserved]

§ 4279.84 Replacement of document.

(a) *Authorized representative.* The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which may have been lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized, which includes:

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if Assignment Guarantee Agreement, the

original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced should be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and Note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included if in existence. If copies of the endorsement cannot be obtained, best available records of transfer must be presented the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a state or territory, or the District of Columbia. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than $1 million verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds must be issued and payable to the United States of America acting through the USDA. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall hold USDA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provision of the multinote system, the Agency will not attempt to obtain, or participate in the obtaining of, replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before the Agency will replace any instruments.

§§ 4279.85–4279.100 [Reserved]

Subpart B—Business and Industry Loans

§ 4279.101 Introduction.

(a) Content. This subpart contains loan processing regulations for the Business and Industry (B&I) Guaranteed Loan Program. It is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287, which contains loan servicing regulations.

(b) Purpose. The purpose of the B&I Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits. It is NOT intended that the guarantee authority will be used for marginal or substandard loans or to relieve lenders having such loans.

(c) Documents. Copies of all forms, regulations, and Instructions referenced in this subpart are available in any state or district office or the National office.

§ 4279.102 Definitions.

The definitions in § 4279.2 of subpart A of this part also apply to this subpart.

§§ 4279.103–4279.106 [Reserved]

§ 4279.107 Guarantee fee.

The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The fee may be passed on to the borrower. Except as provided in this section, the guarantee fee will be 2 percent multiplied by the principal loan amount multiplied by the percent of guarantee and will be paid one time only at the time the Loan Note Guarantee is issued.

(a) The guarantee fee may be reduced to 1 percent if the Agency determines that the business meets the following criteria:

(1) High-impact business development investment (It is the goal of this program to encourage high-impact business investment in rural areas. The weight given to business investments will be in accordance with § 4279.155(b)(5)); and

(2) The business is located in a community that is experiencing long-term population decline and job deterioration; or

(3) The business is located in rural community that has remained persistently poor over the last 60 years or more; or

(4) The business is located in a rural community that is experiencing trauma as a result of natural disaster or that is experiencing fundamental structural changes in its economic base.

(b) Each fiscal year, the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee fee for all additional loans guaranteed during the remainder of that fiscal year will be 2 percent.

§ 4279.108 Eligible borrowers.

(a) *Type of entity.* A borrower may be a cooperative, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or state reservation or other Federally recognized tribal group; a public body; or an individual. A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

(1) Provide employment;

(2) Improve the economic or environmental climate;

(3) Promote the conservation, development, and use of water for aquaculture; or

(4) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy system.

(b) *Citizenship.* Borrowers must meet one of the following sets of conditions:

(1) Individual borrowers must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. Corporations or other nonpublic body organization-type borrowers must be at least 51 percent owned by persons who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence; or,

(2) The borrower does not meet the requirements of paragraph (1) of this section; but,

(i) The facility financed will create or save jobs for U.S. residents in a rural area, and

(ii) The principals or other capable management are present and able to remain in the U.S. and will remain in the U.S. to continue the operation of the company; and,

(iii) The loan funds will only be used to finance fixed assets that will be located in the U.S.

(c) *Rural area.* The business financed with a B&I Guaranteed Loan must be located in a rural area. Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(1) Rural areas include all territory of a state that is:

(i) Not within the outer boundary of any city having a population of 50,000 or more; and,

(ii) Not within an area that:

(A) Is urbanized or urbanizing as defined in this section; and,

(B) Has a population density of more than 100 persons per square mile, according to the latest decennial census of the United States. All density determinations will be made on the basis of minor civil divisions or census county divisions as used by the Bureau of the Census. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, cemeteries, office parks, shopping malls, or land set aside for such purposes will be excluded.

(2) An urbanized area is an area immediately adjacent to a city with a population of 50,000 or more, that for general social and economic purposes forms a single community with such a city. An urbanizing area is an area immediately adjacent to a city with a population of 50,000 or more or its urbanized area, which appears likely, based on development and population trends, to become urbanized in the foreseeable future. The corporate status of an urbanized or urbanizing area is not material. An area located in recognizable open country or separated from any city of 50,000 or more population by recognizable open country or by a river, will be assumed to be not urbanized or urbanizing.

(d) *Other credit.* All applications for assistance will be accepted and processed without regard to the availability of credit from any other source.

§§ 4279.109–4279.112 [Reserved]

§ 4279.113 Eligible loan purposes.

Loan purposes must be consistent with the general purpose set forth in § 4279.101. They include but are not limited to the following:

(a) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(b) Business conversion, enlargement, repair, modernization, or development.

(c) Purchase and development of land, easements, rights-of-way, buildings, or facilities.

(d) Purchase of equipment, lease-hold improvements, machinery, supplies, or inventory.

(e) Pollution control and abatement.

(f) Transportation services incidental to industrial development.

(g) Startup costs and working capital.

(h) Agricultural production, when not eligible for a Farm Credit Programs loan from the Farm Service Agency and when it is part of an integrated business also involved in the processing of agricultural products.

(1) Examples of potentially eligible production include but are not limited to: an apple orchard in conjunction with a food processing plant; poultry buildings linked to a meat processing operation; or sugar beet production coupled with storage and processing. Any agricultural production considered for B&I financing must be owned, operated, and maintained by the business receiving the loan for which a guarantee is provided. Independent agricultural production operations, even if not eligible for Farmer Programs loans, are not eligible for the B&I program.

(2) The agricultural production portion of any loan will not exceed 50 percent of the total loan or $1 million, whichever is less.

(i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided the purchase is required for all of their borrowers.

(j) Aquaculture, including conservation, development, and utilization of water for aquaculture.

(k) Commercial fishing.

(l) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage.

(m) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation.

(n) The growing of mushrooms or hydroponics.

(o) Interest (including interest on interim financing) during the period before the first principal payment becomes due or the facility becomes income producing, whichever is earlier.

(p) Feasibility studies.

(q) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Existing lender debt may be included provided that, at the time of application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt), the lender is providing better rates or terms, and the refinancing is a secondary part of the overall loan.

(r) Take out of interim financing. Guaranteeing a loan to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application which proposes such interim financing prior to completing the interim loan. A lender that is considering an interim loan should be advised that the Agency assumes no responsibility or obligation for interim loans advanced prior to the Conditional Commitment being issued.

(s) Fees and charges for professional services and routine lender fees.

(t) Agency guarantee fee.

(u) Tourist and recreation facilities, including hotels, motels, bed and breakfast establishments, and convention centers, except as prohibited under ineligible purposes.

(v) Educational or training facilities.

(w) Community facility projects which are not listed as an ineligible loan purpose.

(x) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations.

(y) The financing of housing development sites provided that the community demonstrates a need for additional housing to prevent a loss of jobs in the area or to house families moving to the area as a result of new employment opportunities.

(z) Community antenna television services or facilities.

§ 4279.114 Ineligible purposes.

(a) Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the borrower.

(b) Projects in excess of $1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees.

(c) Projects in excess of $1 million that would increase direct employment by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business.

(d) Charitable institutions, churches, or church-controlled or fraternal organizations.

(e) Lending and investment institutions and insurance companies.

(f) Assistance to government employees and military personnel who are directors or officers or have a major ownership of 20 percent or more in the business.

(g) Golf courses or race tracks.

(h) Any business that derives more than 10 percent of annual gross revenue from gambling activity.

(i) Any illegal business activity.

(j) Prostitution.

(k) Any line of credit.

(l) The guarantee of lease payments.

(m) The guarantee of loans made by other Federal agencies.

(n) Residential housing except when health care or assisted living is involved.

(o) Loans made with the proceeds of any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code, as amended. Funds generated through the issuance of the tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.

§ 4279.115 Prohibition under Agency programs.

No B&I loans guaranteed by the Agency will be conditioned on any requirement that the recipients of such assistance accept or receive electric service from any particular utility, supplier, or cooperative.

§§ 4279.116–4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

(a) *Loan amount.* The total amount of Agency loans to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan requests, must not exceed $10 million except as provided for in this paragraph. The Administrator may, at the Administrator's discretion, grant an exception to the $10 million limit under the following circumstances:

(1) The project to be financed is a high priority project. Priority will be determined in accordance with the criteria set forth in § 4279.155;

(2) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guarantee is not approved;

(3) In no circumstances will the total amount of guaranteed loans to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan requests, exceed $25 million;

(4) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding $10 million; and,

(5) Any request for a guaranteed loan exceeding the $10 million limit must be submitted to the Agency in the form of a preapplication. The preapplication must be submitted to the National office for review and concurrence before encouraging a full application.

(b) *Percent of guarantee.* The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and the Agency. Except as provided in paragraphs (b) (1) through (4) of this section, the maximum percentage of guarantee is 80 percent for loans of $5 million or less and 70 percent for loans exceeding $5 million. The Administrator may, at the Administrator's discretion, grant an exception to the guarantee percentage limits under the following circumstances:

(1) The project to be financed is a high priority project. Priority will be determined in accordance with the criteria set forth in § 4279.155;

(2) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the higher guarantee percentage is not approved;

(3) The percentage of guarantee will not exceed 90 percent; and

(4) Each fiscal year, the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee percentage exceeding 80 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee percentage for all additional loans guaranteed during the remainder of that fiscal year will not exceed 80 percent.

§ 4279.120 Fees and charges.

(a) Routine lender fees. The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business.

(b) Professional services. Professional services are those rendered by professionals generally licensed or certified by states or accreditation associations, such as architects, engineers, packagers, accountants, attorneys, or appraisers. The borrower may pay fees for professional services needed for planning and developing a project provided that the amounts are reasonable and customary in the area. Professional fees may be included as an eligible use of loan proceeds.

§§ 4279.121–4279.124 [Reserved]

§ 4279.125 Interest rates.

The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval. Lenders are encouraged to utilize the secondary market and pass interest rate savings on to the borrower.

(a) A variable interest rate agreed to by the lender and borrower must be a rate that is tied to a base rate agreed to by the lender and the Agency. The variable interest rate may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly and must be specified in the Loan Agreement. The lender must incorporate, within the variable rate Promissory Note at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. The lender will assure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(b) Any change in the interest rate between the date of issuance of the Conditional Commitment and before the issuance of the Loan Note Guarantee must be approved in writing by the Agency approval official. Approval of such a change will be shown as an amendment to the Conditional Commitment.

(c) It is permissible to have one interest rate on the guaranteed portion of the loan and another rate on the unguaranteed portion of the loan provided that the rate on the guaranteed portion does not exceed the rate on the unguaranteed portion.

(d) A combination of fixed and variable rates will be allowed.

§ 4279.126 Loan terms.

(a) The maximum repayment for loans on real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment purchased with loan funds or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan.

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income. However, the first full installment must be due and payable within 3 years from the date of the Promissory Note and be paid at least annually thereafter. Interest-only payments will be paid at least annually from the date of the note.

(c) Only loans which require a periodic payment schedule which will retire the debt over the term of the loan without a balloon payment will be guaranteed.

(d) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower's ability to repay the loan. The lender may apply the maximum guidelines specified above only when the loan cannot be repaid over a shorter term.

§§ 4279.127–4279.130 [Reserved]

§ 4279.131 Credit quality.

The lender is primarily responsible for determining credit quality and should address all of the elements of credit quality in a written credit analysis including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) Cash flow. All efforts will be made to structure or restructure debt so that the business has adequate debt coverage and the ability to accommodate expansion. All loans guaranteed through the B&I program must be sound, with reasonably assured repayment.

(b) Collateral.

(1) Collateral must have documented value sufficient to protect the interest of the lender and the Government and collateral value will normally be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy.

(2) Some businesses are predominantly cash flow oriented, and where cash flow and profitability is strong, loan-to-value coverage may be less than normal policy. A loan primarily based on cash flow must be supported by a successful and documented financial history.

(c) Industry. Current status of the industry will be considered and businesses in areas of decline will be required to provide strong business plans which outline how they differ from the current trends. The regulatory environment surrounding the particular business or industry will be considered.

(d) Equity. The equity amount will indicate a significant investment by the owners, sufficient to provide reasonable protection to creditors, and an ability to maintain a positive equity position through a normal economic downturn.

(e) Lien priorities. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

(f) Management. A thorough review of key management personnel will be completed to assure that the business has adequately trained and experienced managers.

§§ 4279.132–4279.136 [Reserved]

§ 4279.137 Financial statements.

(a) The lender will determine the type and frequency of submission of financial statements by the borrower. At a minimum, annual financial statements prepared by an accountant in accordance with Generally Accepted Accounting Principles will be required.

(b) If specific circumstances warrant and the proposed guaranteed loan will exceed $3 million, the Agency may require annual audited financial statements. For example, the need for audited financial statements will be carefully considered in connection with loans that depend heavily on inventory and accounts receivable for collateral.

§§ 4279.138–4279.142 [Reserved]

§ 4279.143 Insurance.

(a) Hazard. Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the collateral or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk during construction by the business, and property damage.

(b) Life. The lender may require life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage will be in amounts necessary to provide for management succession or to protect the business. The cost of insurance and its effect on the applicant's working capital must be considered as well as the amount of existing insurance which could be assigned without requiring additional expense.

(c) Worker compensation. Worker compensation insurance is required in accordance with state law.

(d) Flood. National Flood insurance is required when it is available.

(e) Other. Public liability, business interruption, malpractice and other insurance appropriate to the borrower's particular business and circumstances should be considered and required when needed to protect the interests of the borrower.

§ 4279.144 Appraisals.

Lenders will be responsible for assuring that appraisal values adequately reflect the actual value of all collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will meet the requirements set forth by the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines set forth in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). For additional guidance and information concerning the completion of real property appraisals, refer to subpart A of part 1922. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

§§ 4279.145–4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantees.

(a) Personal and corporate guarantees, when obtained, are part of the collateral for the loan. However, the value of such guarantee is not considered in determining whether a loan is adequately secured for loanmaking purposes.

(b) Personal/corporate guarantees for those owning greater than 20 percent of the borrower or those providing significant revenues or income to the borrower will be required where legally

permissible, except as provided for by this section.

(c) Exceptions to the requirements for personal guarantees must be requested by the lender and concurred in by the Agency approval official on a case-by-case basis. The lender must strongly document that collateral, equity, cash flow, and profitability, or a combination of these, indicates an above average ability to repay the loan.

§ 4279.150 Feasibility studies.

A feasibility study by a qualified independent consultant may be required by the Agency for startup businesses or existing businesses when the project will significantly affect the borrower's operations.

§§ 4279.151–4279.154 [Reserved]

§ 4279.155 Loan priorities.

Applications and preapplications received by the Agency will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (b) of this section, the Agency will compare an application to other pending applications.

(a) When applications on hand otherwise have equal priority, applications from qualified veterans will have preference.

(b) Priorities will be assigned by the Agency to eligible applications on the basis of a point system as set forth in this section. The application and supporting information will be used to determine an eligible proposed project's priority for available guarantee authority. All lenders, including CLP lenders, will consider Agency priorities when choosing projects for guarantee. The lender will provide necessary information related to determining the score, as requested.

(1) *Population priority.* The priority score for population will be the total score for the following categories:

(i) Located in an unincorporated area or in a city with under 25,000 population (10 points).

(ii) Located in a county defined as nonadjacent to a metropolitan area, according to the latest definition provided by the Economic Research Service of the Department of Agriculture (5 points).

(2) *Community priority.* The priority score for community will be the total score for the following categories:

(i) Located in an eligible area of long term population decline and job deterioration based on reliable statistical data (5 points).

(ii) Located in a rural community that has remained persistently poor over the last 60 years or more (5 points).

(iii) Located in a rural community that is experiencing trauma as a result of natural disaster or experiencing fundamental structural changes in its economic base (5 points).

(iv) Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater (5 points).

(3) *Empowerment Zone/Enterprise Community (EZ/EC).*

(i) Located in an EZ/EC selected or designated area (10 points).

(ii) Located in a EZ/EC applicant community which was not selected or designated as EZ/EC. (5 points).

(4) *Loan features.* The priority score for loan features will be the total score for the following categories except that the total score for loan features cannot exceed 15 points:

(i) Lender will price the loan at secondary market rate plus 1.5 percent or less (5 points).

(ii) Lender will price the loan at secondary market rate plus 1 percent or less (5 points).

(iii) The Agency guaranteed loan is less than 50 percent of project cost (5 points).

(iv) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).

(5) *High impact Business Investment Priorities.* The priority score for high impact business investment will be the total score for the following three categories:

(i) Industry. The priority score for industry will be the total score for the following, except that the total score for industry cannot exceed 10 points.

(A) Industry that ranks among the leading-edge industries for industrial growth potential, as measured by being in the top half of industries in terms of industrial life cycle (3 points).

(B) Industry whose basis for competitiveness results from effective use of the local natural resource base, rural location, or special assets or contributions from the community, and not from extraordinary tax abatements or other industrial attractions (3 points).

(C) Industry that has potential to achieve 20 percent or more of its sales in international markets (3 points).

(D) Industry that is not already present in the community and therefore represents a diversification of the local economy and reduces overall community vulnerability to cyclical changes in the fortunes of the predominant local industries (3 points).

(ii) Business. The priority score for business will be the total score for the following, except that the total score for business cannot exceed 10 points.

(A) Business that offers high value, specialized products and services that command high prices because of uniqueness, high quality, or niche marketing strategies and which displays the capacity for innovativeness and rapid response in capitalizing on market opportunities (3 points).

(B) Business that has a significant potential to stimulate the development of a broader complex of business activities that provide inputs to or serve as the markets for the initial business (3 points).

(C) Business that is locally owned and managed (3 points).

(D) Business that is a cooperative form of enterprise (3 points).

(iii) Job quality. The priority score for job quality will be the total score for the following, except that the total score for job quality cannot exceed 10 points.

(A) Business that provides jobs with career and earnings growth opportunities within the local plant and does not require employees to move away from the community in order to achieve career advancement (4 points).

(B) Business in which the average wage for project jobs exceeds 150 percent of the Federal minimum wage (4 points).

(C) Business in which the average wage for project jobs exceeds 200 percent of the Federal minimum wage (an additional 4 points).

(6) *Administrative points.* The state director may assign up to 10 additional points to an application to account for such factors as statewide distribution of funds, natural or economic emergency conditions, area economic development strategies, or other factors the state director believes are not adequately covered elsewhere in the scoring system. An explanation of the assigning of these points by the state director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National office, the Administrator may also assign up to an additional 10 points. The Administrator may assign the additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters or other factors the Administrator believes are not adequately covered elsewhere in the scoring system.

§ 4279.156 Planning and performing development.

(a) *Design policy.* All project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, state, and local codes and requirements. The lender must ensure that the planned project will be completed

within the available funds and, once completed, will be suitable for the borrower's needs.

(b) *Project control.* The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction proceeds are used in accordance with the approved plans, specifications, and contract documents and that funds are used for eligible project costs.

(c) *Equal opportunity.* For all construction contracts in excess of $10,000, the contractor must comply with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) *Americans with Disabilities Act (ADA).* B&I Guaranteed Loans which involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the ADA, must comply with the ADA. The lender and borrower are responsible for compliance.

§§ 4279.157–4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, they may file a complete application as the first contact with the Agency. Neither preapplications nor applications will be accepted or processed unless a lender has agreed to finance the proposal.

(a) *Preapplications.* Lenders may file preapplications by submitting the following to the Agency:

(1) A letter signed by the borrower and lender containing the following:

(i) Borrower's name, organization type, address, contact person, and federal tax identification and telephone numbers.

(ii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms.

(iii) Name of proposed lender, address, telephone number, contact person, and lender's Internal Revenue Service (IRS) identification number.

(iv) Brief description of the project, products, and services provided, and availability of raw materials and supplies.

(v) Type and number of jobs created or saved.

(vi) Amount of borrower's equity and a description of collateral, with estimated values, to be offered as security for the loan.

(vii) If a corporate borrower, the names and addresses of the borrower's parent, affiliates, and/or subsidiary firms, if any, and a description of the relationship.

(2) A completed Form RECD 4279–2, ''Certification of Non-Relocation and Market Capacity Information Report,'' if the proposed loan is in excess of $1 million and will increase direct employment by more than 50 employees.

(3) For existing businesses, a current balance sheet and a profit and loss statement not more than 90 days old and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the 3 most recent years.

(4) For startup businesses, a preliminary business plan must be provided as part of the preapplication.

(b) *Applications.* Except for CLP lenders, applications will be filed with the Agency by submitting the following information: (CLP applications will be completed in accordance with § 4279.43(g)(1) but CLP lenders must have the material listed in this paragraph in their files.)

(1) A completed Form RECD 4279–1, ''Application for Loan Guarantee (Business and Industry).''

(2) The information required for filing a preapplication, as listed above, if not previously filed or if the information has changed.

(3) Form FmHA 1940–20, ''Request for Environmental Information,'' and attachments, unless the project is categorically excluded under Agency environmental regulations. If a Phase I site assessment has been completed, a copy must be provided.

(4) A personal credit report from an acceptable credit reporting company for a proprietor (owner), each partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the applicant, except for those corporations listed on a major stock exchange. Credit reports are not required for elected and appointed officials when the applicant is a public body.

(5) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V.

(6) Appraisals, if available. (Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals.)

(7) For all businesses, a current (not more than 90 days old) balance sheet, a pro forma balance sheet at startup, and projected balance sheets, income and expense statements, and cash flow statements for the next 2 years. Projections should be supported by a list of assumptions showing the basis for the projections.

(8) Lender's complete written analysis, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender's credit analysis must address the borrower's management, repayment ability, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary.

(9) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(10) Current personal and corporate financial statements of any guarantors.

(11) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed loan agreement provisions for the loan. The final Loan Agreement must be executed by the lender and borrower before the Agency issues a Loan Note Guarantee. The following requirements must be addressed in the Loan Agreement:

(i) Prohibition against assuming liabilities or obligations of others.

(ii) Restriction on dividend payments.

(iii) Limitation on purchase or sale of equipment and fixed assets.

(iv) Limitation on compensation of officers and owners.

(v) Minimum working capital or current ratio requirement.

(vi) Maximum debt to net worth ratio.

(vii) Restrictions concerning consolidations, mergers, or other circumstances.

(viii) Limitations on selling the business without the concurrence of the lender.

(ix) Repayment and amortization of the loan.

(x) List of collateral and lien priority for the loan including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements on the corporate and personal guarantors must be updated no less than annually.

(xi) Type and frequency of financial statements to be required for the duration of the loan.

(xii) The final Loan Agreement between the lender and borrower will contain any additional requirements imposed by the Agency in its Conditional Commitment.

(12) A business plan, which includes at a minimum a description of the business and project, management experience, products and services, proposed use of funds, availability of labor, raw materials and supplies, and the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship. This may be omitted if the information is included in a feasibility study.

(13) Independent feasibility study, if required.

(14) For companies listed on a major stock exchange and/or subject to the Securities and Exchange Commission (SEC) regulations, a copy of SEC Form 10–K, ''Annual Report Pursuant to Section 13 or 15D of the Act of 1934.''

(15) For health care facilities, a certificate of need, if required by state law.

(16) A certification by the lender that it has completed a comprehensive analysis of the proposal, the applicant is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections and equity, and the collateral to be obtained.

(17) Any additional information required by the Agency.

§§ 4279.162–4279.164 [Reserved]

§ 4279.165 Evaluation of application.

(a) *General review.* If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. Review of CLP applications will be modified in accordance with § 4279.43(g).

(b) *Environment.* Before loan approval, the proposed project must comply with environmental requirements.

§§ 4279.166–4279.172 [Reserved]

§ 4279.173 Loan approval and obligating funds.

(a) Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment to the lender to set forth conditions under which a Loan Note Guarantee will be issued. The Conditional Commitment must be accepted by the lender and borrower in writing.

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and applicant may propose alternate conditions. Within the requirements of the applicable regulations and instructions and prudent lending practices, the Agency may negotiate with the lender and the applicant regarding any proposed changes to the Conditional Commitment.

§ 4279.174 Transfer of lenders.

(a) The loan approval official may approve the substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued, provided that there are no changes in the borrower's ownership or control, loan purposes, or scope of project and loan conditions in the Conditional Commitment and the Loan Agreement remain the same.

(b) The new lender's servicing capability, eligibility, and experience will be analyzed by the Agency prior to approval of the substitution. The original lender will provide the Agency with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender must execute a new Part B of Form RECD 4279–1.

§§ 4279.175–4279.179 [Reserved]

§ 4279.180 Changes in borrower.

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must be approved by the Agency loan approval official.

§ 4279.181 Conditions precedent to issuance of Loan Note Guarantee.

The Loan Note Guarantee will not be issued until the lender, including a CLP lender, certifies to the following:

(a) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency.

(b) All planned property acquisition has been completed, all development has been substantially completed in accordance with plans and specifications, and costs have not exceeded the amount approved by the lender and the Agency.

(c) Required hazard, flood, liability, worker's compensation, and personal life insurance, when required, are in effect.

(d) Truth in lending requirements have been met.

(e) All equal credit opportunity requirements have been met.

(f) The loan has been properly closed, and the required security instruments have been obtained or will be obtained on any acquired property that cannot be covered initially under state law.

(g) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and subject to any other exceptions approved in writing by the Agency.

(h) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time.

(i) When required, personal, partnership, or corporate guarantees have been obtained.

(j) All other requirements of the Conditional Commitment have been met.

(k) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been filed against the collateral and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.

(l) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment and Form RECD 4279–1. A copy of the detailed loan settlement of the lender must be attached to support this certification.

(m) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender's certification must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(n) None of the lender's officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stockshare requirements for participation) has a substantial financial interest in the borrower and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a

Farm Credit System (FCS) institution that is the lender, the lender will certify that an FCS institution on the next highest level will independently process the loan request and act as the lender's agent in servicing the account.

§§ 4279.182–4279.185 [Reserved]

§ 4279.186 Issuance of the guarantee.

(a) When loan closing plans are established, the lender will notify the Agency. Coincident with, or immediately after loan closing, the lender will provide the following to the Agency:

(1) Lender's certifications as outlined in § 4279.181.

(2) Executed Lender's Agreement.

(3) Form FmHA 1980–19, ''Guaranteed Loan Closing Report,'' and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantees and the following documents, as appropriate, will be issued:

(1) *Assignment Guarantee Agreement.* In the event the lender uses the single note option and assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency will execute the Assignment Guarantee Agreement; and

(2) *Certificate of Incumbency.* If requested by the lender, the Agency will provide the lender with a certification on Form RECD 4279–7, ''Certificate of Incumbency and Signature,'' of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.

(c) The Agency may, at its discretion, request copies of loan documents for its file.

(d) There may be instances when not all of the working capital has been disbursed, and it appears practical to disburse the balance over a period of time. The state director, after review of a disbursement plan, may amend the Conditional Commitment in accordance with the disbursement plan and issue the guarantee.

§ 4279.187 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender writes the Agency within the period allowed requesting additional time to satisfy the objections, the Agency may grant the request. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

§§ 4279.188–4279.200 [Reserved]

18. A new part 4287, is added to chaper XLII to read as follows:

PART 4287—SERVICING

Subpart A—[Reserved]

Subpart B—Servicing Business and Industry (B&I) Guaranteed Loans

Sec.
4287.101 Introduction.
4287.102 Definitions.
4287.103–4287.105 [Reserved]
4287.106 Routine servicing.
4287.107–4287.111 [Reserved]
4287.112 Interest rate adjustments.
4287.113 Release of collateral.
4287.114–4287.122 [Reserved]
4287.123 Subordination of lien position.
4287.124 Alterations of loan instruments.
4287.125–4287.133 [Reserved]
4287.134 Transfer and assumption.
4287.135 Substitution of lender.
4287.136–4287.144 [Reserved]
4287.145 Default by borrower.
4287.146–4287.155 [Reserved]
4287.156 Protective advances.
4287.157 Liquidation.
4287.158 Determination of loss and payment.
4287.159–4287.168 [Reserved]
4287.169 Future recovery.
4287.170 Bankruptcy.
4287.171–4287.179 [Reserved]
4287.180 Termination of guarantee.
4287.181–4287.200 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—[Reserved]

Subpart B—Servicing Business and Industry Guaranteed Loans

§ 4287.101 Introduction.

(a) This subpart supplements subparts A and B of part 4279 by providing additional requirements and instructions for servicing and liquidating all Business and Industry (B&I) Guaranteed Loans. This includes Drought and Disaster (D&D), Disaster Assistance for Rural Business Enterprises (DARBE), and Business and Industry Disaster (BID) loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and instructions referenced in this subpart are available in any state or district office or the National office.

§ 4287.102 Definitions.

The definitions contained in § 4279.2 apply to this subpart.

§§ 4287.103–4287.105 [Reserved]

§ 4287.106 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral.

(a) *Lender reports.* The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using Form FmHA 1980–41, ''Guaranteed Loan Status Report.''

(b) *Loan classification.* Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the Agency must be notified immediately.

(c) *Agency/lender conference.* The lender will meet with the Agency at the Agency's request to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

(d) *Financial reports.* The lender must obtain the financial statements required by the Loan Agreement, and these statements must be forwarded to the Agency. The lender is required to submit annual statements to the Agency within 120 days of the borrower's fiscal yearend. The lender must analyze the financial statements and provide the Agency with a written summary of its analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Spreadsheets of the new financial statements and previous financial statements must also be included.

(e) *Additional expenditures.* The lender will not make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

§§ 4287.107–4287.111 [Reserved]

§ 4287.112 Interest rate adjustments.

(a) *Reductions.* The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been purchased by the Agency, then the Agency will affirm or reject interest rate change proposals in writing. When the Agency holds any portion of the loan, it will concur in such interest rate changes only when it is demonstrated to the Agency that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state. The Government's financial interests must not be adversely affected by the reduction of the interest rate.

(1) Factors which will be considered in making such determinations include:

(i) Whether the proposed interest rate will be below the Government's cost of borrowing money;

(ii) Whether continuing with the loan would realistically promote or enhance rural development and employment in rural areas;

(iii) Whether recovery is maximized and the monetary recovery would be increased by proceeding immediately to liquidation (if applicable) or allowing the borrower to continue at a reduced interest rate; and

(iv) Whether an in-depth financial analysis by the lender reasonably indicates that the business would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any.

(2) Fixed rates can be changed to variable rates to reduce the interest rate to the borrower only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(3) Variable rates can be changed to a fixed rate, which is at or below the current variable rate.

(4) The interest rates, after adjustments, must comply with the requirements for interest rates on new loans, as established by § 4279.125.

(5) The lender is responsible for the legal documentation of interest rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal instruments should be provided to the Agency for its records.

(b) *Increases.* No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates.

§ 4287.113 Release of collateral.

(a) All releases of collateral must be supported by a current appraisal on the remaining collateral. The appraisal will be at the expense of the borrower and must meet the requirements of § 4279.144. The Agency must not be adversely affected by the release, and the remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. Sale or release of collateral must be based on an arm's-length transaction. There must be adequate consideration for the release. Adequate consideration for release of collateral may include, but is not limited to:

(1) Application of the net proceeds from the sale of collateral to the borrower's debts in order of lien priority (Application of sale proceeds to the Agency guaranteed debt must be in inverse order of maturity);

(2) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value for which the lender will obtain a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of collateral to the borrower's business operation in such a manner that a significant enhancement of the borrower's debt service ability can be clearly demonstrated. (The lender's written request must detail how the borrower's debt service ability will be enhanced); and

(4) Assurance that the release of collateral is essential for the success of the business, thereby furthering the goals of the B&I program. Such assurance must be supported by written documentation from the lender.

(b) Within the parameters of paragraph (a) of this section, lenders may release collateral (other than personal and corporate guarantees) with a cumulative value up to 20 percent of the original loan amount without Agency concurrence if the proceeds will be used to reduce the guaranteed loan or to buy replacement collateral.

(c) Within the parameters of paragraph (a) of this section, release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the lender and concurred in by the Agency in writing in advance of the release. A written evaluation will be done by the lender to justify the release.

§§ 4287.114–4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred in by the Agency in writing in advance of the subordination. The subordination must enhance the borrower's business, and the Agency's interest in and lien position on the collateral, after the subordination, must be adequate to secure the loan. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit and fixed or limited term, after which the guaranteed loan lien priority will be restored. Generally, subordination to a revolving line of credit will not exceed 1 year. There must be adequate consideration for the subordination.

§ 4287.124 Alterations of loan instruments.

The lender shall neither alter nor approve any alterations of any loan instruments without the prior written approval of the Agency.

§§ 4287.125–4287.133 [Reserved]

§ 4287.134 Transfer and assumption.

(a) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with subpart B of part 4279. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(b) *Terms.* Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and of the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4279.126. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(c) *Release of liability.* The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the

amount of the loan being assumed, supported by a current appraisal and a current financial statement where applicable. The Agency will not pay for the appraisal. If the transfer is for less than the entire debt, the lender must demonstrate to the Agency that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(d) *Proceeds.* Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.

(e) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under subpart B of part 4279.

(f) *Credit quality.* In all cases, the lender must make a complete credit analysis, subject to Agency review and approval.

(g) *Documents.* Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the conveyance instruments will be filed, registered, or recorded as appropriate.

(1) The assumption will be done on the lender's form of assumption agreement and will contain the Agency case number of the transferor and transferee. The lender will provide the Agency with a copy of the transfer and assumption agreement. It is the lender's responsibility to ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, should be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) The lender will provide to the Agency a written certification that the transfer and assumption are valid, enforceable, and comply with all Agency regulations.

(h) *Loss resulting from transfer.* If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss to recover its pro rata share of the actual loss. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be included in the calculations.

(i) *Related party.* If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(j) *Payment requests.* Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under subpart B of part 4279.

(k) *Cash downpayment.* When the transferee will be making a cash downpayment as part of the transfer and assumption:

(1) The lender should have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals, to determine the value of the collateral securing the loan. The appraisal fee and any other costs will not be paid by the Agency.

(2) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.

(3) Cash downpayments may be paid directly to the transferor provided:

(i) The lender recommends that the cash be released and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(ii) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;

(iii) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and

(iv) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.

(4) The Agency will not consider a purchase money mortgage or contract for purchase as an option to maximize recovery.

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender shall not sell or transfer the entire loan without the prior written approval of the Agency. The Agency will not pay any loss or share in any costs (i.e., appraisal fees, environmental studies, or other costs associated with servicing or liquidating the loan) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes cases where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan subsequently sold to another lender.

(a) The Agency may approve the substitution of a new lender if:

(1) The proposed substitute lender:

(i) Is an eligible lender in accordance with § 4279.29;

(ii) Is able to service the loan in accordance with the original loan documents; and

(iii) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) The substitution of lender is requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence.

(b) Where the lender has failed and been taken over by FDIC and the guaranteed loan is liquidated by FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if FDIC were an approved substitute lender.

§§ 4287.136–4287.144 [Reserved]

§ 4287.145 Default by borrower.

(a) The lender must notify the Agency when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement. Form FmHA 1980–44, ''Guaranteed Loan Borrower Default Status,'' will be used and the lender will continue to complete this form bimonthly until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and the borrower to resolve the problem.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Temporary curative actions include but are not limited to:

(i) Deferment of principal (subject to rights of any holder);

(ii) An additional temporary loan by the lender to bring the account current;

(iii) Reamortization of or rescheduling the payments on the loan (subject to rights of any holder);

(iv) Transfer and assumption of the loan in accordance with § 4287.134;

(v) Reorganization;

(vi) Liquidation;

(vii) Subsequent loans guarantees; and

(viii) Changes in interest rates with the Agency's, the lender's, and holder's approval, provided such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

(2) In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or limits as set out in § 4279.126, whichever is less.

§§ 4286.146–4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment must be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances will not be made in lieu of additional loans.

(a) The maximum loss to be paid by the Agency will never exceed the original principal plus accrued interest regardless of any protective advances made.

(b) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee notwithstanding the guaranteed portion of the loan is held by another.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when cumulative protective advances exceed $5,000.

§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation may be considered. If the lender concludes that liquidation is necessary, it must request the Agency's concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for repurchase in accordance with § 4279.78.

(a) *Decision to liquidate.* A decision to liquidate shall be made when it is determined that the default cannot be cured through actions listed in § 4287.145 or it has been determined that it is in the best interest of the Government and the lender to liquidate because such actions would only delay liquidation and liquidating early would enhance the possibility of a maximum recovery. Therefore, the decision to liquidate or continue with the borrower must be made as soon as possible when any of the following exist:

(1) A loan has been delinquent 90 days and the lender and borrower have not been able to cure the delinquency through one of the actions listed in § 4287.145.

(2) It has been determined that delaying liquidation will jeopardize or eliminate the possibility of full recovery on the loan.

(3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) *Submission of liquidation plan.* The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation. State directors have no authority to exercise the option to liquidate by the Agency without National office approval. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. Form FmHA 1980–45, ''Notice of Liquidation Responsibility,'' will be forwarded to the Finance office when the Agency liquidates.

(c) *Lender's liquidation plan.* The liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including:

(i) Recommended action for acquiring and disposing of all collateral; and

(ii) Recommended action to collect from guarantors.

(4) Necessary steps for preservation of the collateral.

(5) Copies of borrower's latest available financial statements.

(6) Copies of guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred and justification for each expense.

(8) A schedule to periodically report to the Agency on progress of liquidation.

(9) Estimated protective advance amounts with justification.

(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown on how the amounts were determined.

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(12) Legal opinions, if needed.

(13) If the outstanding balance of principal and accrued interest is less than $200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is $200,000 or more, the lender will obtain an independent appraisal report on all collateral securing the loan which will reflect the fair market value and potential liquidation value. The independent appraiser's fee will be shared equally by the Agency and the lender.

(14) The Agency must concur in advance regarding the need for and scope of an environmental site assessment. If an environmental site assessment is needed to evaluate potential risks associated with the acquisition of real estate serving as collateral, the lender will arrange for a qualified, independent environmental assessment of the property. The cost of the assessment will be shared equally by the Agency and the lender.

(d) *Approval of liquidation plan.* The Agency will inform the lender in writing whether it concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation.

(1) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(2) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect

the lender's and the Agency's interest. The reason for a protective bid is to ensure that the collateral is not sold to other bidders at an unrealistically low price. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value less estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens.

(e) *Acceleration.* The lender, or the Agency if it liquidates, will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration document will be sent to the Agency (or lender if the Agency liquidates). The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

(f) *Filing an estimated loss claim.* When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures, and the loss claim will be promptly processed in accordance with applicable Agency regulations.

(g) *Accounting and reports.* When the lender conducts liquidation, it will account for funds during the period of liquidation and will provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(h) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency any payments received from the borrower and pro rata share of liquidation or other proceeds, using Form FmHA 1980–43, ''Lender's Guaranteed Loan Payment to FmHA.''

(i) *Abandonment of collateral.* There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and the concurrence of the National office, may abandon the collateral in lieu of liquidation. A proposed abandonment will be considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940. Examples where abandonment may be considered include but are not limited to:

(1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues;

(2) The collateral is functionally or economically obsolete;

(3) There are superior liens held by other parties;

(4) The collateral has deteriorated; and

(5) The collateral is specialized and there is little or no demand for it.

(j) *Disposition of personal or corporate guarantees.* The lender should take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender will seek a deficiency judgment when there is a reasonable chance of future collection of the judgment. The lender must make a decision whether or not to seek a deficiency judgment when:

(1) A borrower voluntarily liquidates the collateral, but the sale fails to pay the guaranteed indebtedness;

(2) The collateral is voluntarily conveyed to the lender, but the borrower and personal and corporate guarantors are not released from liability; or

(3) A liquidation plan is being developed for forced liquidation.

(k) *Compromise settlement.* A compromise settlement will normally not take place until all collateral has been sold, a deficiency balance exists, and the deficiency obligation exceeds the debtor's repayment ability.

(1) The lender and the Agency must receive complete financial information on all parties obligated for the loan and must be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Agency.

(2) Before a personal guarantor can be released from liability, the following factors must be considered:

(i) Cash or other consideration offered by the guarantor;

(ii) Age and health of the guarantor;

(iii) Potential income of the guarantor;

(iv) Inheritance prospects of the guarantor;

(v) Availability of the guarantor's assets;

(vi) Possibility that the guarantor's assets have been concealed or improperly transferred; and

(vii) Effect of other guarantors on the loan.

(3) Once the Agency and the lender agree on a reasonable amount that is fair and adequate, the lender can proceed to effect the settlement compromise.

§ 4287.158 Determination of loss and payment.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable.

(a) *Report of loss form.* Form FmHA 449–30, ''Loan Note Guarantee Report of Loss,'' will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) *Estimated loss.* In accordance with the requirements of § 4287.157(f), an estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability.

(2) An estimated loss will be applied first to reduce the principal balance on the guaranteed loan and the balance, if any, to accrued interest. Interest accrual on the defaulted loan will be discontinued.

(3) A protective advance claim will be paid only at the time of the final report of loss payment.

(c) *Final loss.* Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation.

Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on Form FmHA 449–30.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of in accordance with § 4287.157(j) prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

(5) Accrued interest will be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender will include documentation of changes in both the selected base rate and the loan rate.

(6) Loss payments will be paid by the Agency within 60 days after the review of the final loss report and accounting of the collateral.

(d) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve Form FmHA 449–30 and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency has conducted the liquidation, it will pay the lender in accordance with the Loan Note Guarantee.

§§ 4287.159–4287.168 [Reserved]

§ 4287.169 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be prorated between the Agency and the lender based on the original percentage of guarantee.

§ 4287.170 Bankruptcy.

The lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings.

(a) *Legal expenses during bankruptcy proceedings.* (1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) When a proceeding under Title 11 of the United States Code (Bankruptcy) results in liquidation by the lender, legal expenses incurred by the lender during the entire bankruptcy proceedings will be considered eligible liquidation costs for payment only from liquidation proceeds.

(b) *Reports of loss during bankruptcy.* When the loan is involved in reorganization proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding, only paragraphs (b)(3) and (5) of this section are applicable.

(1) *Estimated loss payments.* (i) If a borrower has filed for protection under Title 11 of the United States Code for a reorganization (but not Chapter 13) and all or a portion of the debt has been discharged, the lender will request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the reorganization. All subsequent claims of the lender during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the reorganization plan. Once the reorganization plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest rate reduction under the terms of the reorganization plan.

(ii) The lender will use Form FmHA 449–30 to request an estimated loss payment and to revise any estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(iii) Upon completion of a reorganization plan, the lender will complete a Form FmHA 1980–44 and forward this form to the Finance office.

(2) *Interest loss payments.* (i) Interest losses sustained during the period of the reorganization plan will be processed in accordance with paragraph (b)(1) of this section.

(ii) Interest losses sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(iii) A report of loss will be completed to compensate the lender for the difference in interest rates specified on the Loan Note Guarantee and the rate of interest specified in the plan.

(iv) If an estimated loss claim is paid during the operation of the Chapter 11 reorganization plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary.

(3) *Final loss payments.* Final loss payments will be processed when the loan is liquidated.

(4) *Payment application.* The lender must apply estimated loss payments first to the unsecured principal of the

guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office.

(5) *Overpayments.* Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender.

(6) *Protective advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued interest will be considered in the loss calculations.

§§ 4287.171–4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

(a) upon full payment of the guaranteed loan;

(b) upon full payment of any loss obligation; or

(c) upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled.

§§ 4287.181–4287.200 [Reserved]

Dated: September 12, 1995.

Jill Long Thompson,

Under Secretary for Rural Economic and Community Development.

[FR Doc. 96–1576 Filed 2–1–96; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF ENERGY

10 CFR Parts 1035 and 1036 and 48 CFR Part 909

RIN 1991–AB24

Debarment and Suspension (Procurement) and Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) and Department of Energy Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today is proposing to amend its regulations governing debarment and suspension in procurement and nonprocurement activities. The proposed amendments to the nonprocurement rule only include DOE agency-specific provisions; i.e., none include provisions in the Government-wide common rule. The proposed rule would establish a common fact-finding process in cases involving a genuine dispute over material facts. The proposed rule removes the Department's procurement debarment and suspension regulations from part 10 of the Code of Federal Regulations (CFR) and recodifies them in the Department of Energy Acquisition Regulations (DEAR), chapter 9 of title 48 of the Code of Federal Regulations.

DATES: Written comments (3 copies) must be received on or before April 2, 1996 in order to be assured of consideration.

ADDRESSES: Persons wishing to submit comments on this notice of proposed rulemaking should send them to Cynthia Yee, Office of Clearance and Support, Procurement and Assistance Management, HR–52.2, U. S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mrs. Cynthia Yee, 202–586–1140.

SUPPLEMENTARY INFORMATION:

I. Background
A. Discussion.
B. Section-by-Section Analysis.
II. Procedural Requirements.
A. Regulatory Review.
B. Review under the Regulatory Flexibility Act.
C. Review Under the Paperwork Reduction Act.
D. Review Under the National Environmental Policy Act.
E. Review Under Executive Order 12612.
F. Review Under Executive Order 12778.
III. Public Comments.

I. Background

A. Discussion

President Reagan signed Executive Order 12549 on February 18, 1986, which established governmentwide effect for an agency's nonprocurement debarment and suspension actions. On October 13, 1994, President Clinton signed Public Law 103–355, the Federal Acquisition Streamlining Act of 1994. Section 2455 of that Act provides that the debarment, suspension, or other exclusion of a participant in a procurement activity under the Federal Acquisition Regulation, or in a nonprocurement activity under regulations issued pursuant to 12549, shall be given reciprocal governmentwide effect. This proposed rulemaking furthers those actions by changing various provisions to clarify the DOE procurement suspension and debarment provisions and to ensure consistency between the Federal Acquisition Regulation (FAR) and the DEAR. Additionally, this proposed rule deletes some DOE-specific provisions to provide for uniformity with other Federal agencies.

B. Section-by-Section Analysis

The DOE today is removing the current regulation, at 10 CFR Part 1035, and recodifying the regulation at 48 CFR Part 909. In recodifying the debarment and suspension regulations, DOE has made various changes to clarify the provisions of procurement debarment and suspension and to ensure consistency between the FAR and the DEAR. The rules of procedure for fact-finding conferences in Appendix A of 10 CFR Part 1035 are removed. Under the recodified regulations, the Energy Board of Contract Appeals will conduct fact-finding in disputed suspension or proposed debarments.

This proposed rule also amends 10 CFR Part 1036, which governs debarment and suspension with regard to DOE nonprocurement and grants programs.

The Department of Energy Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees (DOE List) has been eliminated as unnecessary because the General Services Administration maintains, pursuant to Executive order 12549, a governmentwide list of parties excluded from federal procurement and nonprocurement programs.

The following is a comparison of existing provisions in 10 CFR Part 1035 with provisions proposed for inclusion in 48 CFR Part 909 (DEAR).

Subpart 909.400 is not signficantly different from the previous 10 CFR

1035.1; subpart 909.401 also is unchanged from 10 CFR 1035.2. Subpart 909.402 is removed as it is contained in FAR 9.402. Subpart 909.403 differs significantly from 1035.4 in that, except for DOE-specific definitions, all other definitions are removed as they are contained in FAR 9.403.

Subpart 909.405 is an abbreviated discussion of the effects of being listed on the General Services Administration's Consolidated List of Debarred, Suspended, and Ineligible Contractors (GSA List), previously contained in 10 CFR 1035.13, which includes only those DOE-specific requirements.

Subpart 909.406–2, which identifies causes of so serious or compelling a nature that they affect the present responsibility of a DOE contractor, was previously contained at 10 CFR 1035.5.

Subpart 909.406–3 discusses the DOE procedures for investigation, referral, decisionmaking and notices of debarment previously contained in 10 CFR 1035.5(c), 1035.7 and 1035.8. The discussion in 909.406–3 is abbreviated and more consistent with the requirements contained in FAR 9.406 and incorporates many of the FAR provisions.

Subpart 909.406–6, in which provision for reconsideration is addressed, was previously contained in 10 CFR 1035.11(c).

New subpart 909.407–2 enumerates other causes for suspension previously contained in 10 CFR 1035.5(b).

New subpart 909.407–3 discusses the DOE procedures for investigation, referral, decisionmaking and notices of suspension previously contained 10 CFR 1305.5(c), 1035.7 and 1035.8.

The changes proposed to 10 CFR Part 1036, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) are primarily minor in nature. Sections 1036.105, 1036.110, 1036.215, 1036.312, 1036.313, 1036.314, 1036.412, 1036.710, and 1036.715 are administrative changes, consisting of correcting the identity of the DOE debarring and suspending official, correcting the citation for procurement suspension and debarment provisions, deleting reference to the DOE List, and deleting incorrect references within Part 1036.

Significant changes to DOE agency-specific provisions are made to section 1036.312 and 1036.411, which are amended by deleting the references to information that is not to be included in a notice of proposed debarment. Section 1036.315, a DOE agency-specific provision, is amended by deleting subparagraph 1036.315(c), which discusses terms of voluntary exclusions.

Section 1036.700, which discusses DOE procedures for debarment and suspension, is revised to include language similar to that contained in the proposed DEAR provisions. The proposed revision provides for fact-finding by the Energy Board of Contract Appeals in suspensions or proposed debarments in which the debarring/suspending official determines that material facts are in dispute.

Section 1036.705 is amended by deleting reference to *in camera* review of evidence, providing for decision making based on the administrative record.

The most signficant changes that will be made by the proposed DEAR provisions and the revisions to 10 CFR Part 1036 are with respect to *in camera* review and fact-finding. The proposed changes are procedural in nature and will not have any substantive impact on any person's or entity's rights.

Due to the extensive revisions to DEAR, the complete text of DEAR 909.4 is published. In order to focus commentor's attention on the changes that are proposed to 10 CFR Part 1036, only those portions of Part 1036 that are affected by the changes proposed are published, rather than publishing the complete text of the common rule. In addition to the amendments discussed, minor technical changes of a nonsubstantive nature are made.

II. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). However, the proposed rule was subject to review under the Executive Order by the Office of Information and Regulatory Affairs because it relates to the subject matter of a Governmentwide common rule.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a signficant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

D. Review Under NEPA

DOE has determined that issuance of this proposed rule is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and therefore that neither an environmental assessment nor an environmental impact statement is required. Categorical exclusion A2 in DOE's regulations implementing NEPA, appendix A of subpart D of 10 CFR Part 1021, applies to this rulemaking. Categorical exclusion A2 encompasses procedural and administrative matters pertaining to contracts.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, and in the distribution of power and responsibility among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain procedural requirements pertaining to suspension and debarment of DOE contractors. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of the States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect,

effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This proposed rule would, when adopted as a final rule, have no preemptive effect, will not have any effect on existing Federal laws, and would only clarify the existing regulations on this subject. The revisions would apply only to actions initiated after the effective date of the final rule, and thus, would have no retroactive effect. Therefore, DOE certifies that this proposed rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All written comments received by the date indicated in the DATES section of this notice and all other relevant information will be fully considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determinations (10 CFR 1004.11).

DOE has concluded that this proposed rule does not involve a substantial issue of fact or law, and that the proposed rule will not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 533), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Parts 1035 and 1036 and 48 CFR Part 909

Administrative practice and procedure, Government procurement.

Issued in Washington, DC, on January 23, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Title 10 Code of Federal Regulations Parts 1035 and 1036 and Chapter 9, Title 48 Code of Federal Regulations are proposed to be amended as set forth below.

10 CFR PART 1035—DEBARMENT AND SUSPENSION (PROCUREMENT) [REMOVED]

1. Part 1035—Debarment and Suspension (Procurement) is removed.

48 CFR PART 909—CONTRACTOR QUALIFICATIONS

2. The authority citation for Part 909 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

3. Subpart 909.4 is revised to read as follows:

Subpart 909.4—Debarment, Suspension, and Ineligibility

909.400 Scope of subpart.
909.401 Applicability.
909.403 Definitions.
909.405 Effect of listing.
909.406 Debarment
909.406–2 Causes for debarment.
909.406–3 Procedures
909.406–6 Requests for reconsideration of debartment.
909.407–2 Causes for suspension.
909.407–3 Procedures.

909.400 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures governing the debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) contracts, procurement sales contracts, and real property purchase agreements, and from participating in DOE approved subcontracts and subagreements.

(b) Sets forth the causes, procedures, and requirements for determining the scope, duration, and effect of DOE debarment and suspension actions; and

(c) Implements and supplements FAR subpart 9.4 with respect to the exclusion of organizations and individuals from procurement contracting and Government approved subcontracting.

909.401 Applicability.

The provisions of this subpart apply to all procurement debarment and suspension actions initiated by DOE on or after the effective date of this subpart. Nonprocurement debarment and suspension rules are codified in 10 CFR part 1036.

909.403 Definitions.

In addition to the definitions set forth at FAR 9.403, the following definitions apply to this subpart.

Debarring Official. The DOE Debarring Official is the Deputy Assistant Secretary for Procurement and Assistance Management, or designee.

DOE means the Department of Energy, including the Federal Energy Regulatory Commission.

Suspending Official. The DOE Suspending Official is the Deputy Assistant Secretary for Procurement and Assistance Management, or designee.

909.405 Effect of listing.

(e) The Department of Energy may not solicit offers from, award contracts to or consent to subcontract with contractors debarred, suspended or proposed for debarment unless the Deputy Assistant Secretary for Procurement and Assistance Management makes a written determination justifying that there is a compelling reason for such action in accordance with FAR 9.405(a).

(f) DOE may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is on the GSA List.

(g) DOE shall not conduct business with an agent or representative of a contractor if the agent's or representative's name appears on the GSA List.

(h) DOE shall review the GSA List before conducting a preaward survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to the award, extension, or renewal of subcontracts.

909.406 Debarment.

909.406–2 Causes for debarment.

(c) The Debarring Official may debar a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a DOE contractor. Such cause may include but is not limited to:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private contract or subcontract; and

(2) Inexcusable, prolonged, or repeated failure to pay a debt (including disallowed costs and overpayments) owed to DOE, provided the contractor has been notified of the determination of indebtedness, and further provided that the time for initiating any administrative or legal action to oppose or appeal the determination of indebtedness has expired or that such action, if initiated, has been concluded.

(d) The Debarring Official may debar a contractor:

(1) On the basis that an individual or organization is an affiliate of a debarred

contractor, subject to the requirements of FAR 9.406–1(b) and 9.406–3(c);

(2) For failure to observe the material provisions of a voluntary exclusion (see 10 CFR 1036.315 for discussion of voluntary exclusion).

909.406–3 Procedures.

(a) *Investigation and referral.* (1) Offices responsible for the award and administration of contracts are responsible for reporting to both the Deputy Assistant Secretary for Procurement and Assistance Management and the DOE Inspector General information about possible fraud, waste, abuse, or other wrongdoing which may constitute or contribute to a cause(s) for debarment under this subpart. Circumstances that involve possible criminal or fraudulent activities must be reported to the Office of the Inspector General in accordance with 10 CFR Part 1010, Conduct of Employees, Section 1010.217(b), Cooperation with the Inspector General.

(2) At a minimum, referrals for consideration of debarment action should be in writing and should include the following information:

(i) The recommendation and rationale for the referral;

(ii) A statement of facts;

(iii) Copies of documentary evidence and a list of all witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of parties including the contractor, principals, and affiliates (including last known home and business addresses, zip codes and DUNS Number);

(v) DOE's acquisition history with the contractor, including recent experience under contracts and copies of pertinent contracts;

(vi) A list of any known active or potential criminal investigations, criminal or civil proceedings, or administrative claims before the Board of Contract Appeals; and

(vii) A statement regarding the impact of the debarment action on DOE programs. This statement is not required for referrals by the Inspector General.

(3) Referrals may be returned to the originator for further information or development.

(b) *Decisionmaking process.* Contractors proposed for debarment shall be afforded an opportunity to submit information and argument in opposition to the proposed debarment.

(1) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Debarring Official shall make a decision on the basis of all the information in the administrative record, including any submissions made by the contractor. If the respondent fails to submit a timely written response to a notice of proposed debarment, the Debarring Official shall notify the respondent in accordance with FAR 9.406–3(e) that the contractor is debarred.

(2) In actions not based upon a conviction or civil judgment, the contractor may request a fact-finding hearing to resolve a genuine dispute of material fact. In its request, the contractor must identify the material facts in dispute and the basis for disputing the facts. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official shall refer the matter to the Energy Board of Contract Appeals for a fact-finding conference.

(3) *Meeting.* Upon receipt of a timely request therefor from a contractor proposed for debarment, the Debarring Official shall schedule a meeting between the Debarring Official and the respondent, to be held no later than 30 days from the date the request is received. The Debarring Official may postpone the date of the meeting if the respondent requests a postponement in writing. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may present and explain evidence that causes for debarment do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, or duration of a proposed debarment or debarment.

(4) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts through the submission of oral and written evidence; resolve facts in dispute; and provide the Debarring Official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. The fact-finding conference shall be conducted in accordance with rules consistent with FAR 9.406–3(b) promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals will notify the affected parties of the schedule for the hearing. The Energy Board of Contract Appeals shall deliver written findings of fact to the Debarring Official (together with a transcription of the proceeding, if made) within a certain time period after the hearing record closes, as specified in the Energy Board of Contract Appeals Rules. The findings shall resolve any disputes over material facts based upon a preponderance of the evidence, if the case involves a proposal to debar, or on adequate evidence, if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments.

(d) *Debarring Official's decision.*

(4) The Debarring Official's final decision shall be based on the administrative record. In those actions where additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall be those findings prepared by the Energy Board of Contract Appeals. Findings of fact shall be final and conclusive unless within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, as provided in the Board's Rules, or unless set aside by a court of competent jurisdiction. The Energy Board of Contract Appeals shall be provided a copy of the Debarring Official's final decision.

909.406–6 Requests for reconsideration of debarment.

(a) At any time during a period of debarment, a respondent may submit to the Debarring or Suspending Official a written request for reconsideration of the scope, duration, or effects of the suspension/debarment action because of new information or changed circumstances, as discussed at FAR 9.406–4(c).

(b) In reviewing a request for reconsideration, the Debarring or Suspending Official may, in his or her discretion, utilize any of the procedures (meeting and fact-finding) set forth in 48 CFR (DEAR) 909.406–3 and 909.407–3. The Debarring or Suspending Official's final disposition of the reconsideration request shall be in writing and shall set forth the reasons why the request has been granted or denied. A notice transmitting a copy of the disposition of the request for reconsideration shall be sent to the respondent and, if a fact-finding conference under 48 CFR (DEAR) 909.406–3(b)(4) is pending (as in the case of a request for reconsideration of a suspension, where the proposed debarment is the subject of a fact-finding conference), a copy of the disposition shall be transmitted to the Energy Board of Contract Appeals.

909.407–2 Causes for suspension.

(d) The Suspending Official may suspend an organization or individual:

(1) Indicted for or suspected, upon adequate evidence, of the causes described in 48 CFR (DEAR) 909.406–2(c)(1).

(2) On the basis of the causes set forth in 48 CFR (DEAR) 909.406–2(d)(2).

(3) On the basis that an organization or individual is an affiliate of a suspended or debarred contractor.

909.407–3 Procedures.

(b) *Decisionmaking process.*

(1) In actions based on an indictment, the Suspending Official shall make a decision based upon the administrative record, which shall include submissions made by the contractor in accordance with 48 CFR (DEAR) 909.406–3(b)(1) and 909.406–3(b)(3).

(2) For actions not based on an indictment, the procedures in 48 CFR (DEAR) 909.406–3(b)(2) and FAR 9.407–3(b)(2) apply.

(3) *Coordination with Department of Justice.* Whenever a meeting or fact-finding conference is requested, the Suspending Official's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such Department of Justice official requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall:

(i) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(ii) Deny the request for a meeting or fact-finding and base the suspension decision solely upon the information in the administrative record, including any submission made by the respondent.

(e) *Notice of suspending official's decision.* In actions in which additional proceedings have been held, following such proceedings, the Suspending Official shall notify respondent, as applicable, in accordance with paragraphs (e)(1) or (e)(2) of this section.

(1) Upon deciding to sustain a suspension, the Suspending Official shall promptly send each affected respondent a notice containing the following information:

(i) A reference to the notice of suspension, the meeting and the fact-finding conference;

(ii) The Suspending Official's findings of fact and conclusions of law;

(iii) The reasons for sustaining a suspension;

(iv) A reference to the Suspending Official's waiver authority under 48 CFR (DEAR) 909.405;

(v) A statement that the suspension is effective throughout the Executive Branch as provided in 48 CFR (FAR) subpart 9.407–1(d);

(vi) Modifications, if any, of the initial terms of the suspension;

(vii) A statement that a copy of the suspension notice was sent to GSA and that the respondent's name and address will be added to the GSA List; and

(viii) If less than an entire organization is suspended, specification of the organizational element(s) or individual(s) included within the scope of the suspension.

(2) If the Suspending Official decides to terminate a suspension, the Suspending Official shall promptly send, by certified mail, return receipt requested, each affected respondent a copy of the final decision required under this section.

PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

4. The authority citation for part 1036 continues to read as follows:

Authority: E.O. 12689, E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 42 U.S.C. 701 et seq.); Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 98 Stat. 1003–1005 (31 U.S.C.) 6301–6308.

Subpart A—General

§ 1036.105 [Amended]

5. Section 1036.105 is amended by revising the phrase ''Director, Procurement and Assistance Management Directorate'' to read ''Deputy Assistant Secretary for Procurement and Assistance Management or designee'' in the definitions for ''Debarring Official'' (paragraph (3)) and ''Suspending Official'' (paragraph (3)); and removing the definitions for ''Director'' and ''DOE List.''

Subpart C—Debarment

§ 1036.312 [Amended]

6–8. Section 1036.312 is amended by removing paragraph (b)(1); by removing paragraph (d)(1); by removing paragraph (e)(1); in paragraph (f) by revising ''Director'' to read ''debarring official;'' and in paragraph (g) by revising ''DOE'' to read ''GSA.''

§ 1036.313 [Amended]

9. Section 1036.313 is amended in paragraph (a)(1) by revising ''Director'' to read ''debarring official'' and removing the citation ''(See § 1036.600(c)).''

§ 1036.314 [Amended]

10. Section 1036.314 is amended by removing paragraph (d)(1)(vi) and redesignating paragraphs (d)(1) (vii) and (viii) to (d)(1) (vi) and (vii).

§ 1036.315 [Amended]

11. Section 1036.315 is amended by removing paragraph (c).

Subpart D—Suspension

§ 1036.411 [Amended]

12. Section 1036.411 is amended by removing paragraph (c)(1); by removing paragraph (f)(1); in paragraph (h) by revising ''Director'' to read ''suspending official'' and in paragraph (j) by revising ''DOE'' to read ''GSA.''

§ 1036.412 [Amended]

13. Section 1036.412 is amended by removing paragraph (a)(1).

Subpart G—Additional DOE Procedures for Debarment and Suspension

§ 1036.700 [Revised]

14. Section 1036.700, is revised to read as follows:

§ 1036.700 Procedures.

(a) *Decisionmaking process for debarments.*

(1) In actions based upon a conviction or civil judgment, and other actions in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submissions made by the awardee. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the awardee, unless the debarring official extends this period for good cause. The debarring official shall consider information and argument in opposition to the proposed debarment including identification of disputed material facts. If the respondent fails to submit a timely written response to a notice of proposed debarment, the debarring official shall notify the respondent in accordance with 10 CFR 1036.312 that the awardee is debarred.

(2) In actions not based upon a conviction or civil judgment, if it is

found that the awardee's submission in opposition raises a genuine dispute over facts material to the proposed debarment, at the request of the awardee, the debarring official shall refer the matter to the Energy Board of Contract Appeals for a fact-finding conference, in accordance with rules consistent with this section promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Debarring Official findings of fact, not conclusions of law. The findings shall resolve any disputes over material facts based on a preponderance of evidence.

(b) *Decisionmaking process for suspensions.*

(1) In actions based on an indictment, the suspending official shall make a decision based upon the administrative record, which shall include submissions made by the awardee.

(2) In actions not based on an indictment, if it is found that the awardee's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interest of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official shall, at the request of the awardee, refer the matter to the Energy Board of Contract Appeals for a fact-finding conference, in accordance with rules promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Suspending Official findings of fact, not conclusions of law. The findings shall resolve any disputes over material facts based on adequate evidence.

(c) *Meeting.* Upon receipt of a timely request therefore from the respondent, the debarring/suspending official shall schedule a meeting between the debarring/suspending official and the respondent, to be held no later than 30 days from the date the request is received. The debarring/suspending official may postpone the date of the meeting if the respondent requests a postponement in writing. At the meeting, the respondent, appearing personally or through an attorney or other authorized representative, may informally present and explain evidence that causes for debarment or suspension do not exist, evidence of any mitigating factors, and arguments concerning the imposition, scope, duration, or effects of a proposed debarment or suspension.

(d) *Fact-finding conference.* The purpose of a fact-finding conference under this section is to provide the respondent an opportunity to dispute material facts and to provide the debarring/suspending official with findings of fact based, as applicable, on adequate evidence or on a preponderance of the evidence. If the debarring/suspending official determines that a written response or a presentation at the meeting under paragraph (c) of this section puts material facts in dispute, the debarring/suspending official shall refer the matter to the Energy Board of Contract Appeals for fact-finding. The fact-finding conference shall be conducted in accordance with rules promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals shall report to the Debarring Official findings of fact, but not conclusions of law. The findings shall resolve any disputes over material facts based on a preponderance of evidence if the case involves a proposal to debar, or on adequate evidence if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that warrants a fact-finding conference for those proposed debarments based on convictions or civil judgments.

15. Section 1036.705 is amended in the introductory paragraph by revising ''Director's'' and ''Director'' to read ''debarring/suspending official'' in the first and second sentences, revising reference to ''1036.700 (b)(1) or (b)(2)'' to read ''1036.700(c)'' and by revising paragraph (b) to read as follows:

§ 1036.705 Coordination with Department of Justice.

* * * * *

(b) Deny additional proceedings and base the decision on all information in the administrative recording, including any submissions made by the respondent.

§ 1036.710 [Removed]

16. Section 1036.710, DOE consolidated list of debarred, suspended, ineligible, and voluntarily excluded awardees, is removed.

§ 1036.715 [Amended]

17. Section 1036.715 is amended by revising the section heading to read ''Effects of being listed on the GSA list.'' and, in the introductory paragraph, by revising ''Director'' to read ''Deputy Assistant Secretary for Procurement and Assistance Management or designee'' and by revising ''DOE List'' to read ''GSA List'' wherever it appears in paragraphs (a) through (g).

[FR Doc. 96–1920 Filed 2–1–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–SW–32–AD]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters. This proposal would require an adjustment to the low-RPM warning unit threshold to increase the revolutions-per-minute (RPM) at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the throttle governor (governor) selected off, except in certain situations. This proposal is prompted by an FAA Technical Panel Review of Robinson accident history data which revealed that main rotor (M/R) blade stall at abnormally low M/R RPM resulted in accidents. The actions specified by the proposed AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter.

DATES: Comments must be received by March 4, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–32–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5265; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–32–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–32–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to Robinson Model R44 helicopters, serial numbers (S/N) 0001 through 0183 and 0189, which would require resetting the warning unit to activate the warning horn and caution light at 96 to 97% RPM, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, except in certain situations. A recent FAA Technical Panel review of Robinson accident history data revealed that some Model R22 accidents resulted from pilot mismanagement of the M/R RPM.

The Technical Panel noted that, with the throttle governor selected off, the Model R44 demonstrates potential for rotor RPM decay similar to the Model R22. This lead the Technical Panel to recommend that the Model R44 be flown with the governor on with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot. Additionally, the Technical Panel recommended an increase in the RPM at which the warning horn and caution light activate, thereby allowing additional time for the initiation of corrective action between the activation of the warning horn and caution light and the onset of M/R blade stall.

Based on this recommendation, Robinson issued Robinson Helicopter Company R44 Service Bulletin SB–7A, Revised June 8, 1995, which describes procedures for increasing the RPM threshold at which the warning horn and caution light activate to avoid inadvertent low M/R RPM. This condition, if not corrected, could result in M/R stall and a subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R44 helicopters of the same type design, the proposed AD would require an adjustment to the warning horn and caution light threshold from 95± 1% RPM to between 96% and 97% RPM to increase the RPM at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot.

The FAA estimates that 20 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 0.2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $240.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Robinson Helicopter Company: Docket No. 95–SW–32–AD.

Applicability: Model R44 helicopters, serial numbers (S/N) 0001 through 0183 and 0189, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously.

To minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in M/R stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569–6 low-RPM warning unit so that the warning horn and caution

light activate when the M/R RPM is between 96% and 97% rotor RPM in accordance with the procedures contained in the Model R44 maintenance manual.

(b) Insert pages 2–7 of the FAA-approved Robinson Helicopter Company R44 Rotorcraft Flight Manual, revised July 25, 1995, into each Model R44 helicopter's flight manual, and make pen-and-ink changes to pages 2–7 to add the word ''inflight'' before ''system malfunction'', change ''and'' to ''or'', and add the phrase ''with an instructor pilot'' at the end so that the affected limitation will state ''Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot.''

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

Issued in Fort Worth, Texas, on January 29, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–2263 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 73

[Airspace Docket No. 95–ASW–6]

Proposed Establishment of Restricted Areas; NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish the following four new restricted areas in western/central New Mexico: R–5117, Fort Wingate, NM; R–5119, Socorro, NM; R–5121, Fort Wingate, NM; and R–5123, Magdalena, NM. The proposed restricted areas would provide an extended test range for the U. S. Army to conduct missile and sensor system tests associated with the theater missile defense system. Under the proposed test program, missile launches would be conducted from the Fort Wingate Army Depot, near Gallup, NM, and would terminate in the existing restricted areas at the White Sands Missile Range (WSMR), NM. Currently, there are no operational over land ranges and few over water ranges operated by the United States that provide a realistic environment for testing the theater missile defense system. The proposed restricted areas would provide airspace to contain the launch, ascent, reentry, and impact of missiles and boosters. The areas would be designated for joint-use and would be activated only for the minimum time needed to safely conduct each test.

DATES: Comments must be received on or before March 15, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500 Docket No. 95–ASW–6, Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Pete Magarelli, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ASW–6.'' The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to:

(1) U.S. Army Space and Strategic Defense Command, Attention: Mr. Dennis R. Gallien, P.O. Box 1500, Huntsville, AL 35807–5027, Telephone No. (205) 955–3887

or

(2) National Range Operations Branch, Attention: Mr. John W. Jensen, Building 1530, White Sands Missile Range, NM 88002–5012, Telephone No. (505) 678–1121.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish four new restricted areas in west/central New Mexico. The proposed restricted areas would be designated R–5117, Fort Wingate, NM; R–5119, Socorro, NM; R–5121, Fort Wingate, NM; and R–5123, Magdalena, NM. The U.S. Army has proposed these areas to accommodate extended range tests needed to validate theater missile defense system design and operational effectiveness.

Proposed Restricted Area R–5117 would be designated at the Fort Wingate Army Depot. R–5117 would extend from the surface to unlimited altitude to contain the missile launch area. Restricted Area R–5121 would be designated adjacent to R–5117. R–5121 would extend from FL 200 to unlimited altitude and would be required to contain the ascent of missiles after launch from the Fort Wingate site. R–

5123 would be designated in order to provide a booster drop zone to contain the reentry and impact of missile boosters after launch from R–5117. R–5123 would extend from the surface to unlimited altitude. R–5119 would be designated as a missile reentry area. R–5119 would extend from FL 350 to unlimited altitude and would be located adjacent to existing WSMR restricted airspace. R–5119 would be required to contain missiles during that portion of the reentry phase of flight prior to the trajectory entering existing WSMR restricted airspace. Missile impact would occur in the existing WSMR impact areas.

When activated, the proposed restricted areas could potentially impact nonparticipating aircraft operations along portions of Federal airways and jet routes, or on direct flights, in the vicinity of the Gallup (GUP), Socorro (ONM), and Truth or Consequences (TCS) navigational aids. It is anticipated that the potential impact of the restricted areas on nonparticipating aircraft operations would be lessened by the limited number of planned test events (6 to 10 per year), and a U.S. Army agreement to complete test activity prior to 9:00 a.m., local time, when the volume of air traffic in the area is normally low. In addition, the entire launch through recovery operation is designed to take less than 15 minutes total, therefore, it is anticipated that the tests would 5 have minimal impact on instrument flight rules traffic. It is possible that activation of the proposed restricted areas may necessitate rerouting of a few aircraft, however, any rerouting should be minimal due to the location, small size, and limited activation time requirements of the areas. The two proposed restricted areas which would extend from the surface, R–5117 and R–5123, would be designated over government-controlled tracts of land.

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

Environmental Review

This proposal will be subject to an environmental impact analysis by the proponent and the FAA prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 is revised to read as follows:

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

2. Section 73.51 is amended as follows:

§ 73.51 [Amended]

R–5117 Fort Wingate, NM [New]

Boundaries. Beginning at lat. 35°25′51″N., long. 108°30′09″W.; to lat. 35°28′46″N., long. 108°37′14″W.; to lat. 35°28′46″N., long. 108°37′39″W.; to lat. 35°21′27″N., long. 108°36′58″W.; to the point of beginning.
Designated altitudes. Surface to unlimited.
Time of designation. Intermittent by NOTAM 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. Commanding General, White Sands Missile Range, NM.

R–5119 Socorro, NM [New]

Boundaries. Beginning at lat. 33°59′56″N., long. 106°43′29″W.; to lat. 33°59′51″N., long. 106°56′27″W.; to lat. 34°08′16″N., long. 107°05′17″W.; to lat. 34°00′28″N., long. 107°12′04″W.; to lat. 33°46′04″N., long. 107°02′38″W.; to lat. 33°26′49″N., long. 107°02′25″W.; to lat. 33°26′49″N., long. 107°00′00″W.; to lat. 33°32′44″N., long. 106°58′47″W.; to lat. 33°54′10″N., long. 106°46′24″W.; to lat. 33°57′16″N., long. 106°43′58″W.; to the point of beginning.
Designated altitudes. FL 350 to unlimited.
Time of designation. Intermittent by NOTAM 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. Commanding General, White Sands Missile Range, NM.

R–5121 Fort Wingate, NM [New]

Boundaries. Beginning at lat. 35°25′51″N., long. 108°30′09″W.; to lat. 35°21′22″N., long. 108°25′59″W.; to lat. 35°19′18″N., long. 108°28′10″W.; to lat. 35°17′48″N., long. 108°31′41″W.; to lat. 35°21′27″N., long. 108°36′58″W.; to the point of beginning.
Designated altitudes. FL 200 to unlimited.
Time of designation. Intermittent by NOTAM 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. Commanding General, White Sands Missile Range, NM.

R–5123 Magdalena, NM [New]

Boundaries. Beginning at lat. 34°22′30″N., long. 107°57′00″W.; to lat. 34°25′00″N., long. 107°49′00″W.; to lat. 34°24′45″N., long. 107°37′00″W.; to lat. 34°18′00″N., long. 107°30′00″W.; to lat. 34°15′08″N., long. 107°37′00″W.; to lat. 34°19′00″N., long. 107°40′00″W.; to lat. 34°15′08″N., long. 107°45′20″W.; to lat. 34°14′52″N., long. 107°44′40″W.; to lat. 34°13′00″N., long. 107°48′00″W.; to the point of beginning.
Designated altitudes. Surface to unlimited.
Time of designation. Intermittent by NOTAM 24 hours in advance.
Controlling agency. FAA, Albuquerque ARTCC.
Using agency. Commanding General, White Sands Missile Range, NM.

Issued in Washington, DC, on January 25, 1996.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 96–2273 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 95N–0103]

Food Labeling; Nutrient Content Claims and Health Claims; Special Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require that, in certain circumstances, persons responsible for the labeling of foods with nutrient content and health claims maintain records that support the claims, and that they make those records available to appropriate regulatory officials upon request. FDA has tentatively concluded that the proposed requirements are necessary to ensure that, in the specified circumstances, when a claim is made on the label or in the labeling of a food to characterize the level of a nutrient in that food, or to characterize the relationship between a nutrient in the food and a disease or health-related condition, the claim is made in

accordance with regulations issued by the agency.

DATES: Written comments by April 17, 1996; except that comments regarding information collection requirements by March 4, 1996, but not later than April 2, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Written comments regarding paperwork burden estimates should be sent to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS–150), Food and Drug Administration,200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION:

I. Background

Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535) amended the act by, among other things, adding section 403(r)(21 U.S.C. 343(r)). This section sets out the circumstances in which nutrient content claims and health claims can be made in food labeling. Under section 403(r) of the act, a food is misbranded if a claim made in its label or labeling that characterizes the level of a nutrient in the food, or characterizes the relationship between a nutrient in the food and a disease or health-related condition, unless the claim is made in accordance with regulations issued by the agency. FDA has adopted regulations implementing the 1990 amendments with respect to nutrient content claims in § 101.13 (21 CFR 101.13) and subpart D of part 101 (21 CFR part 101) of FDA's regulations and with respect to health claims in § 101.14 and subpart E of part 101.

One of the purposes of the 1990 amendments was to encourage the development of new food technologies. (See 136 Congressional Record S 16610, October 24, 1990, statement of Senator Hatch: ''[M]anufacturers should have the economic incentives they need to be creative and innovative so that more and more low-fat, reduced sodium, and high-fiber foods come onto the market.'') The 1990 amendments also addressed ''the need to have consistent, enforceable rules pertaining to the claims that may be made with respect to the benefits of nutrients in foods.'' (See H. Rept. No. 538, 101st Cong., 2d sess., at 8 (1990).) It is likely that new, more healthful products that qualify for claims will be introduced. Yet newly developed foods can present situations that challenge FDA's traditional enforcement tools of inspection and sample analysis.

When FDA issued the regulations implementing the 1990 amendments, the agency determined that, in certain situations, adequate enforcement of the new regulations would be possible only if the agency could review the information that a manufacturer had developed to support the statements on its food labels. One such situation is aeration, a technique now being used to reduce the fat and calorie content of foods. (See the January 6, 1993, final rule on serving sizes (58 FR 2229 at 2271).) Comments on the proposed rule on serving sizes argued that manufacturers of aerated foods should be permitted to substitute a volume-based measure for a weight-based reference amount as the basis for determining the product's serving size. FDA determined that the most reasonable solution was to allow manufacturers to determine a ''density-adjusted reference amount'' for their aerated foods. Under the final regulations, however, manufacturers who choose this approach must have available upon request certain information, including a detailed protocol and records of all data used to arrive at the density-adjusted reference amount (58 FR 2272; § 101.12(e)), available for inspection by FDA.

FDA also found it necessary to impose a records requirement for claims such as ''light,'' which compare the amount or percentage of a nutrient in one product to a reference nutrient value derived from one of a variety of sources (e.g., a representative valid data base or an average value determined from the top three national brands). In issuing its final regulation on nutrient content claims, the agency required that:

> to fully inform consumers, firms that use a broad based reference nutrient value as a basis for a claim must be prepared to make information on how they derived the reference nutrient value available to consumers on request. In addition, the information must also be made available to appropriate regulatory officials on request. This additional requirement will assist regulatory officials in determining compliance with the requirements for appropriate reference nutrient values for products bearing a claim to ensure the claim is not false or misleading.

(58 FR 2302 at 2365, January 6, 1993; nutrient content claims, general principles final rule.) The agency codified this requirement at § 101.13(j)(1)(ii)(A).

Another example of the agency's need to examine supporting information arose with respect to the caloric content of new products with reduced digestibility, such as novel fats and carbohydrates (58 FR 2079 at 2111, January 6, 1993; mandatory status of nutrition labeling, final rule). The agency stated that it would consider the digestibility of new products on a case-by-case basis. FDA also said that those manufacturers who wish to declare adjusted values for the energy contribution of a substance, based on reduced digestibility, should include information on the digestibility of the substance, analytical assay procedures for the compound, and data on interference with required methods of analysis in a food additive petition or in a petition for affirmation that use of the substance is generally recognized as safe, or should provide the information to the agency by other appropriate means. (See 58 FR 2079 at 2087 and 2111 and § 101.9(c)(1)(I)(D).)

Nutrient content claims for restaurant foods presented FDA with difficult compliance questions, as well (58 FR 2302 at 2387). In order to provide a way for restaurants to make claims, FDA devised a ''reasonable basis'' standard, under which restaurateurs who make nutrient content claims for their foods on labeling other than menus must be prepared to present to regulatory officials the basis for their belief that pertinent nutrient levels are present in their foods. (58 FR 2302 at 2388 and § 101.13(q)(5)(ii).) By requiring access to information supporting nutrient content claims, FDA sought to encourage the provision of useful dietary information on restaurant foods while maintaining its ability to assure consumers that nutrient content claims made for restaurant foods reasonably reflect the nutrient content of the food (58 FR 2302 at 2387).

Although in some situations, such as those described above, FDA required that access to a manufacturer's information supporting its labeling claims be provided to the agency, the agency declined to adopt the review of nutritional analyses on file at firms as a general investigatory procedure (58 FR 2079 at 2110). The agency set forth compliance criteria in § 101.9(g) that explain how its traditional investigatory procedures will be applied to mandatory nutrition labeling and, by extension, to claims made under section 403(r) of the act. A comment on proposed § 101.9 suggested that FDA substantiate nutrition label information by verifying laboratory analysis results on file at a firm (58 FR 2079 at 2110). The comment cited, as a model for FDA

to follow, the food labeling regulations proposed (and since made final) by the United States Department of Agriculture (USDA) that require firms to maintain records to support the validity of nutrient declarations contained on product labels and to make these records available upon request by USDA. (See 9 CFR 317.309(h)(8) and 381.409(h)(8).) The agency responded:

> To support a misbranding charge for inaccurate nutrient content information, FDA must have accurate, reliable, and objective data to present in a court of law. To obtain that information, FDA relies upon the work performed by its trained employees because it does not have legal authority in most instances to inspect a food manufacturing firm's records.

(58 FR 2079 at 2110.)

This statement reflects the fact that, unlike USDA, FDA does not have explicit, broad statutory authority to inspect food manufacturing records. However, as discussed in greater detail below, FDA may issue regulations for the efficient enforcement of the act, and those regulations may require that access to certain records be provided to the agency. Thus, although the statement that FDA lacks authority to inspect the records of a food manufacturing firm ''in most instances'' is generally accurate, it is also true that FDA may legally inspect a food manufacturing firm's records when it acts under the authority of a regulation that provides for records inspection.

II. Recent Enforcement Concerns

Since the publication of its final regulations implementing the 1990 amendments, FDA has given further consideration to the difficulties it expects to encounter in enforcing the new rules. When it issued the final rules, FDA identified and addressed the particular problems of which it was aware, such as aeration. Although this approach appeared adequate at the time the regulations were developed, the agency now recognizes that there may be situations that are not provided for in its current regulations in which it will need to have access to records in order to enforce the act adequately.

For example, circumstances may arise of the sort foreshadowed in the final rule authorizing health claims associating calcium with a reduced risk of osteoporosis. In that rule, the agency anticipated that:

> * * * instances may develop in which the bioavailability of the calcium source has not been shown, including the use of new fortificants or food products in which the combination of the component nutrients raises concerns about the assimilability of calcium from the product (e.g., a new bread rich in a novel high phytate fiber source and fortified with calcium).

(See 58 FR 2665 at 2667, January 6, 1993). In the Federal Register of January 6, 1994, the agency also stated that ''[c]alcium sources whose bioavailability has not been shown would be at risk for * * * enforcement action.''

Having further considered this type of situation, the agency believes that it would be a far more appropriate and efficient use of its resources to require the manufacturer of a new food product labeled with a health or nutrient content claim, such as the bread described above, to provide the agency with access to the information that the manufacturer has developed to support a claim. Where a company has developed a product and labeled it with a health or nutrient content claim, and elaborate testing is required to provide the basis for the claim (e.g., animal tests for bioavailability, 58 FR 2665 at 2667), the agency should not have to duplicate those tests. Indeed, it would be unlikely that the agency would have the resources to do so. Thus, unless FDA were able to review the underlying data, companies could make certain claims on newly developed foods that the agency effectively would be unable to verify. Companies would then be in a position to make false labeling statements with virtual impunity.

FDA is also concerned that the development and use of new testing methods may place it in the position of not having sufficient information to assess the accuracy of a claim. The agency has recognized that advances are being made in the area of nutrient testing. For example, in issuing its final regulation on nutrition labeling, the agency noted that testing for certain nutrients is being actively researched (see 58 FR 2079 at 2112 (cholesterol)), and that new testing methods are being developed (see 58 FR 2079 at 2113 (sugars)). The agency said that it would not ''preclude [companies'] use of emerging technologies * * * as they are developed and validated,'' (58 FR 2079 at 2113), but that, for compliance purposes, it would continue to use the methods of the Association of Official Analytical Chemists (AOAC) International or other validated procedures (58 FR 2079 at 2109). However, FDA now expects that there may be situations in which this approach is inadequate; for example, where there is no AOAC or other validated method applicable to a particular food, and a manufacturer has used a new testing method to determine that its food qualifies to bear a claim. Such a case might involve a novel form of fat that requires the use of unconventional analytical methods (58 FR 2079 at 2087).

New foods and new testing techniques are two matters about which the agency has enforcement concerns. The agency does not wish to stand in the way of the development of new technology and of new foods by limiting companies to conventional manufacturing techniques and analytical methods, and FDA believes that to do so would be fundamentally inconsistent with the purpose of the 1990 amendments. (See 136 Congressional Record, S 16610, October 24, 1990, statement of Senator Hatch, stating that Congress ''should not deter'' the benefits of new, more healthful foods for the consumer.) However, the only way that the agency can avoid doing so, and still enforce the act effectively, is if it is able to examine certain relevant records.

The agency also has concerns about claims that are based on information about a food that is available only to the food manufacturer and without which the agency would be unable to evaluate the truthfulness of the claim. ''Light'' provides an example of this type of claim. Without information on what the company has used as its reference nutrient value, FDA cannot determine whether the claim accurately describes the food. An inflexible approach would be to prohibit these claims altogether. However, FDA believes that it is consistent with the 1990 amendments to permit certain useful nutrition-related information in food labeling if the agency can be assured that the information accurately describes the labeled food.

Under section 403(r)(2)(C) and (r)(2)(D) of the act, certain foods bearing nutrient content claims as part of their brand names are exempt from requirements contained in section 403(r)(2) of the act, if the brand name was in use for the food before October 25, 1989 (§ 101.13(q)(1) and (q)(2)). Without access to company records, FDA will often not be able to determine whether a food that is asserted to qualify for this ''grandfather'' provision actually qualifies; i.e., whether the name was in use prior to October 25, 1989, and whether the food is unchanged. As with the claim ''light,'' this information may be available only to the food manufacturer. FDA's tentative view is that companies that take advantage of this exemption should be prepared to demonstrate to FDA that the food for which they claim the exemption qualifies for it.

The regulations that FDA is now proposing are designed both to ensure that the agency's ability to enforce the 1990 amendments is not compromised and to avoid significant interference with the development of new food technologies and more healthful foods. The circumstances described above establish a need for FDA to have access to records in particular situations; this rule is intended to address those situations. The agency expects that the concerns it has identified will arise primarily with respect to foods bearing claims (e.g., a new food designed specifically to meet the requirements of a nutrient content claim). Therefore, although the proposed regulations are limited in scope to health and nutrient content claims, the agency expects that they will be sufficient to enable it to enforce the provisions of the 1990 amendments and the regulations implementing those amendments, and it does not at this time anticipate extending these proposed requirements to other situations.

III. Legal Authority

When Congress enacted the 1990 amendments, it sought to ensure that the rules pertaining to health and nutrient content claims would be enforceable (see H. Rept. 538, 101st Cong., 2d sess. 8, 9 (1990)). Health and nutrient content claims are intended to make the consumer aware of the nutritional attributes of the labeled food. Because these claims are meant to help consumers maintain healthful dietary practices, it is of the utmost importance that they accurately reflect the nutritional composition of the labeled food. (See 136 Congressional Record, H 12953, October 26, 1990, statement of house floor managers: ''There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims.'')

The agency expects that many advances in food technology will occur that will provide the basis for claims, as food products are designed to meet the requirements for particular health and nutrient content claims. These developments, although beneficial, have the potential, as stated above, to outstrip the agency's traditional enforcement tools. This proposal is intended to address this problem. By enabling manufacturers to provide valuable information to consumers, while ensuring that the agency has the ability to verify that information, the regulations being proposed will serve the interests of both manufacturers and consumers. Food manufacturers will be able to profit from the advances that they make by marketing foods with claims that make the foods attractive to consumers, yet consumers and competitors can be confident that the agency has the tools to ensure that the claims appropriately appear on the foods that bear them. Thus, consumers will be able to rely on the claims to structure their diet in a manner that allows them to achieve their dietary goals.

FDA may require records to be maintained in specific instances and may inspect those required records, despite the act's lack of express, general statutory authority to inspect records. The Supreme Court has recognized that FDA has authority that ''is implicit in the regulatory scheme, not spelled out in haec verba'' in the statute. (See *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973).)

> Indeed: it is a fundamental principle of administrative law that the powers of an administrative agency are not limited to those expressly granted by the statutes, but include, also, all of the powers that may fairly be implied therefrom. * * * In the construction of a grant of powers, it is a general principle of law that where the end is required the appropriate means are given and that every grant of power carries with it the use of necessary and lawful means for its effective execution.

(*Morrow* v. *Clayton*, 326 F.2d 35, 44 (10th Cir. 1963).)

Under section 701(a) of the act (21 U.S.C. 371(a)), the agency may issue regulations for the efficient enforcement of the act. Courts have recognized that FDA may impose recordkeeping requirements where they effectuate the act's goals. (See *Toilet Goods Association* v. *Gardner*, 387 U.S. 158, 163–64 (1967); and *National Confectioners Association* v. *Califano*, 569 F.2d 690, 693 & n.9 (D.C. Cir. 1978).) The agency has required that records be maintained and made available for inspection by FDA employees in a number of situations. (See, e.g., 21 CFR 108.25(g) and 114.100 (acidified foods); 108.35(h) and 113.100 (thermal processing of low-acid foods); part 129 (21 CFR part 129) (bottled drinking water); 172.320 (amino acids); 176.170 (components of paper and paperboard in contact with aqueous and fatty foods); and 179.25(e) (food irradiation).)

FDA has tentatively determined that the proposed requirements, which would cover only those health and nutrient content claims that pose particular enforcement difficulties, are necessary for the efficient enforcement of the act. Ensuring the accuracy of claims was an overriding concern of Congress in passing the 1990 amendments. Congress envisioned that, under the act as amended, ''only truthful claims may be made on foods'' (136 Congressional Record H 12953, October 26, 1990, statement of Representative Waxman. See also 136 Congressional Record H 12954, statement of Representative Moakley: ''This bill will help curb misleading claims * * *.''; and H. Rept. 538, 101st Cong., 2d sess. 21 (1990): ''The [health] claim on the food label or labeling would have to be stated in a manner which accurately represented the substance of the regulation * * *.'') By its terms, section 403(r) of the act (21 U.S.C. 343(r)(1)) applies to claims made ''for'' a food ''in the label or labeling of the food.'' In order for a claim ''for'' a food to be truthful, it must accurately describe the labeled food. A food labeled ''low fat'' must meet the definition of ''low fat'' in 21 CFR 101.62(b) and any other applicable requirements. Similarly, a food bearing a health claim relating calcium intake to the risk of osteoporosis must, among other things, actually provide the consumer with a ''high'' amount of calcium (§ 101.72(c)(2)(ii)).

It is implicit in the 1990 amendments that a manufacturer who places a health or nutrient content claim in food labeling must have knowledge that the food qualifies to bear the claim. Congress expected that manufacturers would have to ascertain the nutritional attributes of their food products, through laboratory analysis or otherwise, in order to label those products properly. (See H. Rept. 538, 101st Cong., 2d sess. 14 (1990), stating that nutrient definitions will enable manufacturers to ''know the type of analysis to conduct on the food.'') FDA has previously stated that a food manufacturer is responsible for the accuracy of its food labels (58 FR 2079 at 2163 and 2165). Indeed, placing a claim in food labeling that calls the consumer's attention to the food's nutritional characteristics is a representation that the manufacturer has evidence that the food meets the requirements for the claim.[1] Thus, making a claim without such a basis

[1] Cf. Aerosolized food, drug, and cosmetic products, proposed rule; 38 FR 6191 at 6192, March 7,, 1973, (''[W]ith respect to the safety of cosmetics, [the act] necessarily contemplates that the manufacturer or distributer has obtained all data and information necessary and appropriate to substantiate the product's safety before marketing. Any cosmetic product whose safety is not adequately substantiated prior to marketing may be adulterated and would in any event be misbranded unless it candidly and prominently warns that the safety of the product has not been adequately determined.'') *Thompson Medical Co., Inc.* v. *FTS*, 791 (1987) (''[I]n general an advertisement is considered deceptive if the advertiser lacks a 'reasonable basis' to support the claims made in it.''

would be misleading, in violation of section 403(a) of the act.

The agency anticipates, and hopes, that in some instances companies will be amenable to demonstrating to FDA how particular values were calculated, regardless of the existence of these regulations. In the mandatory status of nutrition labeling final rule, the agency noted that: ''A few comments expressed the position that FDA should not declare a product misbranded until the manufacturer has had an opportunity to establish that the variations are reasonable under the circumstances'' (58 FR 2079 at 2162). Moreover, the agency considers that, when a product bears a claim based on information available solely to the manufacturer, it is reasonable for the agency to have access to that information. (See *United States* v. *An Article of Device*, 731 F.2d 1253, 1261–62 (7th Cir. 1984) (upholding regulation requiring makers of prescription devices to be able to prove that their devices work safely for their intended purposes and stating that ''[w]here the government's access to the necessary information may be limited * * * it seems not inappropriate to put the burden of persuasion on the party who * * * presumably has better access to the relevant information''.) (See also *Trans-American Van Service, Inc.* v. *United States*, 421 F. supp. 308, 331 (N.D. Tex. 1976).)

In section 3(b) of the 1990 amendments, Congress specifically directed FDA to issue regulations implementing section 403(r) of the act, and FDA has done so. Congress clearly contemplated that, in these regulations, the agency would not only define certain terms used in claims but would also determine the circumstances when claims can be made (see 136 Congressional Record H 5841, July 30, 1990, (''[T]he secretary is required, in the regulations, to define the circumstances under which statements disclosing the amount and percentage of nutrients in food will be permitted.''); 136 Congressional Record H 12953, October 26, 1990, (defined terms ''will have to be used in a manner that is consistent with the FDA's definition.''); and 136 Congressional Record S 16609, October 24, 1990, statement of Senator Metzenbaum:

> [T]he bill does not specify how the term 'light' should be defined or how the Secretary should permit the term to be used. However, the bill gives the Secretary broad authority to develop an appropriate definition, so the Secretary certainly could consider permitting the term 'light' to be used in the manner * * * describe[d].)

FDA is now proposing to amend the general requirements for nutrient content and health claims in § § 101.13 and 101.14 so that manufacturers who choose to place certain claims on the food label or in labeling may do so only if they keep the information on which the claim is based and make it available to appropriate regulatory officials upon request. Failure to meet the requirements by maintaining appropriate records and complying with an agency request to examine those records will be a violation of section 403(r) of the act, misbranding the food bearing the claim.

IV. The Proposal

FDA is now proposing that manufacturers who place certain types of claims on the labels or labeling of food be required to maintain the information upon which they have relied in determining that the food meets the requirements for the claims and to make it available to the agency upon request. The agency proposes that the claims covered by this requirement will be those based on new food technology (e.g., novel ingredients such as fat substitutes) or a new use of a food technology (e.g., manufacturing methods such as aeration), those based on the results of novel or nonstandardized testing procedures (e.g., where there is no applicable AOAC or other validated method), and those which the agency cannot evaluate without such information (e.g., because they are based on information available only to the manufacturer). The agency believes that these three categories encompass the areas of enforcement difficulty that it has already encountered in developing its new food labeling regulations and those that it can expect in the future, as advances in food technology are made.

Compliance with the proposed regulations would not entail the creation of any new information or the compilation of any special records. Rather, the proposed recordkeeping requirement would obligate manufacturers simply to keep and provide FDA with information that they should already possess. Adequate records may consist of results of direct product analyses, data base values or recipe calculations, or a combination of direct analyses, data base values, and recipe calculations.

The agency anticipates that manufacturers may have concerns about the confidentiality of the information inspected by the agency under this regulation. Manufacturers should be assured that FDA does not and would not release information that would provide a competitive advantage to another manufacturer (21 CFR 20.61). For example, if a company's records that support the validity of a labeling statement contain confidential information describing product formulation, manufacturing processes, or unique testing methods, the agency would protect this information from public disclosure (21 CFR 20.61). (See also 5 U.S.C. 552(b)(4); 18 U.S.C. 1905; and 45 CFR 5.65.)

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analyis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency estimates that this proposed rule would cause some incremental cost of developing, maintaining, and storing information above what food firms would normally experience. However, the agency anticipates these costs will be small. Therefore, the agency finds that the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because any records or necessary documents would be ones that any responsible firm would create and maintain in the normal course of business, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains record retention requirements that are subject to public comment and to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 and 3507).

Therefore, in accordance with 5 CFR part 1320, a description of the record retention requirements is given below with an estimate of the annual collection of information burden. Included in the estimate is the time for reviewing instructions, gathering necessary data, and maintaining the required records.

FDA is soliciting comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) evaluate the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, when appropriate.

Title: Record Retention Requirements for Nutrient Content Claims and Health Claims.

Description: FDA has previously issued regulations that prescribe nutrient content claims (§ 101.13 and subpart D) and health claims (§ 101.14 and subpart E) that may be used on the label or labeling of a food. The proposed rule would establish a requirement that, in certain circumstances, persons responsible for the labeling of foods with nutrient content claims and health claims maintain the records upon which they rely as the basis for those claims. The proposal would also require that those records be made available to appropriate regulatory officials upon request. The proposed regulation does not specify the records that must be retained or the format in which they must be retained but proposes that they be the ones which form the basis for the claims. Thus, the agency believes that the proposed provisions will add only a minor additional record retention burden for firms subject to the proposed provisions.

Description of Respondents: Persons and businesses, including small businesses.

Estimated Annual Reporting and Recordkeeping Burden

21 CFR Section	No. of Responses Per Respondents	Total Annual Responses	Hours Per Response	Total Annual Hours	Total Operating/ Maintenance Costs
101.13 and 101.14	10	1,000	1	1,000	$46,000

The agency has submitted copies of the proposed rule to OMB for its review of these recordkeeping requirements. Interested persons are requested to send comments regarding information collection by March 4, 1996, but not later than April 2, 1996 to the Office of Information and Regulatory Affairs, OMB, rm. 1035, New Executive Bldg., Washington, DC 20503, ATTN: Desk Officer for FDA.

VIII. Comments

Interested persons may, on or before April 17, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1.The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.13 is amended by revising paragraph (o) and by adding new paragraph (s) to read as follows:

§ 101.13 Nutrient content claims—general principles.

* * * * *

(o) Except as provided in § 101.10 and in this paragraph, compliance with requirements for nutrient content claims in this section and in the regulations in subpart D of this part will be determined using the analytical methodology prescribed for determining compliance with nutrition labeling in § 101.9. With respect to those foods covered by paragraph (s) of this section, compliance may be determined by reviewing the records required to be kept under paragraph (s) of this section.

* * * * *

(s) Each person responsible for the labeling of a food that bears a nutrient content claim defined in subpart D of this part that is based on:

(1) A new food technology (e.g., novel ingredients such as fat substitutes) or a new use of a food technology (e.g., manufacturing method such as aeration);

(2) Novel or nonstandardized testing procedures (e.g., where there is no applicable Association of Official Analytical Chemists method or other reliable and appropriate analytical procedure); or

(3) Information available only to the person responsible for the labeling, and which the agency cannot evaluate without such information, shall maintain, for as long as the food is marketed, all records that demonstrate that the food meets the requirements in this section and in the applicable regulation in subpart D of this part. These records shall be made available for authorized inspection and copying by appropriate regulatory officials and shall be submitted to those regulatory officials upon request.

3. Section 101.14 is amended by adding new paragraph (h) to read as follows:

§ 101.14 Health claims: general requirements.

* * * * *

(h) Records. Each person responsible for the labeling of a food that bears a health claim provided for in subpart E of this part that is based on:

(1) A new food technology (e.g., novel ingredients such as fat substitutes) or a new use of a food technology (e.g., manufacturing method such as aeration);

(2) Novel or nonstandardized testing procedures (e.g., where there is no applicable Association of Official Analytical Chemists method or other

reliable and appropriate analytical procedure); or

(3) Information available only to the person responsible for the labeling, and which the agency cannot evaluate without such information, shall maintain, for as long as the food is marketed, all records that demonstrate that the food meets the requirements in this section and in the applicable regulation in subpart D of this part. These records shall be made available for authorized inspection and copying by appropriate regulatory officials and shall be submitted to those regulatory officials upon request.

Dated: December 12, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–2153 Filed 2–1–96; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI41–01–6999b; FRL–5409–9]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve a revision to the Michigan State Implementation Plan (SIP) for the general conformity rules. The general conformity SIP revisions enable the State of Michigan to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level in accordance with 40 CFR part 93, subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

DATES: Comments on this proposed action must be received by March 4, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie at (312) 353–6680.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this Federal Register. Copies of the request and the USEPA's analysis are available for inspection at the following address: USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. (Please telephone Michael G. Leslie at (312) 353–6680 before visiting the Region 5 office.)

Authority: 42 U.S. C. 7401–7671q.

Dated: December 13, 1995.

Gail Ginsberg,

Acting Regional Administrator.

[FR Doc. 96–1851 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[GA–28–1–6955b; GA–30–1–7009b; FRL–5318–4]

Approval and Promulgation of Implementation Plans State: Georgia; Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Georgia through the Department of Natural Resources, Environmental Protection Division (GA EPD) for the purpose of realphabetizing and updating definitions, updating volatile organic compounds (VOCs) reasonably available control technology (RACT) rules, stationary source monitoring and testing procedures, and regulations for the prevention of significant deterioration of air quality (PSD). In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 4, 1996.

ADDRESSES: Written comments on this action should be addressed to Laura Thielking at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Laura Thielking, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, X4210. Reference files GA–28–1–6955 and GA–30–1–7009.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: September 29, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 96–1929 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[GA–21–3–64881b; FRL–5319–6]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of Georgia for the purpose of establishing regulations governing emission statements, inspection and maintenance procedures, new source permitting requirements and stage II vapor recovery regulations. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal

because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 4, 1996.

ADDRESSES: Written comments on this action should be addressed to Alan Powell at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Alan Powell, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4209. Reference file GA–21–5747.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: September 18, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 96–1846 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[GA–21–2–5930b; FRL–5321–7]

Approval and Promulgation of Implementation Plans; Georgia: Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision originally submitted on November 13, 1992, and resubmitted on September 27, 1995, by the State of Georgia for the purpose of establishing a small business assistance program (SBAP). In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 4, 1996.

ADDRESSES: Written comments should be addressed to: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of Georgia may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555, ext. 4195.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: October 17, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 96–1927 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[RI15–1–6954b; A–1–FRL–5329–4]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Control of Volatile Organic Chemicals From Automotive Refinishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes and requires VOC emission standards for automotive refinishing operations. In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before March 4, 1996.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and

EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 16, 1995.

John P. DeVillars,

Regional Administrator, EPA New England.

[FR Doc. 96–2229 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[AD–FRL–5405–6]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permit Program submitted by the Commonwealth of Massachusetts. Massachusetts' Operating Permit Program was submitted for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits for all major stationary sources and to certain other sources. EPA is also approving the Commonwealth's authority to implement hazardous air pollutant requirements. In the Final Rules Section of this Federal Register, EPA is promulgating interim approval of the Massachusetts Operating Permit Program as a direct final rule without prior proposal because the Agency views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before March 4, 1996.

ADDRESSES: Comments should be addressed to Ida E. Gagnon, Air Permits, APO, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the State's submittal and other supporting information relevant to this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 10th floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits, APO, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 28, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 96–2249 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 76

[FRL–5416–4]

Acid Rain Program; Nitrogen Oxides Emissions Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of addition of documents to docket and of extension of comment period on proposed rule.

SUMMARY: On January 19, 1996 the Environmental Protection Agency (EPA) promulgated a proposed rule implementing the second phase of the Nitrogen Oxides Reduction Provisions in Title IV of the Clean Air Act (refered to as ''the January 19, 1996 proposed rule''). The proposed rule established nitrogen oxides (NO_X) emission limitations for certain coal-fired utility units and revised NO_X emission limitations for others as specified in section 407(b)(2) of the Clean Air Act. The emission limitations will reduce the serious adverse effects of NO_X emissions on human health, visibility, ecosystems, and materials.

EPA recently determined that certain materials related to interagency review of the January 19, 1996 proposed rule were erroneously excluded from the rulemaking docket. EPA has added those materials to the docket. Further, EPA is extending the comment period so that comments on the proposed rule are due on March 19, 1996.

DATES: *Comments.* Comments on the January 19, 1996 proposed rule (which implements the second phase of the Nitrogen Oxides Reduction Provisions of Title IV) must be received on or before March 19, 1996.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air Docket Section (A–131), Attention, Docket No. A–95–28, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Docket. Docket No. A–95–28, containing supporting information used in developing the proposed rule (including the added materials relating to interagency review), is available for public inspection and copying betweeen 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street, SW, Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Peter Tsirigotis, at (202) 233–9133), Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On January 23, 1996, the Utility Air Regulatory Group (UARG) requested that the period (which had been set at 45 days) for submission of comments on the January 19, 1996 proposed rule be extended for 30 more days, until April 3, 1996. In addition, UARG stated that certain materials that related to interagency review of the proposed rule and that were required to be docketed under section 307(d)(4)(B)(ii) of the Clean Air Act had not been included in the docket.

In response, EPA has reviewed the docket and, on January 26, 1996, added to the docket the interagency materials that were erroneously excluded. UARG was notified at that time about the addition of the materials. Further, EPA has considered the extension request as well as the importance of completing this rulemaking (including interagency review of the final rule) and issuing a final rule by the statutory deadline, under section 407(b)(2) of the Act, of January 1, 1997. In light of these considerations, EPA is extending the comment period to March 19, 1996. This extension will provide commenters a total of 60 days from the promulgation

of the January, 19, 1996 proposed rule. This also provides a sufficient period, well in excess of the typical 30-day notice period, from the addition of materials in the docket and the publication of the instant notice concerning such addition.

Dated: January 29, 1996.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 96–2238 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 80

[FRL–5412–2]

RIN 2060–AD55

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act prohibits the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. In today's action, EPA proposes to revise its regulations regarding gasoline so as to prohibit the introduction of gasoline which is produced with the use of any lead additive, or contains more than 0.05 gram of lead per gallon, into commerce for use as motor vehicle fuel effective January 1, 1996, to remove existing regulatory provisions which will no longer be necessary as a result of this ban, and to modify other provisions to reflect the institution of this ban. In the final rules section of this Federal Register, EPA is promulgating this amendment as a direct final rule without prior proposal, because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the proposed changes is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received by March 4, 1996.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–95–13, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. Materials relevant to this rulemaking have been placed in Docket A–95–13. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material. Those wishing to notify EPA of their intent to submit adverse comment or request an opportunity for a public hearing on this action should contact Paulina Chen, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9031.

FOR FURTHER INFORMATION CONTACT: Paulina Chen, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9031.

SUPPLEMENTARY INFORMATION: For addition information, see the direct final rule published in the rules section of this Federal Register.

Dated: January 29, 1995.

Carol M. Browner,

Administrator.

[FR Doc. 96–2232 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Box Turtles From the United States in 1996

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for Information and Comment.

SUMMARY: Information is solicited to assist the Fish and Wildlife Service in (1) making an export finding for box turtles for 1996, as required under The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and (2) evaluating the feasibility of breeding of box turtles in captivity for export. International Air Transport Association (IATA) Live Animals Regulations, as they apply to shipment of box turtles, are described, and comment is invited on IATA shipping container requirements for live box turtles.

DATES: Comments and information must be received by March 4, 1996.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, D.C. 20240. The fax number is (703) 358–2276. Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Comments and other information received are available for public inspection by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Scientific Authority finding—Dr. Marshall A. Howe, Office of Scientific Authority, phone (703) 358–1708; fax (703) 358–2276; e-mail marshall__howe@mail.fws.gov. Management Authority finding and export permits—Mr. Scott Hicks, Office of Management Authority, phone (800) 358–2104; fax (703) 358–2281.

SUPPLEMENTARY INFORMATION: Publication of this notice has occurred later than planned, because of the unexpected furlough of most Department of the Interior employees in December, 1995 and January, 1996. Nevertheless, the Fish and Wildlife Service (Service) believes that public input is important and has allowed for a 30-day public comment period. The Service realizes that the collecting period for turtles by commercial dealers in Louisiana is highly seasonal and will therefore issue its advice as promptly as possible after all public input has been thoroughly considered. It is the Service's intent to be able to issue export permits, if warranted, by March 15, 1996.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless the trade is strictly controlled. Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

International trade in Appendix II species is permitted only if shipments are accompanied by either an export permit issued by the country-of-origin, or a re-export certificate issued by an intermediary country. Before such

export permits can be issued, the designated Scientific Authority of the country-of-origin must make a finding that the exports will not be detrimental to the survival of the species (''non-detriment finding''); and the designated Management Authority of the country-of-origin must determine that the specimens to be exported were obtained legally and, for live specimens, that they are treated and shipped so as to minimize the risk of injury, damage to health, or cruel treatment [50 CFR 23.15(d)]. The Scientific Authority is also charged with monitoring the export permits and actual exports of Appendix II species on an ongoing basis, to ensure that the export remains at a level well below that which might make the species eligible for inclusion in Appendix I.

Non-Detriment Findings for Species Exported in Large Numbers

In making non-detriment export findings for Appendix II animal species traded in large numbers, Scientific Authorities consider such factors as whether take of the species or similar species in the past may have contributed to a reduction in its numbers or distribution, or whether life history traits indicate a potential vulnerability to current levels of take and export. Findings are usually based upon existing biological information derived from scientific studies and/or professionally accepted wildlife or fishery management programs. For species bred-in-captivity, a key element of the finding is an evaluation of the extent to which the captive population is self-sustaining, without need for augmentation from the wild.

Information desirable for making a non-detriment finding includes the total offtake of the species; the geographical source of the animals; an independent measure of population status (or an index to population change over time) for the species; and the presence of an enforceable program for managing take and commerce. Also desirable, and sometimes necessary, is information on recruitment potential, demographic structure of the collected population, status of the habitat base, and an assessment of market factors likely to influence commercial demand in the future.

For Appendix II species traded in large numbers, the Service, as Scientific Authority for the United States, has generally found it to be impractical to develop findings for each export application. A general finding, which defines minimum criteria that future applications must meet for approval, is the preferred approach. One type of general finding used by the Service is a determination that all exports allowed by a program professionally managed by a State wildlife agency will be non-detrimental. This approach has been taken in certain special cases, where the primary management responsibility for heavily traded Appendix II species (e.g., alligators) rests with the States, and the State program has been determined to collect the requisite information on population status and trends and otherwise meet professionally accepted standards for wildlife management programs.

Other general findings may establish restrictive conditions, such as a quota (maximum allowable number) or other export limitation mechanism, to ensure that exports from the United States remain non-detrimental. Under a quota system, for example, all valid applications for export permits that meet Management Authority criteria for legal acquisition and humane transport would be approved, until the cumulative number of specimens exported reached the established quota level. Subsequent applications would be denied. General export findings will be conservative (zero or minimal export permitted) when the quality and comprehensiveness of biological and management information are weak, or when substantial information suggests a possible detrimental impact of take. Similarly, liberal advices (high levels of export permitted) will be issued only when comprehensive information of high quality indicates the species can likely sustain intensive collection.

International Trade in Box Turtles

At the ninth meeting of the Conference of the Parties to CITES in 1994, the Parties adopted proposals submitted by the United States and the Netherlands to add to Appendix II all species of box turtles (*Terrapene* spp.) not already listed on a CITES Appendix. Two of these species are native to the United States: the eastern box turtle (*T. carolina*) and the ornate box turtle (*T. ornata*). The listing proposals were based on several sources of information. First, long-term population declines had been documented in most well studied populations in the United States (*T. carolina*: Maryland, Indiana, Missouri; *T. ornata*: Wisconsin, Kansas). Second, analysis of Service export statistics revealed a substantial increase in export of wild *T. carolina* and *T. ornata* for the pet trade in recent years, coincident with declining availability of certain popular tortoise species. According to Service data, the number of *T. carolina* reported to be exported was approximately 26,000 in both 1992 and 1993 and 22,000 in 1994. Reported export of box turtles identified as *T. ornata* totalled approximately 10,500 in 1993 and 12,300 in 1994. Finally, population modelling of other turtle and tortoise species with similar longevity, survival, and reproductive characteristics (e.g. Blanding's turtle, *Emydoidea blandingii*) suggest that box turtle populations may be unusually vulnerable to elevated mortality of adults or juveniles. Removal of adult box turtles from the wild for commercial trade could have the effect of being an additive mortality factor.

In considering how to manage trade in these newly listed species, the Service first reviewed State laws and regulations pertaining to commerce in reptiles and discussed management capabilities with representatives of wildlife agencies in those States interested in maintaining an export market for box turtles. On the basis of these reviews and discussions, the Service determined, for 1995 only, that only the State of Louisiana was interested in export and had the regulatory and management (including enforcement) infrastructure for managing collection of reptiles in a manner that could potentially allow the appropriate CITES findings to be made.

Key elements of the Louisiana regulations included the following: (1) requirement of a collector's license for anyone collecting or selling box turtles; (2) requirement of a dealer's license for anyone buying, acquiring, or handling native reptiles for resale or shipping out of State; (3) Department of Wildlife and Fisheries (hereinafter ''Department'') authority to inspect the premises, holding facilities, and records of dealers, and require data from dealers on the total number of box turtles taken within each of the State's wildlife districts; (4) establishment of a standing advisory committee (the Louisiana Reptile and Amphibian Task Force) that consists of university herpetologists, State personnel, and commercial interests; and (5) provision for penalties for violations of State laws related to trade in reptiles.

In this management context, the following information was considered in determining whether a non-detriment finding could be made for export of box turtles taken in Louisiana in 1995:

1. The Department provided the following assessment with respect to population status of *T. carolina*: ''After consultation with the Louisiana Reptile and Amphibian Task Force * * * there is no evidence to indicate that native (eastern) box turtles are endangered or threatened in Louisiana.'' (It is recognized that this statement represents a professional

opinion rather than a quantitative assessment of population status.)

2. The primary target of turtle dealers in Louisiana appeared to be the Gulf coast subspecies, *T. carolina major*, which, according to the scientific literature, may be more commonly multiple-brooded than more northern subspecies and therefore possibly less vulnerable to take than turtle/tortoise species that have been the focus of recent population modelling efforts.

3. The Department was in the process of seeking funding for initiating studies of (1) the status of box turtle populations in Louisiana and (2) a comparison of box turtle demographic characteristics in protected and unprotected areas.

4. The Department would be collecting statistically representative data on the sizes (carapace length) of animals collected for commercial purposes. Such data are important for determining whether commercial take is size-selective or negatively affecting the demographic structure of box turtle populations.

5. The Department stated its intention to develop these data collection efforts into an operational box turtle management program that will include, if necessary, such standard management protocols as quotas, seasons, and size limits. The Department provided a written commitment to the goal of assuring ''a sustainable and perpetual harvest of box turtles.''

On the basis of this available information, the Service's Scientific Authority made a general, non-detriment finding for 1995 establishing a precautionary export quota of 9,750 specimens of *T. carolina* taken in the State of Louisiana. This number represents 50% of the number of Louisiana-collected *T. carolina* believed, on the basis of export records, to have been exported from the United States in 1993 (the most recent year for which complete export figures were available). Based on studies of eastern box turtle population densities, this represents the adult population of approximately 4 square miles of suitable habitat. The Service believed then and continues to believe that this level of export for 1995 will not significantly affect populations, but that a much more substantial database on population status and impacts of take, and full implementation of a management program, would be necessary before any increase in the quota could be considered. The Service was unable to make a non-detriment finding for *T. ornata*, or for *T. carolina* collected in States other than Louisiana.

Given the paucity of biological information currently available, the 1995 advice is subject to the following additional conditions:

1. It is limited to those animals held in captivity at the end of 1994 or collected in 1995.

2. Studies of (a) the status of box turtle populations in Louisiana and (b) a comparison of box turtle demographic characteristics in protected and unprotected (i.e., potentially subject to collection) areas will be initiated by the Department, in cooperation with Louisiana box turtle exporters, as soon as funding is secured. A study proposal, approved by the Louisiana Amphibian and Reptile Task Force, to assess the population status of box turtles must be received before any export applications for 1996 will be considered.

3. Because the impact of exports on populations cannot be thoroughly assessed without knowledge of the total commercial offtake of turtles (domestic use + export), issuance of permits for export will be further conditional upon collection of information by the Department on (a) the total number of box turtles collected for commercial markets in Louisiana, and (b) certain physical characteristics of all turtles (or a statistically representative sample), collected.

4. Collectors will be required to record the wildlife district (as defined by the Department) in which each turtle is collected and to provide this information to the wholesaler/retailers. The wholesaler/retailer will be required to provide such information to State authorities upon request and to retain the records for 3 years. Before export permits will be issued by the Service, dealers will have to certify that box turtles for which export permits are requested were taken in the State of Louisiana. The Department will review these certifications.

5. The limited quota will remain in effect until such time as (1) either analysis of data on turtle measurements or other information suggests that a change in the quota in either direction is warranted, or (2) field studies develop baseline information sufficient for modelling parameters of a sustainable level of take.

6. Advice on export applications for 1996 will not be issued before (1) data on sizes and locations of animals collected in 1995 are analyzed and the animals appear to be representative of a demographically healthy population; (2) the State's management program and the process of initiating the required field studies is determined to be on track; and (3) the existing information and proposed advice is made available for public review.

Developments Subsequent to 1995 Export Decision

After export advice was issued for specimens taken in Louisiana in 1995, the Department prepared a draft study plan for assessing the population status of box turtles and the impact of box turtle collection in Louisiana. After approval by the Louisiana Amphibian and Reptile Task Force, this plan was submitted to the Service for review. The Service found that the study design was appropriate for obtaining the information necessary for development of a sound management program.

The plan describes an approach to field-sampling of box turtles that should yield comparative data on populations and demographic structure between collected and uncollected areas. It also describes procedures State personnel will use for collecting demographic data on turtles in the possession of dealers prior to export. Funding for the study has been secured. However, because study plan development was not completed until late summer, field studies will not commence until 1996. Data on physical characteristics of a sample of turtles in the possession of dealers were summarized and provided to the Service in an October 1995 interim report.

A survey of Louisiana dealers reported by the Department in December 1995 yielded a total estimated collection in Louisiana in 1995 of 11,950 box turtles, of which 9,500 were ascribed to the Gulf coast race, *T. c. major*, and 2,450 to the three-toed race, *T. c. triunguis*. Service export records up to the time of this notice show that 6,115 of these (4,365 *major* and 1,750 *triunguis*) were exported from the United States. It is not known what proportion of the 5,835 animals not exported were marketed domestically, released, or maintained in captivity.

Samples of 437 *major* and 394 *triunguis* were selected for morphological analysis. Juveniles constituted 23.3 percent of the sample of *triunguis* and 9.6 percent of the sample of *major*. (For these purposes juveniles were defined as animals in size classes smaller than the first size class that, in a frequency distribution of collected animals by size class, exhibited a sudden increase). The sex ratio (male:female, all ages included) in the sample of collected animals was 1.0:0.78 for *triunguis* and 1.0:0.52 for *major*. Sex ratio varied substantially as a function of the time of year that animals were collected. Average carapace length was 123.2 mm for adult

triunguis and 164.9 mm for adult *major*. There was no sexual size dimorphism in *triunguis*, but carapaces of *major* males averaged 7.4 mm longer than female carapaces. Although there appeared to be no deliberate selectivity on the part of collectors with respect to size class of either race, the sex ratio bias toward males may be an artifact of a market or collector preference for males, which are, on average, more brightly colored and more active than females (fide Department staff).

According to the Department, the area from which box turtles were collected commercially in Louisiana in 1995 ranged from Lafayette and Baton Rouge east to the Mississippi border and southeast to the vicinities of New Iberia, Thibodeaux, and the Mississippi River delta. The range of collected *triunguis* extends along the northern border of this zone from the neighborhood of Baton Rouge across the northern border of Lake Pontchartrain and east to Mississippi. Maps provided by the Department indicate a narrow zone of overlap between the range of this race and that of *major* to the south. The Department believes that the great majority of box turtles are being taken along the margins of extensive swampland and bottomland hardwood forests and along just a few cleared corridors within this zone. They further state that 75 percent of the habitat of *major* is inaccessible.

The Service solicits comments on the information presented above and any additional information relevant to the issuance of export advice for box turtles from Louisiana for 1996.

Captive-Bred Box Turtles

The Service has received several inquiries and five permit applications (from Arkansas) concerning export of captive-bred box turtles. The Service considers captive-bred animals to be animals that are both conceived and hatched within the confines of a controlled environment physically isolated from wild populations. Offspring hatched in captivity from eggs collected from the wild or produced from eggs laid in captivity by gravid females collected from the wild are not considered to be captive-bred. Unless a captive-breeding program meets the rigorous standards of CITES Resolution Conf. 2.12, captive-bred Appendix II animals are subject to the same CITES permit requirements and non-detriment findings as wild-caught animals, as described above. For many species, however, properly managed captive-breeding programs can provide a sustainable supply of animals with minimal impact on wild populations.

The Service is not convinced of the feasibility of breeding box turtles in captivity in commercial quantities. The Service is also concerned about the difficulty of distinguishing captive-bred turtles from wild turtles, especially when wild specimens are readily available in the vicinity of the captive-breeding operation. To substantiate that individual box turtles are captive-bred and to allow the Service to make the necessary determinations, the breeder must be able to document the source and disposition of all box turtles that enter into the breeder's possession. This necessitates physical separation of the breeding stock from wild-caught turtles or marking each turtle individually, and providing detailed records of the captive-breeding operation. Such records must include the source of the parent stock, age and sex composition of the population, annual egg production, hatching success, mortality rate of breeder stock and hatchlings, and disposition of any turtles sold. To understand more fully the potential for both sustainable and verifiable captive-breeding of box turtles, the Service solicits additional information.

Transport Requirements

CITES requires that ''any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.'' Specifically, to export species listed in Appendix II, such as the box turtle, Article IV, paragraph (c) of the treaty requires that, to issue an export permit, the Management Authority of the exporting country must be satisfied that the animals in the shipment will be ''so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.'' The CITES party countries have agreed that compliance with the International Air Transport Association (IATA) Live Animal Regulations is the standard for meeting the treaty's humane transport requirements for air transport. The CITES party countries have also agreed that all CITES permits should state that for live animal shipments a permit is only valid if the shipment complies with the IATA Live Animal Regulations (Resolution Conf. 9.3). All U.S. CITES permits contain this provision as a permit condition to comply with this CITES requirement. If a shipment of box turtles is transported that is not in compliance with the IATA Live Animals Regulations, the export permit being used is not valid, and may not be accepted by the importing country.

All U.S. exporters who obtain CITES export permits for live box turtles are informed of the requirement to comply with the IATA Live Animals Regulations. Prior to export, CITES export permits must be endorsed by the Service's Division of Law Enforcement. If the shipment is not in compliance with IATA, Law Enforcement officials can refuse to endorse the export permit. Such shipments are also subject to refusal of clearance on import. Improperly transported containers, in addition to being subject to seizure or enforcement actions upon import, also increase the risk of disease or mortality to the animals contained therein.

It is therefore obligatory that all exports of box turtles from the United States comply with the IATA Live Animal Regulations, for air transport. Shipments may comply with either the 21st or 22nd Edition of the Live Animals Regulations, copies of which may be ordered directly from IATA, at 2000 Peel Street, Montreal, Quebec, Canada H3A 2R4.

These shipping standards are internationally accepted by all airlines that are members of IATA (the majority of all U.S. and world carriers, and all carriers shipping turtles internationally from the United States), and by the CITES party governments. The IATA Live Animals Regulations are multilateral and internationally accepted.

In addition to complying with the general requirements of the IATA Live Animals Regulations, shipments of box turtles are also required to comply with the specific container requirement applicable to box turtles, which is Container Requirement 43 in the 22nd Edition of the IATA Live Animals Regulations.

The Service notes the mandatory nature of the requirements that turtles not be overcrowded in the containers, that sufficient ventilation must be provided, and that the containers be sufficiently strong. For all shipments of live animals, the IATA Live Animals Regulations state that the container ''must be able to withstand other freight potentially damaging it or causing the structure to buckle or bend.'' A container used for box turtles must be manufactured from fibreboard, hardboard, plywood, or rigid plastics that can withstand crushing if other freight falls upon it. Containers must also have ventilation holes that are large enough to allow for air circulation. In some cases during very cold weather, styrofoam can be used to line the container as an insulating layer, as long as ventilation is not impeded. Fine wire or nylon mesh should be used to screen the ventilation openings, but should not have jagged edges that may injure the

animals or loose pieces that may be ingested. Box turtles should not under any circumstances be stacked or be shipped in containers that are deep enough to allow them to clamber on top of one another.

The Service also notes the requirement to comply with other aspects of Container Requirement 43 and the general IATA Live Animals Regulations, which are industry standards accepted internationally by air carriers and governments. The Service attends the IATA Live Animals Board meetings, which are also attended by air carriers, the CITES Secretariat, veterinary experts, and non-governmental organizations. The Service welcomes comments from industry, veterinary, and conservation experts on whether or not the IATA Container Requirement for box turtles could be refined in any way in order to facilitate more healthful or more humane transport of box turtles.

Future Actions

If possible, advice will be issued within a week of the closing period for comment and published in the Federal Register.

The primary authors of this request for information were Dr. Marshall A. Howe and Mr. Tim Van Norman, Office of Scientific Authority, and Mr. Scott Hicks and Dr. Susan Lieberman, Office of Management Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: January 25, 1996.

John G. Rogers,

Director.

[FR Doc. 96–2208 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 61, No. 23
Friday, February 2, 1996

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–002–1]

Asgrow Seed Co.; Receipt of Petition for Determination of Nonregulated Status for Squash Line Genetically Engineered for Virus Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Asgrow Seed Company seeking a determination of nonregulated status for a squash line designated as CZW–3 that has been genetically engineered for virus resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this squash line presents a plant pest risk.

DATES: Written comments must be received on or before April 2, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–002–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–002–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 18, 1995, APHIS received a petition (APHIS Petition No. 95–352–01p) from the Asgrow Seed Company (Asgrow) of Kalamazoo, MI, requesting a determination of nonregulated status under 7 CFR part 340 for a yellow crookneck squash line designated as CZW–3 (line CZW–3) that has been genetically engineered to contain genes that confer virus resistance. The Asgrow petition states that squash line CZW–3 should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, line CZW–3 has been genetically engineered to contain the coat protein genes from cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus for resistance to these three viruses. The subject squash line also contains the *nptII* gene from the prokaryotic transposon Tn5, which encodes the enzyme neomycin phosphotransferase II and is used as a selectable marker for transformation. Expression of the added genes is controlled by 35S promoters and terminators from the plant pathogen cauliflower mosaic virus. The *Agrobacterium tumefaciens* vector system was used to transfer the plasmid containing the DNA elements described above into the yellow crookneck squash parental line.

Line CZW–3 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. The subject squash line has been evaluated in field trials conducted in 1993 and 1994 under APHIS permits. In the process of reviewing the applications for field trials of line CZW–3, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The Food and Drug Administration (FDA) published a statement of policy on foods derived from new plant varieties in the Federal Register on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the Federal Register announcing the regulatory status of Asgrow's yellow crookneck squash line CZW–3 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 30th day of January 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–2259 Filed 2–1–96; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection in support of the Conservation Reserve Program (CRP). The collection requirements have been revised to decrease the number of respondents for certain forms, decrease the total annual responses to match the reduction in respondents, change form identified as CRP–42 to CRP–1F Addendum, and reduce the average response time for this form from 30 minutes to 5 minutes.

DATES: Comments on this notice must be received on or before April 2, 1996 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Comments may be sent to Cheryl Zavodny, Chief, Conservation Programs Branch, Conservation and Environmental Programs Division, USDA, FSA, P.O. Box 2415, Washington, DC 20013, (202) 720–6221.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 704, 1986–1990 Conservation Reserve Program and 7 CFR Part 1410, 1991–1995 Conservation Reserve Program Regulations.

OMB Number: 0560–0125.

Approval Date of Expiration: March 3, 1996.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: Revisions were made to the currently approved information collection to reflect the Department's continued efforts to retarget CRP to more environmentally sensitive acreage. Total public burden hours are based on the following assumptions:

1. Some contracts will expire from CRP on September 30, 1996;
2. Easement authority will not be reinstated;
3. Participants with acreage that expires from CRP on September 30, 1996, will be offered an opportunity to modify and extend the expiration date under certain conditions;
4. Five percent of eligible producers will elect to preserve bases, allotments, and quotas by continuing to abide by the terms and conditions of the contract after expiration.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .1207253 hours per response.

Respondents: Owners, operators, and other producers on eligible cropland.

Estimated Number of Respondents: 310,200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 37,449.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, D.C., 20503 and to Cheryl Zavodny, Chief, Conservation Programs Branch, Conservation and Environmental Programs Division, USDA, FSA, P.O. Box 2415, Washington, DC 20013, (202) 720–6221.

Copies of information collection documents may be obtained from Leslie Deavers, Agriculture Program Specialist, Conservation and Environmental Programs Division, USDA, FSA, P.O. Box 2415, Washington, DC 20013, (202) 720–9563.

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

Signed at Washington, DC, on January 25, 1996.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–2176 Filed 2–1–96; 8:45 am]

BILLING CODE 3410–05–P

Farm Service Agency

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request an extension for, and revision of, an information collection process currently in effect with respect to regulations issued under the United States Warehouse Act (USWA), related reporting and recordkeeping requirements and Standards for Approval of Warehouses Under the Commodity Credit Corporation (CCC) Charter Act.

DATES: Comments on this notice must be received on or before April 2, 1996 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Judy Fry, Agricultural Marketing Specialist, Warehouse and Inventory Division, Farm Service Agency, USDA, P.O. Box 2415, Washington, D.C. 20013–2415; telephone (202) 720–7433.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under the United States Warehouse Act, Related Reporting and Recordkeeping Requirements, and Standards for Approval of Warehouses Under the CCC Charter Act.

OMB Control Number: 0560–0120.

Expiration Date of Approval: February 28, 1996.

Type of Request: Extension and Revision of Currently Approved Information Collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0120, as identified above, allows FSA to effectively administer the regulations under the USWA, related reporting and recordkeeping requirements, and the Standards for Approval under the CCC Charter Act.

USWA and CCC activities are administered by FSA. Although there are several types of warehouses covered by USWA and CCC functions, the reporting requirements for a particular type of warehouse are essentially the same for all types of warehouses. With some exceptions, the same forms are used for both USWA licensing and CCC purposes. These forms are furnished to interested warehouse operators or used by warehouse examiners employed by FSA to secure and record information about the warehouse operator and the warehouse. The general purpose of the forms are identical, i.e., to provide those charged with issuing licenses under USWA or executing contracts for CCC as a basis to determine whether the warehouse and the warehouse operator meet applicable standards, to receive a license or contract, and to determine compliance once the license is issued or the contract approved.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .42799 hours per response.

Respondents: Business or other for profit.

Estimated Number of Respondents: 6500.

Estimated Number of Responses per Respondent: 4.566.

Estimated Total Annual Burden on Respondents: 19,544.

Comments are sought on these requirements including: (a) whether the continued collection of information is necessary for the proper performance of USWA functions and CCC contracting activities, including whether the information will have practical utility; (b) the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information to be collected; (d) minimizing the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Judy Fry, Agricultural Marketing Specialist, Warehouse and Inventory Division, Farm Service Agency, USDA, P.O. Box 2415, Washington, D.C. 20013–2415; telephone (202) 720–7433. Copies of the information collection may be obtained from Judy Fry at the above address. The comment period is limited to 30 days because of the current expiration date of the information collection approval.

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

Signed at Washington, D.C., on January 30, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–2260 Filed 2–1–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Bureau of the Census

1996 Test Census

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 2, 1996.

ADDRESSES: Direct all written comments to Margaret L. Woody, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Edison Gore, Bureau of the Census, Room 3536, FOB #3, Washington, DC 20233, (301) 457–3998.

SUPPLEMENTARY INFORMATION:

I. Abstract

The 1996 Test Census is designed to test new and improved methodologies for reducing the differential in the census results among the various components of the population, and for containing costs associated with conducting a census. The Census Bureau will use the results of this test, in combination with other research, to decide how to conduct the 2000 census. The test will be conducted in two rural sites and one urban site with a combined housing unit total of about 10,000. The rural sites (roughly 2,000 housing units) will encompass two American Indian reservations. The urban site (roughly 8,000 housing units) will encompass six census tracts in Chicago, Illinois.

A primary objective for both the rural and urban components of the test is to refine the Integrated Coverage Measurement (ICM) program. Other objectives are listed below.

Major objectives for the rural component of the test:

- Use and evaluate tribal ''administrative records,'' such as tribal rolls, utility records, tribal school records, and tribal voter registration as coverage improvement tools.
- Use improved address list development and collection methodology.
- Implement and evaluate a ''partnership agreement'' with the tribes, and expand the Tribal Liaison's role to include involvement in census operational activities.
- Test the use of statistical estimation techniques to improve the enumeration of residents on American Indian reservations and trust lands.

Major objectives for the urban component of the test:

- Test the ICM program in a reengineered census setting.
- Test techniques for measuring housing unit and noninstitutional group quarters coverage in a census setting.
- Test use of administrative records for coverage improvement.
- Test improved address listing techniques.

The 1996 Test Census will include four questionnaires—two self-enumeration simple forms (consisting of basic population and housing questions), a self-enumeration Individual Census Report (used to gather population information from residents of group quarters), and a self-enumeration Be Counted form (used only in the rural sites and made available at convenient locations for persons who did not receive a

questionnaire or believe they were not counted).

The two simple forms are identical in content, except for the household rostering questions. Another component of this test will be to evaluate two alternative approaches to household rostering. One roster design, called the ''rosterless'' version, does not require the respondent to create a traditional roster list. It includes an abbreviated set of instructions on who should be included and not included, and asks the respondent to provide the number of persons in the household. The second roster design, called the ''extended'' roster, includes a sequential set of reminders about whom to include, such as non-relatives as well as related persons, mobile persons who may have more than one residence, and persons with no usual residence.

Enumerator-administered questionnaires also will be used in this test to conduct nonresponse followup operations for housing units that do not return their questionnaires by mail. These questionnaires will be addressed in a separate OMB submission.

II. Method of Collection

We will conduct a complete census in the three test sites. In the rural sites, census enumerators will deliver the questionnaires to the households. Respondents will be asked to complete the questionnaires and return them by mail in the postage-paid envelopes. In the urban site, census questionnaires will be mailed to the housing units and returned in postage-paid envelopes.

III. Data

OMB Number: Not available.

Form Number: DT–1A, DT–1B, DT–10 (Be Counted), and DT–20A (Individual Census Report).

Type of Review: Regular.

Affected Public: Individuals and households.

Estimated Number of Respondents: 10,000 Housing Units.

Estimated Time Per Response: 9 minutes (DT–1A and DT–10), 10 minutes (DT–1B), and 2 minutes (DT–20A).

Estimated Total Annual Burden Hours: Total = 494 hours.

The estimated burden assumes an anticipated mail-back response rate of 35 percent, and a vacancy rate of 11 percent on average for the three sites. Although total burden normally is calculated assuming a 100 percent response rate, the burden for this test does not include the time taken by field enumerators to complete the enumerator-administered census questionnaires during nonresponse followup for the remaining 65 percent of households that we expect will not respond by mail. The burden for the enumerator forms, including the portion of the form that is completed for vacant units, will be reported in a separate OMB submission.

DT–1A = *233.6 hours* [9 minutes × 4,450 occupied housing units x .35(mail return rate)]; DT–1B = *260.1* hours [10 minutes × 4,450 occupied housing units × .35 (mail return rate)].

Estimated Total Annual Cost: $1.7 Million (FY96), and $0.3 Million (FY97).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 29, 1996.

Margaret L. Woody,

Office of Management and Organization.

(FR Doc. 96–2270 Filed 2–1–96; 8:45 a.m.)

BILLING CODE 3510–07–P

International Trade Administration

[A–428–814]

Certain Cold-Rolled Carbon Steel Flat Products From Germany; Termination of Antidumping Duty Administrative Review

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

ACTION: Notice of Termination of Administrative Review of Antidumping Duty Order; Certain Cold-Rolled Carbon Steel Flat Products From Germany (A–428–814).

SUMMARY: On September 8, 1995, in response to a request from petitioners, the Department of Commerce (''the Department'') initiated an administrative review of Thyssen Stahl AG (''TSAG'') and Thyssen, Inc. (''TINC''), covering the period August 1, 1994, through July 31, 1995. The Department received a request for withdrawal on December 14, 1995, from petitioners. Because the request for review was withdrawn, and there were no other requests from any interested parties for review of these or other companies under this antidumping duty order, the Department is now terminating this review.

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robin Gray; Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–1395 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION: On August 31, 1995, the Department received a request from petitioners for review of the antidumping duty order on certain cold-rolled carbon steel flat products from Germany for the period August 1, 1994, through July 31, 1995.

On September 8, 1995, the Department published in the Federal Register (60 FR 46817) a notice of initiation of an administrative review of the order with respect to TSAG and TINC and the period August 1, 1994, through July 31, 1995.

On December 14, 1995, petitioners withdrew their request for this administrative review, pursuant to 19 CFR 353.22(a)(5). Ordinarily, parties have 90 days in which to withdraw a request for review.

Given that the review has not progressed substantially and there would be no undue burden on the parties or the Department, the Department has determined that it would be reasonable to grant the withdrawal at this time. Therefore, in accordance with section 353.22(a)(5) of the Department's regulations, the Department has terminated this administrative review. Further, we note that respondent has not objected to petitioners' request to withdraw.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: January 26, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–2160 Filed 2–1–96; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

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

ACTION: Notice of intent to revoke antidumping duty orders and findings and to terminate suspended ivestigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than 30 days from the date of publication.

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Brazil
- Brass Sheet & Strip
- A–351–603
- 52 FR 1214
- January 12, 1987
- Contact: Tom Killiam at (202) 482–2704

Canada
- Color Picture Tubes
- A–122–605
- 53 FR 429
- January 7, 1988
- Contact: Valerie Turoscy at (202) 482–0145

Japan
- Color Picture Tubes
- A–588–609
- 53 FR 430
- January 7, 1988
- Contact: Charles Riggle at (202) 482–0650

Singapore
- Color Picture Tubes
- A–559–601
- 53 FR 432
- January 7, 1988
- Contact: Michael Heaney at (202) 482–4475

South Africa
- Brazing Copper Wire & Rod
- A–791–502
- 51 FR 3640
- January 29, 1986
- Contact: Valerie Turoscy at (202) 482–0145

South Korea
- Brass Sheet & Strip
- A–580–603
- 52 FR 1215
- January 12, 1987
- Contact: Tom Killiam at (202) 482–2704

South Korea
- Color Picture Tubes
- A–580–605
- 53 FR 431
- January 7, 1988
- Contact: Tom Prosser at (202) 482–1130

Taiwan
- Stainless Steel Cooking Ware
- A–583–603
- 52 FR 2139
- January 20, 1987
- Contact: Valerie Turoscy at (202) 482–0145

Canada
- Potassium Chloride
- A–122–701
- 53 FR 1393
- January 19, 1988
- Contact: James Rice at (202) 482–1374

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by 30 days from the date of publication. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: January 25, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–2162 Filed 2–1–96; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

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

ACTION: Notice of Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of February 1996.

EFFECTIVE DATE: February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed

under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Austria
Railway Track Maintenance Equipment
A–433–064
43 FR 6937
February 17, 1978
Contact: Paul Stolz at (202) 482–4474

Germany
Sodium Thiosulfate
A–428–807
56 FR 6623
February 19, 1991
Contact: Lyn Johnson at (202) 482–5287

Japan
Benzyl Paraben
A–588–816
56 FR 5795
February 13, 1991
Contact: Leon McNeill at (202) 482–4236

Japan
Butt-Weld Pipe Fittings
A–588–602
52 FR 4167
February 10, 1987
Contact: Sheila Forbes at (202) 482–5253

Japan
Melamine
A–588–056
42 FR 6366
February 2, 1977
Contact: Todd Peterson at (202) 482–4195

The United Kingdom
Sodium Thiosulfate
A–412–805
56 FR 6623
February 19, 1991
Contact: Lyn Johnson at (202) 482–5287

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of February 1996. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: January 25, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–2163 Filed 2–1–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications for the proposed consolidations of:

(1) Colorado Springs Weather Service Office (WSO) into the future Pueblo, Denver/Boulder and Goodland Weather Forecast Offices (WFO);

(2) Rockford WSO into the future Chicago and Quad Cities WFOs;

(3) Grand Island WSO into the future Hastings WFO;

(4) Apalachicola WSO into the future Tallahassee WFO;

(5) Pensacola WSO into the future Mobile and Tallahassee WFOs;

(6) Tupelo WSO into the future Memphis and Jackson WFOs;

(7) Del Rio WSO into the future Austin/San Antonio WFO; and

(8) Bristol WSO into the future Knoxville/Tri-Cities, Roanoke, and Charleston, WV WFOs.

In accordance with Pub. Law 102–567, the public will have 60 days in which to comment on these proposed consolidation certifications.

DATES: Comments are requested by April 2, 1996.

ADDRESSES: Requests for copies of the proposed consolidation packages should be sent to Janet Gilmer, Room 12316, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0276. All comments should be sent to Janet Gilmer at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: NWS anticipates consolidating:

(1) The Colorado Springs Weather Service Office (WSO) with the future Pueblo, Denver/Boulder and Goodland Weather Forecast Offices (WFOs);

(2) The Rockford WSO with the future Chicago and Quad Cities WFOs;

(3) The Grand Island WSO with the future Hastings WFO;

(4) The Apalachicola WSO with the future Tallahassee WFO;

(5) The Pensacola WSO with the future Mobile and Tallahassee WFOs;

(6) The Tupelo WSO with the future Memphis and Jackson WFOs;

(7) The Del Rio WSO with the future Austin/San Antonio WFO; and

(8) The Bristol WSO with the future Knoxville/Tri-Cities, Roanoke and Charleston, WV WFOs.

In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director

and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable); and

(7) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. At their December 14, 1995 meeting the members ''. . . resolved that the MTC modify its procedure to eliminate proposed certification consultations of noncontroversial closings, consolidations, relocations, and automation certifications but will provide final consultation on certifications after public comment and before final submission to the Secretary of Commerce.''

Documentation supporting the proposed certifications is too voluminous to publish in its entirety. Copies of the supporting documentation can be obtained through the contact listed above.

Attached to this Notice are draft memoranda by the respective meteorologists-in-charge recommending the certifications.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating the offices.

Dated: January 29, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Memorandum For: Richard P. Augulis, Director, Central Region

From: Steven D. Schurr, MIC, NWSO Hastings, NE

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, consolidation of the Grand Island Weather Service Office (WSO) with the future Hastings Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Grand Island service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Grand Island service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Hastings WFO will not degrade these services.

2. A detailed list of the services provided within the Grand Island service area from the Grand Island WSO location and a list of services to be provided from the future Hastings WFO location after the proposed consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposal consolidation. Also, the enclosed map shows the WSO Grand Island Area of Responsibility (i.e. ''Affected Service Area'') and the future Hastings WFO's Area of Responsibility. As discussed below, I find there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (MWS) operations which will enhance services in the WSO Grand Island service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Nebraska and portions of surrounding areas is included as attachment D. NWS operational radar coverage for the Grand Island service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D RADAR Commissioning Report from Hastings, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services from Hastings, attachment F, documents that one negative comment was received. That negative comment has been answered to the satisfaction of the commentor as reflected in the report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Grand WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Grand Island service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and continue to recommend this certification.

Endorsement

I, Richard P. Augulis, Director, Central Region, endorse this consolidation certification.

_____

Richard P. Augulis

_____

Date

Attachments

Weather Service Forecast Office, 2090 Airport Road, New Braunfels, TX 78130

January 31, 1996.

Memorandum For: Harry S. Hassel, Director, Southern Region

From: Antonio A. Dreumont, South Texas Area Manager

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgement, that consolidation of the Del Rio Weather Service Office (WSO) with the future Austin/San Antonio Weather Forecast Office (WFO) will not result in any degradation in weather services to the Del Rio area. This proposed certification is in accordance with the advance notification

provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Del Rio service area is included as Attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Austin/San Antonio office will not degrade these services.

2. A detailed list of the services currently provided within the Del Rio service area from the WSO Del Rio location and a list of services to be provided from the future Austin/San Antonio WFO location after consolidation is included in Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Del Rio Area of Responsibility (i.e., ''Affected Service Area'') and the future WFO Austin/San Antonio Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Del Rio service area is included as Attachment C. The new technology (i.e., ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Texas is included as Attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSO Austin/San Antonio, Attachment E–1, and Laughlin AFB, Attachment E–2, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, Attachment F, documents that only one negative comment was received. The negative comment has been answered to the satisfaction of the commentor as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, is not applicable. There is no radar at WSO Del Rio to decommission.

6. A memorandum assigning the liaison officer for the Del Rio service area is included as Attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

January 24, 1996.

Memorandum for: Harry S. Hassel, Director, Southern Region, NWS

From:

Jerry O. McDuffie, MIC, NWSO Knoxville/Tri-Cities, TN

Kenneth A. Kostura, MIC, NWSO Roanoke, VA

Alan A. Rezek, MIC, NWSFO Charleston, WV

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, We have determined, in our professional judgment, that consolidation of the Bristol Weather Service Office (WSO) with the future Knoxville/Tri-Cities, TN, Roanoke, VA, and Charleston, WV Weather Forecast Office (WFO) will not result in any degradation in weather services to the Bristol service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, We recommended that you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

Our recommendation is based on our review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Bristol service area is included as Attachment A. As discussed below, We find that providing the services which address these characteristics and concerns from future WFOs Knoxville/Tri-Cities, TN, Roanoke, VA, and Charleston, WV will not degrade these services.

2. A detailed list of the services currently provided within the Bristol service area from WSO Bristol and a list of services to be provided from the future WFO Knoxville/Tri-Cities, Roanoke, and Charleston, WV locations after consolidation is included as Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Bristol Area of Responsibility (i.e., ''Affected Service Area'') and the future WFO Knoxville/Tri-Cities, Area of Responsibility. As discussed below, We submit that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Bristol service area is included as Attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned WSR–88D radar coverage at an elevation of 10,000 feet for east Tennessee and southwest Virginia is included as Attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for NWSO Knoxville/Tri-Cities, NWSO Roanoke, and NWSFO Charleston, WV, Attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment, along with trained operations and maintenance personnel, are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services, Attachment F, document that no negative comments were received.

C. The Decommissioning Readiness Report, Attachment G, verifies that the existing Bristol WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the WSO Bristol service area is included as Attachment H.

We have considered recommendations of the Modernization Transition Committee (Committee) (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Memorandum for: Harry S. Hassel, Director, Southern Region

From:

Richard I. Coleman, MIC, NWSFO Memphis, TN

Tice H. Wagner, MIC, NWSFO Jackson, MS

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, consolidation of the Tupelo, MS Weather Service Office (WSO) with the future Memphis and Jackson Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Tupelo service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Tupelo service area is included as attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the future Memphis and Jackson WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Tupelo service area from the Tupelo WSO location and a list of services to be provided from the future Memphis and Jackson WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Tupelo Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Memphis Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Tupelo service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Mississippi and Tennessee is included as attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service.

A. The WSR–88D Radar Commissioning Reports for Memphis and Jackson, attachment E, validate that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed but two national work-arounds remain in effect.

B. The User Confirmation of Services for Memphis and Jackson, attachment F, document that the only negative comment received was from the manager of the AFSS. Upon further investigation, we found that the complaint was aimed at FAA practices rather than with WSR–88D products and services.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing WSR–74C radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Tupelo service area is included as attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comment received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe the one negative comment has been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorses this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

8400 Airport Blvd., Bldg. 11, Mobile, AL 36608

November 13, 1995.

Memorandum To: Harry S. Hassel, Director, NWS Southern Region

From:

Randall S. McKee, MIC, NWSO Mobile, AL

William P. Duval, MIC, NWSO Tallahassee

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined, in my professional judgment, Consolidation of the Pensacola Weather Service Office (WSO) with the future Mobile and Tallahassee Weather Forecast Offices (WFO) will not result in any degradation of weather services to the Pensacola service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based on my view of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Pensacola service area is included as Attachment A. As discussed below, I find that providing the services which address these characteristics and concerns from the Mobile and Tallahassee WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Pensacola service area from the Pensacola WSO location and a list of services to be provided from the Mobile and Tallahassee WFO locations after consolidation is included as Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Pensacola Area of Responsibility (i.e., ''Affected Service Area'') and the future WFO Mobile Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Pensacola service area is included as Attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Florida is included as Attachment D. NWS operational radar coverage for the specific service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of services.

A. The WSR–88D Radar Commissioning Reports for Mobile and Tallahassee, Attachment E, validate that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance

documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed, but two national work-arounds remain in effect.

B. The User Confirmation of Services for Mobile and Tallahassee, Attachment F, document that two negative comments were received and have been satisfactorily addressed as stated in the Service Confirmation Report. Neither degrades services to the Pensacola WSO area of responsibility.

C. The Decommissioning Readiness Report, Attachment G, verifies that the existing Pensacola WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Pensacola service area is included as Attachment H.

We have considered recommendations of the Modernization Transition Committee (Committee) (Attachment I) and the _____ public comments received during the comment period (Attachment J). _____ We believe all concerns have been addressed to the satisfaction of our customers and we therefore recommend this certification.

Endorsement

I, Harry S. Hassel, Director, Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Regional Airport, 3238 Capital Circle, SW, Tallahassee, FL 32310–8723

November 3, 1995.

Memorandum For: Harry S. Hassel, Director, NWS Southern Region

From: Paul Duval, MIC NWSO Tallahassee, Florida

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, I have determined that in my professional judgment, consolidation of the Apalachicola Weather Service Office (WSO) with the future Tallahassee Weather Forecast Office (WFO) will not result in any degradation in weather services to the Apalachicola service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, I am recommending you approve this action in accordance with Section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward the certification to the Secretary for approval and transmittal to Congress.

My recommendation is based upon my review of the pertinent evidence, and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of the local weather characteristics and weather-related concerns affecting the weather services provided in the Apalachicola service area is included as Attachment A. As discussed below, I find that providing services which address these characteristics and concerns from the Tallahassee WFO will not degrade these services.

2. A detailed list of the services currently provided within the Apalachicola service area from the Apalachicola WSO location, and a list of services to be provided from the Tallahassee WFO location after consolidation is included as Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Apalachicola Area of Responsibility (i.e. ''Affected Service Area'') and the future WFO Tallahassee Area of Responsibility. As discussed below, I find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Apalachicola service area is included as Attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for north Florida, southeast Alabama and southwest Georgia is included as Attachment D. NWS operational radar coverage for the specific service area will be increased, and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding that there will be no degradation of service.

A. The WSR–88D Radar Commissioning Report, Attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of the system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. Training was completed, but two national work-arounds remain in effect.

B. The User Confirmation of Services, Attachment F, documents that only two negative comments were received. Both of the negative comments have been answered to the satisfaction of the commentors as stated in the Service Confirmation Report.

C. The Decommissioning Readiness Report, Attachment G, verifies that the existing Apalachicola WSR–57 radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the Liaison Officer for the Apalachicola service area is included as Attachment H.

I have considered recommendations of the Modernization Transition Committee (Committee) (attachment I) and the _____ public comments received during the comment period (Attachment J). On _____ the Committee voted to endorse the proposed consolidation (Attachment K). I believe all negative comments have been addressed to the satisfaction of our customers, and I continue to recommend this certification.

Endorsement

I, Harry S. Hassel, Director, National Weather Service Southern Region, endorse this consolidation certification.

_____

Harry S. Hassel

_____

Date

Attachments

Weather Service Forecast Office, 333 West University Drive, Romeoville, IL 60441

Memorandum For: Richard P. Augulis, Director, Central Region

From:
Paul W. Dailey, MIC, NWSFO Chicago
Charles T. Fenley, MIC, NWSFO Quad Cities

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, we have determined, in our professional judgment, consolidation of the Rockford Weather Service Office (WSO) with the future Chicago Weather Forecast Office (WFO) in Romeoville, Illinois and the future Quad Cities WFO in Davenport, Iowa will not result in any degradation in weather services to the Rockford service area. This proposed certification is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, we are recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approved, he will forward the certification to the Secretary for approval and transmittal to congress.

Our recommendation is based on review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided in the Rockford service area is included as Attachment A. As discussed below, we find that providing the services which address these characteristics and concerns from the future Chicago and Quad Cities WFOs will not degrade these services.

2. A detailed list of the services traditionally provided within the Rockford service area from the Rockford WSO location and a list of services to be provided from the future Chicago and Quad Cities WFO locations after consolidation is included as attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Rockford area of responsibility (i.e. ''affected service area'') and the future WFO Chicago area of

responsibility. As discussed below, we find that there will be no degradation in the quality of these services as a result of the consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Rockford service area is included as attachment C. The new technology (i.e. ASOS, WSR–88D, and WIPS) has or will be installed and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Illinois is included as attachment D. NWS operational radar coverage for the Rockford service area will be increased and no area will be missed in coverage.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D Radar Commissioning Report, attachment E, validates that the WSR–88D meets technical specifications (acceptance test); is fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and training operations and maintenance personnel are available on site. Training was completed but two national workarounds remain in effect.

B. The User Confirmation of Services, attachment F, documents that six negative comments were received. All comments have been answered to the satisfaction of the commentors as stated in the service Confirmation Report.

C. The Decommissioning Readiness Report, attachment G, verifies that the existing Marseilles WSR–74S radar is no longer needed to support services or products for local office operations.

6. A memorandum assigning the liaison officer for the Rockford service area is included at attachment H.

I have considered recommendations of the Modernization Transition Committee (attachment I) and the _____ public comments received during the comment period (attachment J). On _____, the Committee voted to endorse the proposed consolidation (attachment K). I believe all negative comments have been addressed to the satisfaction of our customers and I continue to recommend this certification.

Endorsement

I, Richard P. Augulis, Director, Central Region, endorse this consolidation certification.

Richard P. Augulis

Date

Memorandum for: Richard P. Augulis, Director, Central Region

From:

William F. Fortune, MIC, NWSO Pueblo, CO

Larry E. Mooney, MIC, NWSFO Denver, CO

Scott A. Mentzer, MIC, NWSO Goodland, KS

Subject: Recommendation for Consolidation Certification

After reviewing the attached documentation, we have determined, in our professional judgment, consolidation of the Colorado Springs Weather Service Office (WSO) with the future Pueblo, Denver and Goodland Weather Forecast Offices (WFO) will not result in any degradation in weather services to the Colorado Springs service area. This proposed certificate is in accordance with the advance notification provided in the National Implementation Plan. Accordingly, we are recommending you approve this action in accordance with section 706 of Public Law 102–567. If you concur, please endorse this recommendation and forward this package to the Assistant Administrator for Weather Services for final certification. If Dr. Friday approves, he will forward certification to the Secretary for approval and transmittal to Congress.

Our recommendation is based on our review of the pertinent evidence and application of the modernization criteria for consolidation of a field office. In summary:

1. A description of local weather characteristics and weather-related concerns affecting the weather services provided to the Colorado Springs service area is included as Attachment A. As discussed below, we find that providing the services which address these characteristics and concerns from the future Pueblo, Denver, and Goodland WFOs will not degrade these services.

2. A detailed list of the services currently provided within the Colorado Springs service area from the Colorado Springs WSO location and a list of services to be provided from the future Pueblo, Denver, and Goodland WFO locations after the proposed consolidation is included as Attachment B. Comparison of these services shows that all services currently provided will continue to be provided after the proposed consolidation. Also, the enclosed map shows the WSO Colorado Springs Area of Responsibility (i.e. ''Affected Service Area'') and the future Pueblo, Denver, and Goodland WFOs' Areas of Responsibility. As discussed below, we find that there will be no degradation in the quality of those services as a result of consolidation.

3. A description of the recent or expected modernization of National Weather Service (NWS) operations which will enhance services in the WSO Colorado Springs service area is included as Attachment C. The new technology (i.e. ASOS, WSR–88D, and AWIPS) has or will be installed, and will enhance services.

4. A map showing planned NEXRAD coverage at an elevation of 10,000 feet for Colorado is included as Attachment D. NWS operational radar coverage for the Colorado Springs service area will be increased. Some blocking will occur along the western slope of the Rampart Range of mountains but this will have only a minimal impact on the majority of the WSO Colorado Springs service area.

5. The following evidence, based upon operational demonstration of modernized NWS operations, played a key role in concluding there will be no degradation of service:

A. The WSR–88D RADAR Commissioning Reports from Pueblo, Denver and Goodland, Attachment E, validate that the WSR–88Ds meet technical specifications (acceptance test); are fully operational (satisfactory operation of system interfaces and satisfactory support of associated NWS forecasting and warning services); service backup capabilities are functioning properly; a full set of operations and maintenance documentation is available; and spare parts and test equipment and trained operations and maintenance personnel are available on site. A full compliment of spares is on-station, but one national work-around remains in effect.

B. The User Confirmation of Services from Pueblo, Goodland, and Denver, Attachment F, document that only two negative comments were received at Pueblo. Four negative comments were received at Denver, but only one pertained to the Colorado Springs Service Area. Three negative comments were received at Goodland, but none referred to the Colorado Springs Service Area. All negative comments have been answered to the satisfaction of those who made negative comments as reflected in the reports.

C. The Decommissioning Readiness Report, Attachment G, not applicable, there is no radar at Colorado Springs to decommission.

6. A memorandum assigning the liaison officer for the Colorado Springs service area is included as Attachment H.

We have considered recommendations of the Modernization Transition Committee (Attachment I) and the _____ public comments received during the comment period (Attachment J). On _____, the Committee voted to endorse the proposed consolidation (Attachment K). We believe all negative comments have been addressed to the satisfaction of our customers and we continue to recommend certification.

Endorsement

I, Richard P. Augulis, Director, Central Region, endorse this consolidation certification.

Richard P. Augulis

Date

Attachments

[FR Doc. 96–2189 Filed 2–1–96; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 012496A]

Marine Mammals and Endangered Species; Permits

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

ACTION: Issuance of modification to scientific research permit no. 888 (P559).

SUMMARY: Notice is hereby given that Mr. Hiroyuki Suganuma, Ogasawara Marine Center, Byobudani, Chichijima Ogasawara-mura, Tokyo 100–21, Japan has been issued a modification to permit no. 888.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: On November 15, 1995, notice was published in the Federal Register (60 FR 57402) that a request for a permit modification had been submitted by the above-named organization.

The modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing endangered species permits at 50 CFR part 212.

Dated: January 26, 1996.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–2215 Filed 2–1–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List man's brown undershirts to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 4, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 23, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 64421) of proposed addition to the Procurement List. Comments were received from the current contractor and from agents of the Puerto Rican government opposing the proposed addition to the Procurement List. The commenters noted that the addition, together with the declining Defense Department buys and the effects of the North American Free Trade Agreement, would severely impair the contractor's competitive position and the Puerto Rican textile industry, and would cause the loss of a substantial number of jobs in an area of high unemployment.

The Defense Personnel Support Center (DPSC), which purchases the undershirts for the Government, has informed the Committee that it plans to divide future buys between the Committee's program and the Federal Prison Industries on the one hand, and commercial industry on the other, in approximately equal proportions subject to the statutory priorities of Federal Prison Industries and the Committee. DPSC has also informed the Committee that it intends to conduct its next commercial buys of the undershirt as directed purchases from companies other than the current contractor. Consequently, any impact on the current contractor which results from DPSC's purchasing decisions would occur whether or not the Committee added a portion of the Government requirements for the undershirt to the Procurement List. In this situation, the Committee has concluded that adding the requirement to the Procurement List would not, in itself, constitute a severe adverse impact on the contractor, its employees, or the Puerto Rican textile industry.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Undershirt, Man's, Brown
8420–01–112–1472
8420–01–112–1473
8420–01–112–1474
8420–01–112–1475
8420–01–112–1476
8420–01–112–1477
8420–01–112–1478
8420–01–112–1479
(Between 1,000,000 and 1,600,000 annually)

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–2266 Filed 2–1–96; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 4, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 30, November 27, December 1 and 8, 1995, the Committee for Purchase From People Who Are Blind or Severely

Disabled published notices (60 F.R. 34235, 58337, 61685 and 63026) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services for the following locations:

Denver Federal Center, Buildings 1, 41 and 44, Lakewood, Colorado
Denver Field Office, 1961 Stout Street, Denver, Colorado
Colorado Field Office, 730 Simmons Street, Denver, Colorado
Grounds Maintenance, Base Command, Building 2750, Burger King, Building 6006, Edwards Air Force Base, California
Janitorial/Custodial, Schofield Barracks, Building T–913, Fort Shafter, Hawaii
Janitorial/Custodial, Carl D. Perkins Federal Building & U.S. Courthouse, 1405 Greenup Avenue, Ashland, Kentucky
Janitorial/Custodial, Fort Buchanan, Puerto Rico
Operation of Postal Service Center, Andrews Air Force Base, Maryland
Recycling Service, Basewide, Goodfellow Air Force Base, Texas
Switchboard Operation, VA Medical Center, 1601 Perdido Street, New Orleans, Louisiana

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 96–2264 Filed 2–1–96; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received proposal to add to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 4, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Food Service Attendant, U.S. Coast Guard Air Station Miami, Opa Locka, Florida
NPA: Goodwill Industries of South Florida, Inc., Miami, Florida

Beverly L. Milkman,
Executive Director.

[FR Doc. 96–2265 Filed 2–1–96; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0005]

Clearance Request Entitled Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0005).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255). A request for public comments was published at 60 FR 57228, November 14, 1995. No comments were received.

DATES: *Comments Due Date:* March 4, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to

the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 255 is used by all Executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project. Hence the need for information regarding the number and discipline of consultant personnel. The degree to which an A–E firm will utilize consultants can significantly impact on their suitability and qualifications for a specific project. The revision to the form requesting A–E firms provide the name and phone number of a point of contact, usually the project manager, will (1) reduce the time required by the Government to verify performance on current Federal contracts, and (2) reduce the time lost by the A–E firms providing this information at a later date. The information is used to determine if a firm is qualified to perform a specific project.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1.2* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *5,000*; responses per respondent, *4*; total annual responses, *20,000*; preparation hours per response, *1.2*; and total response burden hours, *24,000*.

OBTAINING COPIES OF JUSTIFICATIONS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: January 29, 1996.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–2191 Filed 2–1–96; 8:45 am]

BILLING CODE 6820–EP–M

[OMB Control No. 9000–0060]

Clearance Request Entitled Accident Prevention Plans and Recordkeeping

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0060).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Accident Prevention Plans and Recordkeeping. A request for public comments concerning this burden estimate was published at 60 FR 57228, November 14, 1995. No comments were received.

DATES: *Comment Due Date:* March 4, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20405. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause ''Accident Prevention'' (48 CFR 52.236–13) requires Federal construction contractors to keep records of accidents incident to work performed under the contract that result in death, traumatic injury, occupational disease or damage to property, materials, supplies or equipment. Records of personal inquiries are required by OSHA (OMB Control No. 1220–0029). The Federal Acquisition Regulation requires records of damage to property, materials, supplies or equipment to provide background information when claims are brought against the Government.

If the contract involves work of a long duration, the contractor must submit a written proposal for implementation of the clause. The Accident Prevention Plan, for projects that are hazardous or of long duration, is analyzed by the Contracting Officer along with the agency safety representatives to determine if the proposed plan will meet the requirement of the safety regulations and applicable statutes. The records maintained by the contractor are used to evaluate compliance and may be used in workmen's compensation cases. The Accident Prevention Plan is placed in the contract file for reference.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 2 hours per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,106*; responses per respondent, *2*; total annual responses, *4,212; preparation hours per response, 2*; and total response burden hours, *8,424*.

OBTAINING COPIES OF JUSTIFICATIONS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

Dated: January 26, 1996

Beverly Fayson,

FAR Secretariat.

[FR Doc. 96–2192 Filed 2–1–96; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Notice to Amend Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending eleven systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 4, 1996, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (602) 538–6856 or DSN 879–6856.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 29, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0145–1bTRADOC–ROTC

SYSTEM NAME:

ROTC Financial Assistance (Scholarship) Application File *(February 22, 1993, 58 FR 10077).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Add to the end of the entry 'Records for nonselected applicants are destroyed 1 year after graduation of the nonselectee(s) class.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Fort Monroe, ATTN: Privacy Act Officer, Fort Monroe, VA 23651–6000.'

* * * * *

A0145–1bTRADOC–ROTC

SYSTEM NAME:

ROTC Financial Assistance (Scholarship) Application File.

SYSTEM LOCATION:

Primary location is at U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000.

Segments exist at U.S. Army Reserve Officers' Training Corps (ROTC) Regions, ROTC elements of civilian educational institutions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students and service members who desire to participate in the Army ROTC Financial Assistance (Scholarship Program).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual application for membership, academic transcripts, college board scores and test results, references, photograph, interview board results, acceptance/declination, selection board action including applicants' scores in areas evaluated, notice of applicants' medical status including reports of medical examination, evaluation of applicant by Professor of Military Science commanding officer, letters of recommendation, inquiries regarding applicants' selection/non-selection, reports of ROTC Advanced, Ranger, or Basic Camp performance of applicant, information of applicants' choice of institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2101–2111 and E.O. 9397.

PURPOSE(S):

To administer the financial assistance program; to select recipient for 2, 3, and 4–year scholarships; to monitor selectee's academic and ROTC performance; to develop policies and procedures, compile statistics and render reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder; selected data automated for management purposes on tapes, discs, cards, microfilm/fiche.

RETRIEVABILITY:

By individual's name, Social Security Number, other characteristics of qualification or identity.

SAFEGUARDS:

Records maintained in areas accessible only to authorized personnel having official need in the performance of duties.

RETENTION AND DISPOSAL:

Destroyed 1 year after individual graduates or is disenrolled. Records for nonselected applicants are destroyed 1 year after graduation of the nonselectee(s) class.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Fort Monroe, ATTN: Privacy Act Officer, Fort Monroe, VA 23651–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, ATTN: ATCC–PS, Fort Monroe, VA 23651–5000.

Individual should provide the full name, current address and telephone number and definitive description of the information sought.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, ATTN: ATCC-PS, Fort Monroe, VA 23651–5000.

Individual should provide the full name, current address and telephone number and definitive description of the information sought.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, medical records, academic institutions, Army agencies and commands.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0145–1TRADOC

SYSTEM NAME:

Army Reserve Officers' Training Corps Gold QUEST Referral System *(February 22, 1993, 58 FR 10075).*

* * * * *

CHANGES:

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Fort Monroe, ATTN: ATZG-BO-PF (Privacy Act Officer), Fort Monroe, VA 23651–6000.'

* * * * *

A0145–1TRADOC

SYSTEM NAME:

Army Reserve Officers' Training Corps Gold QUEST Referral System.

SYSTEM LOCATION:

MCS, Incorporated, 10041 Polinski Road, Ivyland, PA 18974–9872;

U.S. Army ROTC Cadet Command, Rot Monroe, VA 23651–5000;

Army ROTC Region Headquarters; and

ROTC Cadet Battalions and ROTC Goldminer Teams. Official mailing address are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential enrollees in the Senior ROTC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of current and former prospect referrals showing: Name, address, telephone number, Social Security Number (optional), sex, citizenship, prior military service, name of high school, high school graduation date, grade point average, SAT/ACT test score, college expected to attend, admissions status to college, academic major, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Chapter 103, sections 2101–2111.

PURPOSE(S):

To provide a central database of potential prospects for enrollment in the Senior ROTC program; assist prospects by providing information concerning educational institutions having ROTC programs; scholarship information and applications; information regarding other Army enlistment, Reserve or National Guard Programs; to render recruitment management information reports; to refer qualified prospects, a Professor of Military Science at or nearest to their college of choice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and cards in file cabinets; on magnetic tape, disks, and computer printouts.

RETRIEVABILITY:

By prospects surname or peculiar identification number assigned by the system.

SAFEGUARDS:

Records are maintained in secured areas within protected buildings, and accessible by only designated, authorized individuals having official need.

RETENTION AND DISPOSAL:

Records are retained for 3 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Fort Monroe, ATTN: ATZG-BO-PF (Privacy Act Officer), Fort Monroe, VA 23651–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army ROTC Cadet Command, ATTN: Marketing Directorate, Fort Monroe, VA 23651–5000.

Individuals should provide their full name, current address, telephone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army ROTC Cadet Command, ATTN: Marketing Directorate, Fort Monroe, VA 23651–5000.

Individuals should provide their full name, current address, telephone number and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the Commander, U.S. Army ROTC Cadet Command, ATTN: Marketing Directorate, Fort Monroe, VA 23651–5000.

RECORD SOURCE CATEGORIES:

Source categories for prospects include the Army ROTC toll-free telephone number, magazines, newspapers, poster advertising coupons, mail-back reply cards, letters, walk-ins, referrals from parents, relatives, counselors, teachers, coaches, friends, associates, college registrars, dormitory directors, national testing organizations, honor societies, boys' clubs, boy scout organizations, Future Farmers of America, minority and civil rights organizations, fraternity and church organizations; neighborhood youth centers, YMCA, YWCA, social clubs, athletic clubs, boys state/girls state/scholarship organizations, U.S. Army Recruiting Command, Military Academy Liaison officers, West Point non-select listing, previous employers, trade organizations, military service, and other organizations and commands comprising the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0145–2TRADOC

SYSTEM NAME:

Junior ROTC/NDCC Instructor Files *(February 22, 1993, 58 FR 10077).*

CHANGES:

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SYSTEM LOCATION:

Delete 'at Fort Bragg, NC; Fort Knox, KY; Fort Riley, KS; and Fort Lewis, WA.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Fort Monroe, ATTN: ATZG-BO-PF (Privacy Act Officer), Fort Monroe, VA 23651–6000.'

* * * * *

A0145–2TRADOC

SYSTEM NAME:

Junior ROTC/NDCC Instructor Files.

SYSTEM LOCATION:

U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000; schools, colleges, training centers and ROTC Regions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Assigned and potential instructors and guest speakers at above locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Instructor evaluation forms, qualification data, biographical sketches and similar or related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2031 and 4651 and E.O. 9397.

PURPOSE(S):

To provide record of qualifications, experience, effectiveness, and similar related information on potential and/or assigned instructors and guest speakers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files.

RETRIEVABILITY:

By name, Social Security number/service number, and year.

SAFEGUARDS:

Records are stored in locked cabinets or rooms, depending on location.

RETENTION AND DISPOSAL:

Records are destroyed 2 years after instructor's transfer or separation or after guest speaker speaks.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Fort Monroe, ATTN: ATZG-BO-PF (Privacy Act Officer), Fort Monroe, VA 23651–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained this record system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000 or commanders of organizations listed under 'System location'.

Individual should provide full name, Social Security Number/military service number, duty position, academic department, and dates of service at the training activity to aid in the information search.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000 or commanders of organizations listed under 'System location'.

Individual should provide the full name, Social Security Number/military service number, duty position, academic department, and dates of service at the training activity.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents; and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES.

Staff and faculty of appropriate school, college, training center, or ROTC Region responsible for conduct of instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0210–190TAPC

SYSTEM NAME:

Individual Gravesite Reservation Files *(February 22, 1993, 58 FR 10093).*

CHANGES:

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SYSTEM LOCATION:

Change zip code to '22331–0482'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Change zip code to '22331–0482'.

* * * * *

A0210–190TAPC

SYSTEM NAME:

Individual Gravesite Reservation Files.

SYSTEM LOCATION:

Commander, Military District of Washington, Fort Lesley J. McNair, Washington, DC 20319–5000;

Soldiers' and Airmen's Home National Cemetery, Washington, DC 20011–4999; and

Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0482 for selective Army post cemeteries.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and former Armed Forces personnel and their dependents who reserved grave plots in either Arlington National Cemetery Soldiers' Home National Cemetery, or Army post cemeteries prior to 1961.

CATEGORIES OF RECORDS IN THE SYSTEM:

Gravesite reservations (DA Forms 2122, 2123); reservist's name, address, number and section of grave reserved, military service, or relationship to service member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To maintain records of individuals holding gravesite reservations in Army national or post cemeteries made prior to 1961; to conduct periodic surveys to determine validity of such reservations; to respond to inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; cards.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel

having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Destroyed when gravesite reservation is used or canceled.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Military District of Washington, Fort Lesley J. McNair, Washington, DC 20319–5000; Soldiers' and Airmen's Home National Cemetery, Washington, DC 20011–4999; Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0482 for selective Army post cemeteries.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this records system should address written inquiries to the appropriate system manager.

Individual should provide sufficient details to permit locating pertinent records and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate system manager.

Individual should provide sufficient details to permit locating pertinent records and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the reservist, his/her representative or next-of-kin; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351AMC

SYSTEM NAME:

Student/Faculty Records: AMC Schools Systems *(February 22, 1993, 58 FR 10104).*

CHANGES:

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SYSTEM LOCATION:

Delete from entry 'U.S. Army Logistics Management Center, Fort Lee, VA' and 'U.S. AMC Field Safety Agency, Charlestown, IN', and replace 'Training Agency' with 'College'.

* * * * *

A0351AMC

SYSTEM NAME:

Student/Faculty Records: AMC Schools Systems.

SYSTEM LOCATION:

U.S. Army Management Engineering College, Rock Island, IL 61299–7040 and U.S. Army Defense Ammunition Center and School, Savanna, IL 61074–9639.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students enrolled/attending schools identified above, faculty, instructors, and guest speakers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student academic records consisting of course completion and results, aptitudes and personal qualities, grades/ratings assigned; instructor/guest speaker qualifications and evaluations, including biographical data; class historical/academic achievements; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and E.O. 9397.

PURPOSE(S):

To determine applicant eligibility, monitor individual's progress, maintain record of student/faculty achievements, and to provide bases for management assessment of curricula and faculty effectiveness and class standing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; cards; photographs; magnetic tapes/discs; and printouts.

RETRIEVABILITY:

By name, Social Security Number, military service number.

SAFEGUARDS:

Records are maintained in locked cabinets within secured areas accessible only to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Individual academic records are retained for 40 years, 3 of which are at the school which created them; they are subsequently transferred to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200. Faculty/instructor qualifications records are retained until individual transfers from the facility, held for 5 years, and then destroyed. Other records are retained until no longer needed, at which time they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant/Director of the appropriate School/Agency.

Individual should provide full name, rank/grade, Social Security Number, course title/class number, and date of attendance or, if a faculty member: Name, course(s) taught, and period in which instructed at named training facility.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant/Director of the appropriate School/Agency.

Individual should provide full name, rank/grade, Social Security Number, course title/class number, and date of attendance or, if a faculty member: Name, course(s) taught, and period in which instructed at named training facility.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual student, faculty, instructor, guest speaker, and management analyses of class performance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351aTRADOC

SYSTEM NAME:

Army School Student Files *(February 22, 1993, 58 FR 10113).*

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the last eight words of the entry.

SAFEGUARDS:

Add a new paragraph 'User identification passwords are assigned each person with authorized access to the records. Each sign-on is authenticated by system software. Identification passwords are change every six months, additions and deletions occur at any time a new person is assigned or someone leaves. The above meets Army Information System Security Regulation requirements'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Combined Arms Command, ATTN: ATZL-IMS-AR (Privacy Act Officer), Fort Leavenworth, KS 66027–2309'.

* * * * *

A0351aTRADOC

SYSTEM NAME:

Army School Student Files.

SYSTEM LOCATION:

All Army schools, colleges, and training centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students who attend formal and/or nonresident courses of instruction at Army schools, colleges and training centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual academic records consisting of courses attended, length of each, extent of completion and results; aptitudes and personal qualities, including corporate fitness results; grade and rating attained; and related information; collateral individual training records comprising information posted to the basic individual academic training record or other long term records; faculty board files pertaining to the class standing/rating/classification/proficiency of students; class academic records maintained by training instructors indicating attendance and progress of class member instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and E.O. 9397.

PURPOSE(S):

To determine eligibility of students for attendance, monitor progress, record completion of academic requirements, and document courses which may be prerequisites for attendance/participation in other courses of instruction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, cards, computer magnetic tapes/disks; printouts.

RETRIEVABILITY:

By individual's name, Social Security Number/military service number.

SAFEGUARDS:

Information is stored in locked cabinets or rooms, accessed only by authorized individuals having official need thereof.

User identification passwords are assigned each person with authorized access to the records. Each sign-on is authenticated by system software. Identification passwords are change every six months, additions and deletions occur at any time a new person is assigned or someone leaves. The above meets Army Information System Security Regulation requirements.

RETENTION AND DISPOSAL:

Individual and class academic records are destroyed after 40 years; collateral individual training records and faculty board files are destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Combined Arms Command, ATTN: Privacy Act Officer, Fort Leavenworth, KS 66027–2309.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Academic Record Office of the Army school, college, or training center attended.

Individual should provide the full name, student number, course title and class number, or description of type training received and dates of attendance/enrollment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Academic Record Office of the Army School, college, or training center attended.

Individual should provide full name, student number, course title and class number, or description of type training received and dates of attendance/enrollment.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents; and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the staff and faculty of appropriate school, college, or training center responsible for the instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351bTRADOC

SYSTEM NAME:

Army Correspondence Course Program (ACCP) *(September 9, 1994, 59 FR 46622).*

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Transportation Center, ATTN: Privacy Act Officer, Fort Eustis, VA 23604–5000.'

* * * * *

A0351bTRADOC

SYSTEM NAME:

Army Correspondence Course Program (ACCP).

SYSTEM LOCATION:

U.S. Army Training Support Center, ATTN: ATIC IPS, Fort Eustis, VA 23604–5121.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army, Navy, Marine Corps, and Air Force, Reserve Officer Training Corps and National Defense

Cadet Corps students, Department of Defense civilian employees, and approved foreign military personnel enrolled in a nonresident course administered by the Army Institute for Professional Development.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain name, grade/rank, Social Security Number, address, service component, branch, personnel classification, military occupational specialty, credit hours accumulated, examination and lesson grades, student academic status, curricula, course description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and E.O. 9397.

PURPOSE(S):

To record lessons and/or exam grades; maintain student academic status; course and subcourse descriptions; produce course completion certificates and reflect credit hours earned; and produce management summary reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, discs, paper printouts, and microfiche.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Random number sign-on authentication for each inquiry made to the system is required. Sign-on decks to enable such access are updated weekly, safeguarded under Army Regulation 380–19, Information Systems Security, and are unique to one terminal only. Access is granted only to designated personnel at the Army Institute for Professional Development responsible for the administration and processing of nonresident students.

RETENTION AND DISPOSAL:

Machine records are retained during student's enrollment, after which student's records are transferred to the Academic Records System History File for indefinite retention. Nonresident students are assigned a 12 month enrollment period. A hard copy transcript reflecting the student's personal and academic data is produced; this is retained by the Army Institute of Professional Development for 3 years, then transferred to the National Personnel Records Center, St. Louis, MO, where it is retained for 37 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Transportation Center, ATTN: Privacy Act Officer, Fort Eustis, VA 23604–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC IPS, Fort Eustis, VA 23604–5121.

Individual should provide the full name, Social Security Number, and signature for identification.

Individual making request in person must provide acceptable identification such as driver's license and military identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC IPS, Fort Eustis, VA 23604–5121.

Individual should provide the full name, Social Security Number, and signature for identification.

Individual making request in person must provide acceptable identification such as driver's license and military identification.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting content, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individual upon enrollment, from class records and instructors, and from graded examinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351cTRADOC

SYSTEM NAME:

Standardized Student Records System *(February 22, 1993, 58 FR 10114).*

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Defense Language Institute Foreign Language Center and Presidio of Monterey, Presidio of Monterey, CA 93944–5006.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Commandant, Defense Language Institute Foreign Language Center, ATTN: ATZP-SSA (Academic Records), Presidio of Monterey, CA 93944–5006.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Commandant, Defense Language Institute Foreign Language Center, ATTN: ATZP-SSA (Academic Records), Presidio of Monterey, CA 93944–5006.'

* * * * *

A0351cTRADOC

SYSTEM NAME:

Standardized Student Records System.

SYSTEM LOCATION:

Defense Language Institute, Presidio of Monterey, CA 93944–5006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been enrolled for foreign language training at the Defense Language Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, and military administrative data, together with academic data generated at Defense Language Institute.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and E.O. 9397.

PURPOSE(S):

To establish a permanent student record used for issuing official grade transcripts and preparing statistical studies to improve training and testing methods.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/discs.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Records are accessible via remote terminal only by authorized personnel citing established user identifier and password

RETENTION AND DISPOSAL:

Records are permanent. They are retained in active file (on-line) until the student departs; then retired to a history tape.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Defense Language Institute Foreign Language Center and Presidio of Monterey, Presidio of Monterey, CA 93944–5006.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant, Defense Language Institute Foreign Language Center, ATTN: ATZP-SSA (Academic Records), Presidio of Monterey, CA 93944–5006.

Individual should provide the full name, current address and telephone number, Social Security Number, class attended, and year graduated.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant, Defense Language Institute Foreign Language Center, ATTN: ATZP-SSA (Academic Records), Presidio of Monterey, CA 93944–5006.

Individual should provide the full name, current address and telephone number, Social Security Number, class attended, and year graduated.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351–1aTRADOC

SYSTEM NAME:

Automated Instructional Management System (AIMS) *(February 22, 1993, 58 FR 10115).*

CHANGES:

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SYSTEM LOCATION:

Delete address and replace with 'Commander, U.S. Army Training Support Center, ATTN: ATIC–TIS, Fort Eustis, VA 23604–5166.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Transportation Center, ATTN: ATZS-IMO-RM (Privacy Act Officer), Fort Eustis, VA 23651–5000.'

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A0351–1aTRADOC

SYSTEM NAME:

Automated Instructional Management System (AIMS).

SYSTEM LOCATION:

Headquarters, Training and Doctrine Command (TRADOC); TRADOC Service Schools; and Army Training Centers. Addresses for the above may be obtained from the Commander, U.S. Army Training Support Center, ATTN: ATIC–TIS, Fort Eustis, VA 23604–5166.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Army, Navy, Marine Corps, and Air Force, and civilians employed by the U.S. Government, and approved foreign military personnel enrolled in a resident course at a U.S. Army service school.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personnel, Program of Instruction, scheduling, testing, academic, graduation, recycle, and attrition data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and E.O. 9397.

PURPOSE(S):

This is the TRADOC standard resident student training management system which automates those processes associated with the scheduling, management, testing, and tracking of resident students. The system is composed of several subsystems which perform functions for personnel, student load management, academic records management, test creation, scoring and grading, student critique, resource scheduling and utilization, electronic mail, and query.

Course completion data on active Army enlisted personnel is supplied to the Army-American Council on Education Registry Transcript System (AARTS) in magnetic media.

Course completion data on active Army officer personnel is supplied to the U.S. Army Research Institute (ARI) in magnetic media.

All student transactions are supplied to the Army Training Requirements and Resources System (ATRRS) through a daily electronic interface for updating course/class data with graduation data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, computer discs, and paper printouts.

RETRIEVABILITY:

Retrieved by Social Security Number and course/class number.

SAFEGUARDS:

Different user identification sign-on codes are assigned each person with authorized access to the database. Each sign-on is authenticated by system software. Identification sign-on codes are changed every six months, additions or deletions occur at any time a new person is assigned or someone leaves. The sole users are the personnel responsible for the administration of personnel enrolled in the resident student training programs at U.S. Army service schools and Army training centers. The above meet Army's Information System Security Regulation requirements.

RETENTION AND DISPOSAL:

Machine records are retained during student's active enrollment, after which they are classified as history records, written to magnetic tape, and stored indefinitely for reference. Paper records are destroyed after 40 years as follows:

Army elements serviced by a records holding area (RHA) hold records for 2 years in the current files area, transfer to RHA for 1 year; the RHA retires the records to the National Personnel Records Center, St. Louis, MO, for the remaining 37 years. Army elements not serviced by a RHA, hold records for 2 years in CFA, then retire to NPRC for the remaining 38 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Transportation Center, ATTN: ATZS-IMO-RM (Privacy Act Officer), Fort Eustis, VA 23651–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from the individual, DOD staff, Personnel and Training systems, and staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0381–100bDAMI

SYSTEM NAME:

Technical Surveillance Index *(August 29, 1994, 59 FR 44411).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete second paragraph and replace with 'The law enforcement portions of the index are located at the Director, U.S. Army Crime Records Center, ATTN: CICR-FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585'.

* * * * *

A0381–100bDAMI

SYSTEM NAME:

Technical Surveillance Index.

SYSTEM LOCATION:

The intelligence portions of the index are located at the Investigative Records Repository, U.S. Army Central Security Facility, U.S. Army Intelligence and Security Command, 902d Military Intelligence Group, ATTN: IAGPA-CSF-R, Fort Meade, MD 20755–5995; and

The law enforcement portions of the index are located at the Director, U.S. Army Crime Records Center, ATTN: CICR-FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons under investigation by military law enforcement or military intelligence activities and parties to the conversation whose conversations have been intercepted during electronic surveillance operations conducted by, or on behalf of, the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

The person who is the subject of the surveillance and to the extent known, names of each identifiable person whose communications were intercepted; language of conversation; Social Security Numbers; telephone number, radio frequencies or radio call signs involved; address of premise at which surveillance was conducted; title or number of the investigative file; element maintaining the case file and date or dates of the interceptions.

Also may include backup material (i.e., electronic surveillance information that was used, retained, or disseminated) when not filed as part of the investigative file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 2510–2520 and 3504; DoD 5240.1-R as implemented by Army Regulation 381–10, U.S. Army Intelligence Activities; and DoD 5200.24 as implemented by Army Regulation 190–53, Interception of Wire and Oral Communications for Law Enforcement Purposes; and E.O. 9397

PURPOSE(S):

To enable Military Law Enforcement and Counterintelligence agencies to quickly locate records of electronic surveillance activities in response to motions for discovery and inquiries and court documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computers, micro-imaging, and paper records.

RETRIEVABILITY:

By a combination of name, address, Social Security Number, telephone number, radio frequency, call sign, or case designation.

SAFEGUARDS:

Access to buildings is controlled by security guards. Computer based index is maintained in 'fail-safe' system software with password protected access. Paper records are maintained in General Services Administration approved security containers, physically separated from other materials, and are accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Investigative Records Repository computer index entries are deleted 10 years after date of interception or upon destruction (shredding, burning, pulping or magnetic erasing) or transfer to the National Archives of case file containing electronic surveillance information. Transfer dates occur 25, 30, and 50 years after the date of the most current material in the file as governed by retention period applied to the case dossier.

Crime Records Center documents and related interception will be maintained for the period of time consistent to the investigative record to which they pertain, i.e., 3, 5, and 40 years. Disposal will be through shredding, burning or pulping and magnetic erasing.

Tapes obtained as the result of domestic non-consensual interceptions and retained as backup material will be kept for 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Intelligence, Headquarters, Department of the Army, The Pentagon, Washington,

DC 20310–1001 for the intelligence portion of the index.

The U.S. Army Criminal Investigations Command, 5611 Columbia Pike, Falls Church, VA 22041–2015 for the law enforcement portion of the index.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Central Security Facility, USAINSCOM, 902d Military Intelligence Group, ATTN: IAGPA-CSF-F, Fort George G. Meade, MD 20755–5995, for intelligence records;

Or to the Director, U.S. Army Crime Records Center, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099, for law enforcement records.

Individual should provide full name, address, and Social Security Number in written request.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Central Security Facility, USAINSCOM, 902d Military Intelligence Group, ATTN: IAGPA-CSF-F, Fort George G. Meade, MD 20755–5995, for intelligence records;

Or to the Director, U.S. Army Crime Records Center, ATTN: CICR-FP, 2301 Chesapeake Avenue, Baltimore, MD 21222–4099, for law enforcement records.

Individual should provide full name, address, and Social Security Number in written request.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Army and other federal, state and local investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), an (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0570–4DARP

SYSTEM NAME:

Human Resources Information System (HRIS) *(February 22, 1993, 58 FR 10131).*

CHANGES:

SYSTEM IDENTIFIER:

Replace 'DARP' with 'ARPC'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

RECORD ACCESS PROCEDURE:

Delete address and replace with 'Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.'

* * * * *

A0570–4ARPC

SYSTEM NAME:

Human Resources Information System (HRIS).

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF RECORDS IN THE SYSTEM:

All U.S. Army Reserve Personnel Center employees, both military and civilian.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of man-hours utilization, production, and backlog records reported by individuals daily and maintained by operating officials to track data in the above categories. The documents include, but are not limited to, information on individuals relating to name, grade, Social Security Number, TDA paragraph and line number, employment category, job title, work center, and distribution of work hours among direct productive, indirect productive, and unavailable categories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To document man-hours utilization, workload, and backlogs to analyze, program, and review manpower requirements in U.S. Army Reserve Personnel Center (ARPERCEN); provide a decision basis for approval or disapproval of requests for additional employees, overtime requests, and awards nominations; measure productivity of units and individual employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records are used to justify manpower requirements with the U.S. Army Manpower Requirements and Documentation Agency.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Personal computer diskettes and computer tapes.

RETRIEVABILITY:

By name, Social Security Number, and TDA paragraph and line number.

SAFEGUARDS:

Computer tapes are stored in locked cabinets. Diskettes are stored in areas accessible only to authorized personnel of ARPERCEN. After hours, the building and security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Diskettes and tapes are retained for 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquires to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, Social

Security Number, organization to which assigned, and dates of assignment.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Personnel Center, ATTN: ARPC-IMG-F, 9700 Page Boulevard, St. Louis, MO 63132–5200.

For verification purposes, individual should provide the full name, Social Security Number, organization to which assigned, and dates of assignment.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the record subjects by means of ARPC Form 222–1–R, Individual Daily Record, and ARPC Form 222–3–R, Individual Daily Executive Level.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96-2252 Filed 2-1-96; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF ENERGY

Electrometallurgical Treatment Research and Demonstration Project in the Fuel Conditioning Facility at Argonne National Laboratory-West Availability of Draft Environmental Assessment and Notice of Public Meetings

AGENCY: Department of Energy.

ACTION: Notice of availability and public meetings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Environmental Assessment for the Electrometallurgical Treatment Research and Demonstration Project in the Fuel Conditioning Facility at Argonne National Laboratory-West. DOE also announces the dates, times, and locations for public meetings on the Draft EA. The proposed project would be conducted at the Fuel Conditioning Facility at Argonne National Laboratory-West (ANL–W) near Idaho Falls, Idaho, to demonstrate the feasibility of an advanced spent fuel treatment technology using a small quantity of spent nuclear fuel from the Experimental Breeder Reactor–II (EBR–II), which is also located at the ANL–W site. The purpose of the proposed project would be to assess the reliability and performance of the facility and the process equipment and provide information on the characteristics of the waste forms resulting from the treatment of the fuel.

DATES: Written and oral comments on the Draft EA are invited from the public and other interested parties and organizations. DOE will consider the comments in preparing the final version of the EA. The public comment period will begin on February 5, 1996, and end on March 22, 1996. Written comments should be postmarked by March 22, 1996, to ensure consideration; comments postmarked after that date will be considered to the extent practicable. Public meetings on the Draft EA will be held as follows:

Idaho Falls, Idaho—February 21, 1996, 1:00 p.m. to 4:00 p.m. and 7:00 p.m. to 10:00 p.m., the Shilo Inn, 780 Lindsay Boulevard

Washington, D.C.—February 27, 1996, 1:00 p.m. to 5:00 p.m., Loew's L'Enfant Plaza Hotel, Ballroom D, 480 L'Enfant Plaza, SW

The meetings will provide opportunities for the submittal of oral and written comments as well as for information exchange and discussion.

ADDRESSES: Requests for copies of the Draft EA, written comments on the Draft EA, or other matters regarding this environmental review should be addressed to: Mr. Greg Bass, NEPA Document Manager, Argonne Group-West, U.S. Department of Energy, P.O. Box 2528, Idaho Falls, ID 83403. Mr. Bass may be contacted by telephone at (208) 533–7184 and facsimile at (208) 533–7422.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, D.C. 20585. Ms. Borgstrom may be contacted by leaving a message at (800) 472–2756 or by calling (202) 586–4600. For general information on the Electrometallurgical Treatment Research and Demonstration Project, contact: Mr. Robert G. Lange, Associate Director, Office of Facilities, NE–40, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874. Mr. Lange may be contacted by calling (301) 903–2915.

SUPPLEMENTARY INFORMATION: DOE is preparing an environmental assessment to evaluate the potential environmental impacts of a proposal to conduct research and demonstration at the Argonne National Laboratory-West (ANL–W) of electrometallurgical technology for the treatment of sodium-bonded spent nuclear fuel. Without some form of treatment, sodium-bonded spent nuclear fuel is unlikely to be suitable for disposal in a geologic repository because the fuel is saturated with sodium, a reactive material. Electrometallurgical treatment of the fuel is expected to stabilize the reactive metallic sodium by converting it to common table salt (i.e., sodium chloride) and allow the fission products to be collected, concentrated, and stabilized together with the transuranic elements for disposal.

The proposed research and demonstration project would be conducted in the Fuel Conditioning Facility at the ANL–W site near Idaho Falls, Idaho. A small quantity of Experimental Breeder Reactorr–II (EBR–II) spent nuclear fuel consisting of both driver fuel (highly-enriched uranium fuel that was located in the center of the reactor core to power the reactor) and blanket assemblies (depleted uranium fuel that was located around the periphery of the core to provide shielding for the reactor vessel) would be treated to determine whether electrometallurgical treatment is a feasible management option for sodium-bonded spent nuclear fuel. The proposed project would also assess the reliability and performance of the facility and the process equipment and provide needed information about the waste forms predicted to result from the treatment of the fuel. To achieve these objectives, up to 100 EBR-II spent fuel driver assemblies and 25 irradiated blanket assemblies may be treated.

DOE will distribute copies of the Draft EA to interested members of the public, Congressional members and committees, the State of Idaho, American Indian tribal governments, local county governments, other Federal agencies, and other interested organizations.

Signed in Washington, D.C., this 25th day of January, 1996, for the United States Department of Energy.

Terry R. Lash,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 96–2242 Filed 2–1–96; 8:45 am]

BILLING CODE 6450–01–P

Availability of the Final Environmental Impact Statement for Management of Spent Nuclear Fuel From the K Basins at the Hanford Site, Richland, Washington

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS).

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of a Final EIS (FEIS) entitled ''Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, Richland, Washington,'' DOE/EIS–0245F. The FEIS evaluates the potential environmental impacts of managing spent nuclear fuel (SNF) located in the K-East (KE) and K-West (KW) SNF storage basins at the Hanford Site located in southeastern Washington State. The FEIS was prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969; the Council on Environmental Quality (CEQ) regulations implementing NEPA in 40 CFR Parts 1500–1508; and DOE's NEPA implementing procedures in 10 CFR Part 1021. The FEIS consists of the Draft EIS (DEIS) and an Addendum containing (1) public comments on the DEIS and DOE's responses to the comments, and (2) a compilation of errata.

The FEIS has been filed with the Environmental Protection Agency (EPA) and has also been distributed to interested members of the public and federal and state agencies. The FEIS will also be available for viewing by the public in the DOE public reading rooms and information repositories identified in this notice. DOE plans to issue a record of decision on the FEIS no sooner than 30 days after the publication of the notice of availability of the FEIS in the Federal Register.

ADDRESSES AND FURTHER INFORMATION: Requests for copies of the FEIS and further information on the FEIS should be directed to: Dr. Phillip G. Loscoe, U.S. Department of Energy, P.O. Box 550, M/S S7–41, Richland, Washington 99352. Dr. Loscoe may be contacted by telephone at (509) 376–7434 or at (800) 321–2008. General information on the DOE NEPA process may be obtained from Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Ms. Borgstrom may be reached by telephone at (202) 586–4600 or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE issued a notice of availability and public hearing for the DEIS and the EPA published a notice of availability in the Federal Register on November 9, 1995 (60 FR 56581, 56590). The public comment period on the DEIS ended on December 29, 1995. One public hearing on the DEIS was held in Pasco, Washington on December 12, 1995. All written and oral public comments on the DEIS were assessed and considered by DOE both individually and collectively.

Because there were no additional alternatives identified from the public and agency review process, DOE determined that an Addendum to the DEIS could be prepared in lieu of rewriting the DEIS. Comment letters, public hearing transcripts, the DOE responses to comments, and a compilation of errata are printed in the Addendum. The DEIS and the Addendum constitute the FEIS under the CEQ regulation at 40 CFR 1503.4(c).

Responses to some comments resulted in errata. Responses to other comments included answers to questions, explanations of technical issues, references to information in DOE's Programmatic SNF EIS (DOE/EIS–0203–F), references to the Draft EIS, explanations of the relationship of this EIS to other related DOE NEPA documents, statements of government policy, or indications that the comment was beyond the scope of this EIS.

Alternatives Considered

The FEIS, like the DEIS, addresses the potential environmental impacts of alternative ways to provide for the safe management and storage of SNF currently stored in the Hanford K Basins. DOE's preferred alternative in the FEIS is the same as in the DEIS, i.e., drying/passivation (conditioning) of the SNF followed by dry vault storage. This alternative would provide for drying the SNF, placing it in multi-canister overpacks in an inert atmosphere, and storing it in a vault for up to 40 years. The FEIS compares the environmental impacts that would be expected to occur from continuing storage in the KE and KW basins (the no action alternative) with the consequences that would be expected to occur if DOE implemented the preferred alternative or one of five other alternatives. The five other alternatives are (1) an enhanced K Basin storage alternative under which SNF would be consolidated in the KW Basin; (2) removal of the SNF and subsequent storage in a new wet storage facility at Hanford; (3) removal of the SNF followed by calcination and dry storage at Hanford; (4) removal of the SNF followed by processing at Hanford and dry storage of the recovered uranium and plutonium at Hanford; and (5) removal of the SNF followed by foreign processing and dry storage of the recovered uranium and plutonium at Hanford.

Availability of Copies of the FEIS

Copies of the FEIS have been distributed to federal, state, and local officials and agencies, organizations and individuals known to be interested in the EIS, and to persons and agencies that commented on the DEIS. Copies of the FEIS may be obtained by contacting Dr. Loscoe at the above address or telephone numbers.

Copies of the FEIS, including reference materials, comment letters, public hearing transcripts, and the DOE responses to comments, will be available for public review at the DOE public reading rooms and information repositories listed below.

(1) U.S. Department of Energy, Headquarters, Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–6020, Monday-Friday 9:00 a.m. to 4:00 p.m.

(2) U.S. Department of Energy, Richland Operations Office, Public Reading Room, 100 Sprout Road, Room 130W, Richland, WA 99352, (509) 376–8583, Monday–Friday 10:00 a.m. to 5:00 p.m.

(3) University of Washington, Suzzallo Library, Government Publications Room, Seattle, WA 98185, (206) 685–9855, Monday–Thursday 9:00 a.m. to 8:00 p.m., Friday and Saturday 9:00 a.m. to 5:00 p.m.

(4) Gonzaga University, Foley Center, East 502 Boone Avenue, Spokane, WA 99258, (509) 328–4220 ext. 3829, Monday–Thursday 8:00 a.m. to midnight, Friday 8:00 a.m. to 9:00 p.m., Saturday 9:00 a.m. to 9:00 p.m., Sunday 11:00 a.m. to midnight.

(5) Portland State University, Branford Price Millar Library, SW Harrison and Park, Portland, OR 97207, (503) 725–3690, Monday–Friday 8:00 a.m. to 10:00 p.m., Saturday 10:00 a.m. to 10:00 p.m., Sunday 11:00 a.m. to 10:00 p.m.

(6) Nuclear and Mixed Waste Library, Washington State Department of Ecology, 300 Desmond Dr. S.E., Lacey, WA 98504, (360) 407–7097, Monday–Friday 8:00 a.m. to 5:00 p.m.

Potential users should call ahead to verify the open hours at the reading room of interest.

Signed in Richland, WA this 25th day of January, 1996, for the United States Department of Energy.

John D. Wagoner,

Manager, U.S. Department of Energy, Richland Operations Office.

[FR Doc. 96–2241 Filed 2–1–96; 8:45 am]

BILLING CODE 6450–01–P

Availability of Draft Environmental Impact Statement for the Nevada Test Site and Off-Site Locations Within the State of Nevada

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Draft Sitewide Environmental Impact Statement (Draft EIS) for the Nevada Test Site and Off-site Locations in the State of Nevada (DOE/EIS–0243), for public review and comment. DOE also announces the dates, times, and locations for public hearings on the Draft EIS. Alternative uses for the land and facilities at the site are analyzed in the Draft EIS.

DATES: DOE filed the Draft EIS with the U.S. Environmental Protection Agency on January 26, 1996, with an expected Federal Register publication date for the notice of availability of February 2, 1996. Written or oral comments on the Draft EIS are invited from the general public, other government agencies, and all other interested parties. Comments received or postmarked by May 3, 1996, whether written or oral, submitted directly to the Department, or presented during a public hearing, will be given equal consideration in preparation of the final EIS. Comments received or postmarked after that date, will be considered to the extent practicable. DOE will use the comments received to help prepare the final version of the EIS.

The dates and locations for the public meetings are listed below. All meetings are scheduled to begin at 6:00 p.m: March 5, 1996, Dixie Center Convention Facilities, 425 South 700 East, St. George, Utah; March 13, 1996, Bob Ruud Community Center, 150 North Highway 160, Pahrump, Nevada; March 19, 1996, University of Nevada, Student Union Bldg., Reno, Nevada; March 26, 1996, Cashman Field Convention Center, 850 Las Vegas Blvd. North, Las Vegas, Nevada.

ADDRESSES: Requests for a copy of the Draft EIS and written comments on the Draft Site-wide EIS should be directed to: Donald R. Elle, Director, Environmental Protection Division, U.S. Department of Energy, Nevada Operations Office, P.O. Box 14459, Las Vegas, NV 89114, phone (702) 295–1433. Oral comments may be submitted at the public hearing or by calling the Nevada Test Site EIS Hotline, 1–800–405–1140 or (702) 794–1550, and recording comments or suggestions.

FOR FURTHER INFORMATION CONTACT: For general information on the Department's NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

This sitewide EIS evaluates the potential environmental impacts of four possible resource management alternatives being considered for the Nevada Test Site (NTS), the Tonopah Test Range, and the formerly operated DOE sites in the state of Nevada: the Project Shoal Area, the Central Nevada Test Area, and portions of the Nellis Air Force Range Complex. Three additional sites in Nevada, Coyote Spring Valley, Dry Lake Valley, and Eldorado Valley are evaluated for colocation of solar energy production facilities. The four alternatives include No Action (continue to operate at the level maintained for the past 5 years); Discontinue Operations (discontinue operations and interagency programs and close the site); Expanded Use (maximize use of NTS and its resources to support defense and nondefense programs; and Alternate Use of Withdrawn Lands (discontinue all defense-related activities at NTS; continue waste management operations in support of NTS environmental restoration efforts; expand nondefense research). Environmental impacts were assessed for each alternative by analyzing, to the extent possible, the discrete and cumulative environmental impacts associated with defense, waste management, environmental restoration, nondefense research and development, and work for others programs.

Related Documentation

The Department will prepare transcripts of the oral comments received during the Draft EIS public hearings. The records of all comments, both oral and written, received during the comment period will be made available for public review in the reading rooms listed below. Additional background documents and references identified as pertinent during the EIS process will also be made available in the reading rooms.

1. DOE Public Reading Room, 2621 Losee Road, North Las Vegas, NV 89030
2. Las Vegas Public Library, 833 N. Las Vegas Blvd., Las Vegas, NV 89101
3. Carson City Public Library, 900 N. Roop St., Carson City, NV 89701
4. Tonopah Public Library, 171 Central St. Tonopah, NV 89049
5. Doris Shirkey Library, 2101 E. Calvada Blvd., Pahrump, NV 89041
6. Caliente Branch Library, 100 Depot Avenue, Caliente, NV 89008
7. University of Nevada, Reno, Noble H. Getchell Library, Reno, NV 89557
8. University of Nevada, Las Vegas, James Dickenson Library, 4505 S. Maryland Parkway, Las Vegas, NV 89154
9. Freedom of Information Reading Room, Forrestal Bldg, 1000 Independence Ave., S.W., Washington, DC 20585
10. Fallon Public Library, Churchill County Library, 553 S. Main, Fallon, NV 89406–3387
11. Washington County Library, 50 S. Main, St. George, UT 84770

Cooperating Agencies

The preparation of this Site-wide EIS required the participation of several Federal agencies and a local government, including the Department of Defense (Air Force and Defense Nuclear Agency), the Department of the Interior (Bureau of Land Management and Fish and Wildlife Service), and Nye County, Nevada.

Public Hearings Registration and Format

Oral and written comments may be presented at the public hearings. Persons desiring to speak at any of these hearings should register by calling the Nevada Test Site EIS Hotline by 3:00 p.m. Pacific Standard Time, two working days in advance of the public hearing; or by writing to the Director of the Environmental Protection Division at the above address. Persons wishing to speak that have not registered in advance may register at the entrance of the meeting room. Individuals speaking on behalf of an organization should identify the organization represented. In order to solicit individual viewpoints and facilitate interactive communication between participants and representatives of the Department, opportunities will be provided at the public hearings for questions and informal discussions regarding the issues to be addressed in this EIS.

Subsequent Document Preparation

After the completion of the public hearing process for the Draft EIS, the Department will consider all comments prior to publication of the Final EIS and the Record of Decision.

Issued in Washington, DC, this 29th day of January, 1996.

Gary T. Palmer,

Environmental Specialist, Office of Environmental Support, Defense Programs.

[FR Doc. 96–2240 Filed 2–1–96; 8:45 am]

BILLING CODE 6450–01–P

Savannah River Operations Office Financial Assistance Award; Intent To Award a Noncompetitive Cooperative Agreement

AGENCY: Savannah River Operations Office, DOE.

ACTION: Notice.

SUMMARY: The DOE announces that it plans to award a cooperative agreement to the University of Georgia Research Foundation (UGARF), University of Georgia, Athens, GA 30602. The cooperative agreement, ''Savannah River Ecology Laboratory (SREL) Program,'' will be awarded for a five-year period at a projected funding level of $70,000,000. Funds of $12,000,000 are available for the first budget period, subject to the availability of funds; the remainder will be awarded thereafter. Pursuant to Section 10 CFR Part 600.7(b)(2)(i)(A) of the DOE Assistance Regulations (10 CFR Part 600), DOE has determined that a noncompetitive award is appropriate since the SREL Program is a continuation of the program presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

FOR FURTHER INFORMATION CONTACT: Charlene Smith, Office of Procurement and Contractor Human Resources, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–7644.

SUPPLEMENTARY INFORMATION:

Procurement Request Number: 09–96SR18546.000.

Project Scope: The proposed cooperative agreement allows UGARF to continue the Savannah River Ecology Laboratory (SREL) program. SREL provides an independent evaluation of the ecological effects of Savannah River Site (SRS) operations through a program of ecological research, education and outreach. This program will continue basic and applied environmental research with emphasis upon expanding the understanding of ecological processes and principles, and upon evaluating the impacts of industrial and land use activities on the environment. The program will provide DOE and the public with an independent view of the environmental management of the SRS. Publication of SREL's scientific findings in peer-reviewed journals will provide independent, verifiable science as a basis for DOE–SRS policy decisions. Collaboration will continue with the other SRS contractors and National Environmental Research Park participants. SREL will respond to mission priorities to increase understanding in such areas as biodiversity, ecosystem management, restoration/remediation ecology, geographic information systems and landscape ecology, radioecology, toxicology, ecological risk assessment, environmental transport of contaminants, dose responses of organisms, and predictive modeling of impacts of restoration processes on population structure and genetics of organisms in the environment.

Based on the documentation presented and appropriate evaluation, it is determined that this award to UGARF on a noncompetitive basis is appropriate and is in the best interest of DOE.

Issued in Aiken, South Carolina, on: January 9, 1996.

Ronald D. Simpson,

DOE Savannah River Operations Office, Head of Contracting Activity, Designee.

[FR Doc. 96–2243 Filed 2–1–96; 8:45 am]

BILLING CODE 6450–01–M

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Management Advisory Board; formerly Utilized Sites Remedial Action Program Committee.

Date and Times: Thursday, February 15, 1996 from 5:00 p.m. to 9:00 p.m.

Place: SAIC Headquarters, 301 Laboratory Road, First Floor Conference Room, Oak Ridge, TN 37831, (423) 481–8200.

For Further Information Contact: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–22, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov.

Supplementary Information: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program including the Formerly Utilized Site Remedial Action Program.

Tentative Agenda

Thursday, February 15, 1996

5:00 p.m.—Chairman Opens Public Meeting.
5:05 p.m.—Review of FUSRAP Committee's Mission and Final Report.
7:00 p.m.—Dinner Break.
8:00 p.m.—Public Comment Session Opens.
9:00 p.m.—Chairman Concludes Public Comment Session.

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee during the public comment session should call (800) 736–3282 and leave a message. Individuals may also register on February 15, 1996 at the meeting site. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication. The Chairman is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: Meeting minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 30, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–2245 Filed 2–1–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge.

Dates: Wednesday, February 21, 1996: 6:00 p.m.–9:00 p.m.

Address: Jacobs Engineering Group, Inc. Building, Einstein Conference Room, 125 Broadway, Oak Ridge, Tennessee.

For Further Information Contact: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

Supplementary Information: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

February Meeting Topics

The Board will be briefed on the Oak Ridge Aerial Measurements/Overflight activities and will also begin the election process for Officers (Chair, Vice Chair, and Secretary).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 a.m. and 5:00 p.m. on Monday, Wednesday, and Friday; 8:30 a.m. and 7:00 p.m. on Tuesday and Thursday; and 9:00 a.m. and 1:00 p.m. on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on January 29, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–2244 Filed 2–1–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–30–000, et al.]

Ventway Pty Ltd., et al.; Electric Rate and Corporate Regulation Filings

January 26, 1996.

Take notice that the following filings have been made with the Commission:

1. Ventway Pty Ltd.

[Docket No. EG96–30–000]

On January 19, 1996, Ventway Pty Ltd. (''Applicant''), with its principal office at AMP Place, Level 22, 10 Eagle Street, Brisbane, Queensland, Australia 4001, filed with the Federal Energy Regulatory Commission (the ''Commission'') an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Applicant states that it will own and/or operate an undivided interest in an electric generating facility and adjacent brown coal mine located in Victoria, Australia.

Comment date: February 13, 1996, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Eclipse Energy Inc.; AIG Trading Corporation; Peak Energy, Inc.; National Fuel Resources, Inc.; Superior Electric Power Corporation

[Docket Nos. ER94–1099–007, ER94–1691–008, ER95–379–003, ER95–1374–001, and ER95–1747–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 16, 1996, Eclipse Energy Inc. filed certain information as required by the Commission's June 15, 1994, order in Docket No. ER94–1099–000.

On January 19, 1996, AIG Trading Corporation, filed certain information as required by the Commission's January 19, 1995, order in Docket No. ER94–1691–000.

On January 17, 1996, Peak Energy, Inc., filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–379–000.

On January 18, 1996, National Fuel Resources, Inc. filed certain information as required by the Commission's September 7, 1995, order in Docket No. ER94–1374–000.

On January 17, 1996, Superior Electric Power Corporation, filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1747–000.

3. Southwest Regional Transmission Association

[Docket No. ER94–1381–001]

Take notice that on January 17, 1996, Southwest Regional Transmission Association (SWRTA), on behalf of its Members, submitted for filing the signature pages of new Members and a list of all of its Members by Member Class designations.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Company

[Docket No. ER96–674–000]

Take notice that on January 16, 1996, Minnesota Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Calpine Newark Cogen, Inc.

[Docket No. ER96–675–000]

Take notice that on January 24, 1996, Calpine Newark Cogen, Inc. tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Calpine Parlin Cogen, Inc.

[Docket No. ER96–676–000]

Take notice that on January 11, 1996, Calpine Parlin Cogen, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER96–776–000]

Take notice that on January 11, 1996, PECO Energy Company (PECO) filed a Service Agreement dated December 28, 1995, with Tennessee Valley Authority (TVA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds TVA as a customer under the Tariff.

PECO requests an effective date of December 28, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to TVA and to the Pennsylvania Public Utility Commission.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER96–777–000]

Take notice that on January 11, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 21, 1995, with Aquila Power Corporation (Aquila) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Aquila as a customer under the Tariff.

PECO requests an effective date of December 21, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to Aquila and to the Pennsylvania Public Utility Commission.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER96–778–000]

Take notice that on January 11, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 21, 1995, with New England Power (New England Power) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds New England Power as a customer under the Tariff.

PECO requests an effective date of December 21, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to New England Power and to the Pennsylvania Public Utility Commission.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER96–779–000]

Take notice that on January 11, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Global Petroleum Corporation (Global). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Global and Global will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on January 12, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Global.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Company Services, Inc.

[Docket No. ER96–780–000]

Take notice that on January 11, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as ''Southern Companies'') filed a tariff pursuant to which Southern Companies would make wholesale power sales at market-based rates.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER96–781–000]

Take notice that on January 11, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Sonat Power Marketing, Inc.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER96–782–000]

Take notice that on January 11, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and the Ohio Edison Company.

Cinergy and the Ohio Edison Company are requesting an effective date of January 1, 1996.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER96–783–000]

Take notice that on January 11, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Coastal Electric Services Company.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Baltimore Gas and Electric Company and Potomac Electric Power Company

[Docket No. ER96–784–000]

Take notice that on January 11, 1996, Baltimore Gas and Electric Company (BGE) and Potomac Electric Power Company (Pepco) (collectively, Applicants) filed, pursuant to Rule 205 of the Federal Power Act and Part 35 of the Commission's Regulations, two transmission tariffs; a Point-to-Point Transmission Service Tariff and a Network Integration Service Transmission Tariff.

The Applicants state that they are making this filing in connection with the proposed merger of BGE and Pepco into Constellation Energy Corporation (Constellation), and that service under these two tariffs will be provided by Constellation upon the consummation of the merger. The Applicants request that the Commission waive the 120-day notice requirement of 35.3 of the Commission's Regulations to allow the tariffs to be accepted for filing and put into effect on the date upon which the merger is consummated. Copies of the filing have been served on the state utility regulatory commissions of the District of Columbia, Maryland, Pennsylvania and Virginia.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. UtiliCorp United Inc.

[Docket No. ER96–785–000]

Take notice that on January 16, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *Cenergy Inc.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *Cenergy Inc.* pursuant to the tariff, and for the sale of capacity and energy by *Cenergy Inc.* to WestPlains Energy-Colorado pursuant to *Cenergy Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Cenergy Inc.*

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER96–786–000]

Take notice that on January 16, 1996, UtiliCorp United Inc., tendered for filing

on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Cenergy Inc.* The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Cenergy Inc.* pursuant to the tariff, and for the sale of capacity and energy by *Cenergy Inc.* to WestPlains Energy-Kansas pursuant to *Cenergy Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of concurrence by *Cenergy Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ER96–787–000]

Take notice that on January 16, 1996, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10 with *Cinergy Inc.* The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Cinergy Inc.* pursuant to the tariff, and for the sale of capacity and energy by *Cinergy Inc.* to Missouri Public Service pursuant to *Cinergy Inc.'s* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Cinergy Inc.*

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. The Toledo Edison Company

[Docket No. ER96–788–000]

Take notice that on January 16, 1996, The Toledo Edison Company (Toledo Edison), tendered for filing a revision to the Resale Service Rate Agreement between Toledo Edison and Southeastern Michigan Rural Electric Cooperative (Southeastern Michigan), which was effective for service rendered by Toledo Edison to Southeastern Michigan from January 1, 1996.

Toledo Edison states that Southeastern Michigan presently purchases firm power under is FERC Electric Tariff No. 33 which terminates under its own provisions on December 31, 1995. Under the Resale Service Rate Agreement, Toledo Edison will continue to sell to Southeastern Michigan all of the power and energy needed by Southeastern Michigan to serve its requirements.

Toledo Edison states that the rate set forth in the Resale Service Rate Agreement is a negotiated rate between Toledo Edison and Southeastern Michigan. Toledo Edison states that the Resale Service Rate Agreement will help Southeastern Michigan become competitive in its source of power.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER96–789–000]

Take notice that on January 16, 1996, PECO Energy Company (PECO), filed a Service Agreement dated January 3, 1996 with Orlando Utilities Commission (OUC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds OUC as a customer under the Tariff.

PECO requests an effective date of January 3, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to OUC and to the Pennsylvania Public Utility Commission.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. PECO Energy Company

[Docket No. ER96–790–000]

Take notice that on January 16, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 28, 1995, with Central Virginia Electric Cooperative (CVEC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CVEC as a customer under the Tariff.

PECO requests an effective date of December 28, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to CVEC and to the Pennsylvania Public Utility Commission.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER96–791–000]

Take notice that on January 16, 1996, PECO Energy Company (PECO), filed a Service Agreement dated December 28, 1995, with Baltimore Gas & Electric Company (BG&E) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds BG&E as a customer under the Tariff.

PECO requests an effective date of December 28, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to BG&E and to the Pennsylvania Public Utility Commission.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Western Resources, Inc.

[Docket No. ER96–792–000]

Take notice that on January 16, 1996, Western Resources, Inc. (Western Resources), tendered for filing a non-firm transmission service agreement with Duke/Louis Dreyfus L.L.C., Western Resources states the purpose of this filing is to permit Duke/Louis Dreyfus L.L.C., access to Western Resources' transmission system. The agreement is proposed to become effective January 3, 1996.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C. and the Kansas Corporation Commission.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Kansas City Power & Light Company

[Docket No. ER96–793–000]

Take notice that on January 16, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated December 20, 1995 between KCPL and Delhi Energy Services, Inc. (Delhi). KCPL proposes an effective date of December 20, 1995, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and Delhi.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rate and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Wisconsin Power and Light Company

[Docket No. ER96–794–000]

Take notice that on January 16, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated January 2, 1996, establishing Citizens Lehman Power Sales as a customer under the terms of WP&L's Point-to-Point Transmission Tariff.

WP&L requests an effective date of January 2, 1996 and accordingly seeks

waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Gateway Energy Marketing

[Docket No. ER96–795–000]

Take notice that on January 16, 1996, Gateway Energy Marketing (Gateway), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, a petition for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective the earlier of March 16, 1996, or the date of a Commission order granting approval of this Rate Schedule.

Gateway intends to engage in electric power and energy transactions as a marketer and broker. In transactions where Gateway purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, Gateway will be functioning as a marketer. In Gateway's marketing transactions, Gateway proposes to charge rates mutually agreed upon by the parties. In transactions where Gateway does not take title to the electric power and/or energy, Gateway will be limited to the role of a broker and will charge a fee for its services. Gateway is not in the business of producing or transmitting electric power. Gateway does not currently have or contemplate acquiring title to any electric power transmission facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. ER96–797–000]

Take notice that on January 16, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated November 1, 1995, between Cinergy, CG&E, PSI and Aquila Power Corporation (AQUILA).

The Interchange Agreement provides for the following service between Cinergy and AQUILA.

1. Exhibit A—Power Sales by AQUILA
2. Exhibit B—Power Sales by Cinergy

Cinergy and AQUILA have requested an effective date of February 1, 1996.

Copies of the filing were served on Aquila Power Corporation, the Nebraska Public Service commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: February 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. William T. McCormick, Jr.

[Docket No. ID–2423–002]

Take notice that on December 18, 1996, William T. McCormick, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, First Chicago NBD
Chairman of the Board and Director, Consumers Power Company

Comment date: February 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2218 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–52–000]

Granite State Gas Transmission, Inc.; Notice of Availability of the Draft Environmental Impact Statement for the Granite State LNG Project

January 29, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has made available a Draft Environmental Impact Statement (DEIS) on the construction and operation of the liquefied natural gas (LNG) storage facility, truck unloading stations, and permanent access road as proposed in the above-referenced docket.

The staff prepared the DEIS to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The DEIS evaluates alternatives to the proposal, including system alternatives and alternative sites for the storage facility and the permanent access road.

Granite State Gas Transmission, Inc. (Granite State), is seeking approval of a specific site in Wells, Maine to store LNG that would be transported by tanker trucks from Everett, Massachusetts. The LNG would be vaporized as needed and the natural gas delivered into Granite State's existing natural gas pipeline transportation system. The proposed action involves construction of:

- a 580,000-barrel LNG storage tank (equivalent to 2 billion cubic feet of natural gas);
- two truck unloading stations;
- two 67 million cubic feet per day vaporizers;
- a vapor handling system;
- a 12-inch-diameter sendout pipeline to deliver the natural gas to the existing Granite State pipeline; and
- a new 1.4-mile-long permanent access road to the storage facility site from State Route 9.

In addition, Granite State proposes to upgrade and temporarily use an existing 1.1-mile-long dirt road for access into the storage facility site during the initial stages of construction. Construction of the project would take about 29 months with an average work force of approximately 45 workers for 26 of the 29 months.

Public Meeting Schedule

A public meeting to receive comments on the DEIS will be held during the comment period. We will give the location and time for this meeting in a future notice.

Comment Procedures

Written comments are welcome to help identify significant issues or concerns related to the proposed action. All comments on environmental issues should contain supporting documentation and rationale. The staff is specifically requesting comments regarding:

• system alternatives (see section 3.2);
• alternative storage facility sites (see sections 3.3 and 6.1); and
• alternative alignments for the permanent access road to the storage facility site (see sections 3.4 and 6.2).

Written comments should be filed on or before March 18, 1996, must reference Docket No. CP95–52–000, and be addressed to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

A copy of the comments should also be sent to the FERC Project Manager identified below.

After these comments are reviewed, any significant issues are investigated, and modifications are made to the FEIS, a Final Environmental Impact Statement (FEIS) will then be published by the staff and distributed. The FEIS will contain the staff's responses to timely comments received on the DEIS.

The DEIS has been placed in the public files of the FERC and is available for public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, (202) 208–1371

and

Town Manager's Office, Town Hall, Wells, ME 04090

Copies of the DEIS have been mailed to Federal, state, and local agencies; public interest groups; public libraries; newspapers; individuals who have requested the DEIS; and other parties to this proceeding. Any person may file a motion to intervene on the basis of the Commission staff's DEIS [see 18 CFR 380.10(a) and 385.214].

A limited number of copies of the DEIS are available from: Mr. Chris Zerby, Project Manager, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Room 72–55, Washington, DC 20426, (202) 208–0111.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2179 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. CP96–150–000]

Chevron U.S.A. Inc.; Notice of Petition for Declaratory Order

January 29, 1996.

Take notice that on January 5, 1996, Chevron U.S.A. Inc. (Chevron), Post Office Box 3725, Houston, Texas 77253–3725, filed in Docket No. CP96–150–000 a petition pursuant to Section 1(b) of the Natural Gas Act (NGA) for a declaratory order exempting facilities to be acquired from Transwestern Pipeline Company (Transwestern) from Commission regulation under the NGA, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Chevron proposes to purchase from Transwestern 48.3 miles of 20-inch pipeline lateral and 3.4 miles of 6-inch pipeline lateral, both located in Pecos County, Texas, for use in Chevron's gathering operations. It is stated that Transwestern filed a request to abandon the facilities by sale to Chevron in Docket No. CP96–119–000. It is asserted that although the facilities are presently certificated as transmission facilities, their primary function, on acquisition by Chevron, would be gathering. It is further asserted that the facilities and their proposed use by Chevron meet the Commission's criteria to support a finding of non-jurisdictional gathering function. It is explained that the facilities will be operated by Warren Petroleum Company, a division of Chevron, which is a producer of natural gas and oil, and not subject to Commission regulation. Chevron requests that the facilities be refunctionalized on acquisition from Transwestern.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 20, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2180 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–97–003]

Chandeleur Pipe Line Company; Notice of Compliance Filing

January 29, 1996.

Take notice that on January 24, 1996, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets, to become effective January 1, 1996:

Substitute Third Revised Sheet No. 5
Substitute First Revised Sheet No. 8
Substitute First Revised Sheet No. 14

Chandeleur states that the purpose of this filing is to correct the pagination, in compliance with Exhibit B of Order 582 issued in Docket No. RM95–3–000 on September 28, 1995.

Chandeleur states that it is serving copies of this filing to its customers, State Commissions and interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2188 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–4–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 29, 1996.

Take notice that on January 23, 1996, Mid Louisiana Gas Company (Mid Louisiana) field to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with an effective date of January 25, 1996:

First Revised Sheet No. 0
First Revised Sheet No. 86
Second Revised Sheet No. 131

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to reflect a revision to the physical location of facilities, related telephone number changes and to update the listing of shared personnel and facilities.

Additionally, the electronic version of this filing consists of all currently effective tariff sheets numbered 1 through 85, 87 through 130, and 132 through 288 as well as the indicated revised sheets. This re-filing of currently effective sheets is submitted in compliance with the Federal Energy Regulatory Commission's directive in Order 582, issued September 28, 1995 (RM95–3–000).

Pursuant to Section 154.7(d) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of ¶ 154.203(b), Compliance filings, and ¶ 154.207, Notice requirements, as well as any other requirement of the Regulations in order to permit the tendered tariff sheets to become effective January 25, 1996, as submitted.

Mid Louisiana states that paper copies of the Revised Tariff Pages and this filing were served upon its jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2182 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–397–003]

Panhandle Eastern Pipe Line Company; Notice of Motion To Place Tariff Sheets into Effect

January 29, 1996.

Take notice that on January 24, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective January 25, 1996. Panhandle asserts that the purpose of this filing is to move into effect the tariff sheets required to implement Limited Firm Transportation Service under Rate Schedule LFT on Panhandle's system.

Panhandle states that on July 25, 1995, Panhandle filed tariff sheets to implement Rate Schedule LFT for Limited Firm Transportation Service on its system with a proposed effective date of August 24, 1995. On August 24, 1995, the Commission issued its Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Technical Conference (August 24, 1995 Order) 72 FERC ¶ 61,185 (1995) in which the Commission accepted Panhandle's tariff sheets subject to refund and the outcome of the technical conference to become effective the earlier of January 25, 1996 or a date specified by the Commission following the technical conference. At the time of this motion filing, the Commission had not specified an effective date earlier than January 25, 1996.

Panhandle states that in copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2186 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–407–004]

Questar Pipeline Company; Notice of Tariff Filing

January 29, 1996.

Take notice that on January 25, 1996, Questar Pipeline Company (Questar) tendered for filing and acceptance to be effective February 1, 1996, Alternate First Revised Sheet No. 7 to First Revised Volume No. 1 and Alternate Substitute Fifteenth Revised Sheet No. 8 to Original Volume No. 3 of its FERC Gas Tariff. Questar explains that these tariff sheets, which reflect Questar's currently effective gathering rates, are filed in compliance with Paragraph E of the Commission's August 31, 1995, order in Docket No. RP95–407.

Questar explains further that the tendered tariff sheets are to become effective February 1, 1996, only if Questar has not received Commission authorization, on or before that date, to spin down its gathering facilities as requested in Docket No. CP95–650. Questar states that the alternate tariff sheets will be withdrawn if the Commission approves Questar's gathering spin down after January 31, 1996.

Questar states that copies of the proposed alternate tariff sheets and the transmittal letter describing the nature of the filing were served upon all parties set out on the official service list in Docket No. RP95–407.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2187 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–155–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

January 29, 1996.

Take notice that on January 24, 1996, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, 35202–2563, filed in Docket No. CP96–155–000 a request pursuant to Section 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for approval to abandon certain regulating facilities in connection with a change in the operation of a delivery point for an existing customer, Alabama Gas Corporation (Alagasco), under Southern's blanket certificate authority issued in Docket No. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set

forth in the request which is on file with the Commission and open to public inspection.

Southern indicates that Alagasco has requested it to remove the existing regulators and install incidental piping and fittings at its Fairfield Delivery Point, located at or near Mile Post 0.128 on Southern's six-inch Fairfield Line in Section 14, Township 18 South, Range 4 West, Jefferson County, Alabama. It is further indicated that the point will be redesigned to deliver gas to Alagasco at mainline pressure not less than 175 psiq. Southern states that such operational changes to the Fairfield Delivery Point will have no impact on Southern's peak day and annual deliveries. Southern further states that the estimated cost of the modifications is $10,900 which Alagasco has agreed to reimburse Southern.

Southern states that the abandonment of facilities and change in operation of the delivery point proposed in this request for authorization will not result in any termination of service or any change to the total Firm Transportation Demand delivered to Alagasco. Southern further states that the proposed abandonment of facilities and change in delivery pressure are not prohibited by any existing tariff of Southern and that Southern has the ability to accomplish the deliveries to Alagasco without detriment or disadvantage to its ability to meet the firm requirements of its other customers.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed thereunder, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2181 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–375–004 and RP95–215–003]

Texas Gas Transmission Corporation; Notice of Refund Report

January 29, 1996.

Take notice that on January 4, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing the allocation of credits to its former sales customers on December 10, 1995, of $1,265,904, in accordance with the Offer of Settlement filed on August 21, 1995, in the above-captioned dockets.

Texas Gas states that this refund report is being made to comply with Subpart F, Sections 154.501 and 154.502 under the Natural Gas Act as amended by Order No. 582, which became effective on November 13, 1995, which requires refund reports within 30 days of the date the refund was made unless otherwise provided by order, settlement or tariff provision.

Texas Gas further states that copies of the refund report are being served upon Texas Gas's jurisdictional customers receiving refunds/credits made on December 10, 1995, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before February 5, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2185 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–164–010]

Trunkline Gas Company; Notice of Compliance Filing

January 29, 1996.

Take notice that on January 25, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets, as listed on Appendix A attached to the filing, proposed to be effective September 1, 1994 and February 1, 1996, as applicable. Trunkline asserts that the purpose of this filing is to comply with the Commission's orders issued July 6, 1995 and December 15, 1995, in Docket No. RP94–164–006, et al. (72 FERC ¶ 61,012 and 73 FERC ¶ 61,319).

Trunkline states the purpose of this filing is to implement the terms of the January 20, 1995, Stipulation and Agreement in Docket No. RP94–164–006, et al. (Settlement). The revised tariff sheets reflect the Final Settlement Rates proposed to be effective February 1, 1996. The revised tariff sheets also reflect Settlement tariff provisions to be effective September 1, 1994 which 1) provide for the crediting of interruptible storage service revenues and for the termination of the interruptible transportation revenue crediting provision and 2) provide for changes in Trunkline's Fuel Recovery Provisions so that the fuel tracker becomes the means by which all of Trunkline's fuel requirements are recovered.

Trunkline states that a copy of this filing are being served on all jurisdictional customers, applicable state regulatory agencies, and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–2184 Filed 2–1–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5413–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed January 22, 1996 Through January 26, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 950608, FINAL EIS, IBR, CA, Cachuma Water Supply Project, Implementation, Long-Term Contract

Renewal, Santa Ynez Valley, Bradbury Dam, Santa Barbara County, CA, Due: January 22, 1996, Contact: Robert May (209) 487–5137.

Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the 30 Day Wait Period for this FEIS is Calculated from the Intended Federal Register Date of December 22, 1995.

EIS No. 960023, DRAFT SUPPLEMENT, NPS, AZ, Tumacacori National Historical Park General Management Plan, Additional Information, Santa Cruz County, AZ, Due: March 18, 1996, Contact: Dan Olson (415) 744–3968.

EIS No. 960024, DRAFT SUPPLEMENT, COE, FL, Palm Beach County Beach Erosion Project, Updated Information concerning Shore Protection for the Ocean Ridge Segment from the Martin County Line to Lake Worth Inlet and from the South Lake Worth Inlet to the Broward County Line, Palm Beach, Martin and Broward Counties, FL, Due: March 18, 1996, Contact: Michael Dupes (904) 232–1689.

EIS No. 960025, DRAFT EIS, AFS, AK, Port Houghton/Cape Fanshaw Timber Harvest Sale Project, Implementation, Tongass National Forest, Chatham and Stikine Areas, South of Juneau, AK, Due: March 26, 1996, Contact: Dave Cottrell (907) 772–3841.

EIS No. 960026, DRAFT EIS, FHW, SC, Carolina Bays Parkway (better known as Grand Strand), Funding, NPDES Permit, COE Section 10 and 404 Permits, Horry and Georgetown Counties, SC, Due: March 18, 1996, Contact: Kenneth R. Myers (803) 253–3881.

EIS No. 960027, DRAFT SUPPLEMENT, FHW, SC, Mark Clark Expressway (Charleston Inner Belt Freeway) Updated Information, Construction between SC–7 Sam Rittenberg Boulevard and SC–171 Folly Road, Stone River, US Coast Guard Permit and COE Section 10 and 404 Permits, Charleston County, SC, Due: March 18, 1996, Contact: Kenneth Myers (803) 253–3881.

EIS No. 960028, DRAFT EIS, AFS, CA, Sequoia National Forest Land and Resource Management Plan, Amendment ''Grazing Management'', Implementation, Kern, Tulare and Fresno Counties, CA, Due: May 3, 1996, Contact: Julie Allen (209) 784–1500.

EIS No. 960029, DRAFT EIS, FHW, MO, US Route 71/Range Line Road Bypass east of the Joplin City limits, Construction, COE Section 404 Permit, Jasper County, MO, Due: March 29, 1996, Contact: Donald Neumann (314) 636–7104.

EIS No. 960030, FINAL EIS, DOE, CA, NV, ADOPTION—Alturas 345 Kilovolt (kv) Electric Power Power Transmission Line Project, Construction, Operation and Maintenance, Right-of-Way Grant Approval, Special-Use-Permit and COE Section 404 Permit, Susanville District, Modoc, Lassen and Sierra Counties, CA and Washoe County, NV, Due: March 4, 1996, Contact: Richard Stone (503) 230–3797.

The U.S. Department of Energy's, Bonneville Power Administration (BPA) has adopted the U.S. Department of the Interior's, Bureau of Land Management FEIS #950572, filed with the Environmental Protection Agency on 12–7–95. BPA is a cooperating agency on this project. Recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

EIS No. 960031, FINAL EIS, FAA, MO, ADOPTION Richards-Gebaur Air Force Base Disposal and Reuse, Implementation, Possible Clean Air Act Title V, National Pollutant Discharge Elimination System, COE Section 404, Hazardous Water Treatment Storage or Disposal Facility, Archaeological Resources Protection Act and Endangered Species Act Section 10 Permits, Jackson and Cass Counties, MO, Due: Contact: Jonathon D. Farthing (210)

The U.S. Department of Transportation's, (FAA) has ADOPTED the U.S. Air Force's FEIS #940289, filed with the Environmental Protection Agency on 7–20–94. FAA is a Cooperating Agency for the above final EIS. Recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

EIS No. 960032, FINAL EIS, BLM, NV, Cortez Pipeline Gold Deposit Project, Development, Construction and Operation of an Open-Pit Mine, Plan of Operations Approval, Right-of-Way Permits and COE Section 404 Permit, Lander County, NV, Due: March 4, 1996, Contact: Dave Davis (702) 635–4000.

EIS No. 960033, DRAFT EIS, FHW, CA, I–805 Nobel Drive Interchange and Extension Project, Improvements, between Nobel Drive and Miramar Road/LaJolla Village Drive and the extension of Nobel Drive from Shoreline Drive to Miramar Road, in the City of San Diego, San Diego County, CA, Due: March 18, 1996, Contact: Dennis A. Scovil (916) 498–5034.

EIS No. 960034, FINAL SUPPLEMENT EIS, COE, FL, Central and Southern Florida Flood Control Project, Restoration of the Upper Kissimmee River Basin through the Headwater Revitalization Project and the Lower Kissimmee River Basin through the Level II Backfilling Plan, Implementation, Updated Information, Glades, Osceda Highlands, Polk, Okeechobee and Orange Counties, FL, Due: March 4, 1996, Contact: Michael A. Smith (904) 232–3506.

EIS No. 960035, DRAFT EIS, NOA, NC, Black Sea Bass (Centropristis striata) Fishery Management Plan (FMP), Implementation, in the western Atlantic Ocean, from Cape Hatteras, NC northward to the US-Canadian Border, Due: April 2, 1996, Contact: Rolland A. Schmitten (301) 713–2239.

EIS No. 960036, FINAL EIS, MMS, AK, Cook Inlet Planning Area, Alaska Outer Continental Shelf Oil and Gas Sale 149, Leasing Offering, AK, Due: March 4, 1996, Contact: George Valiulis (703) 787–1662.

EIS No. 960037, FINAL EIS, DOE, WA, Hanford Site K Basins Management of Spent Nuclear Fuel, Storage and Disposal, Application for Approval of Construction and NPDES Permit Issuance, Columbia River, Richland, Benton County, WA, Due: March 4, 1996, Contact: P.G. Loscoe (509) 376–7434.

EIS No. 960038, DRAFT EIS, FRC, ME, Granite State Gas Transmission, Construction and Operation of a Liquefied Natural Gas Facility, Permits and Approvals, In the Town of Wells, York County, ME, Due: March 18, 1996, Contact: Chris Zerby (202) 208–0111.

EIS No. 960039, FINAL EIS, AFS, OR, Hoodoo Master Plan, Plan of Operation Approval and Special-Use-Permit Issuance, Willamette National Forest, McKenzie Ranger District, Linn County, OR, Due: March 4, 1996, Contact: John P. Allen (541) 822–3381.

EIS No. 960040, FINAL EIS, AFS, MT, Red Lodge Mountain Ski Area Master Development Plan, Special-Use-Permit Approval or Denial, Custer National Forest, Beartooth Ranger District, Carbon County, MT, Due: March 4, 1996, Contact: Tom Highberger (406) 446–2103.

EIS No. 960041, FINAL EIS, COE, WI, East Channel of the Mississippi River at Prairie du Chien Long-Term Channel Maintenance Plan and St. Feriole Island and Adjacent Mainland Barge Transloading Facility Upgrading and Expansion, Implementation and COE Permits, Prairie du Chien, WI, Due: March 4, 1996, Contact: Dennis Anderson (612) 290–5272.

EIS No. 960042, FINAL EIS, FTA, CO, Southwest Corridor Light Rail Transit Project, Construction from Mineral Avenue in the City of Littleton to I–25/Broadway, Colorado Metropolitan Area, Central Business District, Arapahoe, Denver and Jefferson Counties, CO, Due:

March 4, 1996, Contact: Don Cover (303) 844–3242.

EIS No. 960043, FINAL EIS, AFS, UT, Blanchett Park Dam and Irrigation Reservoir, Construction and Operation, Uintah Water Conservancy District (UWCD), Special-Use-Permit and COE Section 404 Permit, Ashley National Forest, Vernal Ranger District, Uintah County, UT, Due: February 26, 1996, Contact: Roland Leiby (801) 781–5140.

Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the 30 Day Wait Period for this FEIS is Calculated from the Intended Federal Register Date of January 26, 1996.

EIS No. 960044, DRAFT EIS, BLM, NV, Talapoosa Gold Mine Project, Construction and Operation, Plan of Operations Approval, Special-Use-Permit and COE Section 404 Permit Issuance, Silver Springs, Lyon County, NV, Due: March 26, 1996, Contact: Ron Moore (702) 885–6000.

Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the Comment Period for this DEIS is Calculated from the Intended Federal Register Date of January 26, 1996.

EIS No. 960045, DRAFT EIS, DOE, NV, Nevada Test Site (NTS) and Off-Site Locations, Implementation, at the Following Sites: Tonopah Test Range; Portions of the Nellis Air Force Range (NAFR) Complex; the Central Nevada Test Area and Shoal Area Project, Nye County, NV, Due: May 3, 1996, Contact: Donald R. Elle (800) 405–1140.

EIS No. 960046, FINAL EIS, BLM, AZ, Cyprus Bagdad Copper Mine, Mill Tailings and Waste Rock Storage Expansion, Plan of Operation Approval, NPDES and COE Section 404 Permits Issuance, Yavapai County, AZ, Due: March 4, 1996, Contact: Mary Johnson (602) 780–8090.

Amended Notices

EIS No. 950489, DRAFT EIS, COE, IN, Indiana Harbor and Canal Dredging and Confined Disposal Facility, Construction and Operation, Comprehensive Management Plan, East Chicago, Lake County, ID, Due: April 1, 1996, Contact: Keith Ryder (312) 353–7795.

Published FR 10–27–95—Review period extended.

EIS No. 950601, FINAL EIS, COE, PR, Rio Fajardo Flood Control Feasibility Study for Flood Protection, Implementation, PR, Due: March 4, 1996, Contact: Barbara Cintron (904) 232–1692.

Published FR 08–25–95—Due Date Correction.

EIS No. 950607, FINAL EIS, AFS, NM, Santa Fe Ski Area Master Development Plan, Upgrading and Expansion, Special-Use-Permit, Santa Fe National Forest, Espanola Ranger District, Santa Fe County, NM, Due: February 5, 1996, Contact: Robert Remilland (505) 667–5120.

Published FR 01–26–96—Correction of CEQ Accession Number.

Dated: January 30, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–2337 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FR–5413–1]

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) on the Modification/Reissuance of a New Source National Pollutant Discharge Elimination System (Permit for Waste Water Discharges From the Proposed Expansion of Sabine Mining Company's (SMC) South Hallsville Lignite Mine No. 1, in Harrison County, Texas

AGENCY: U.S. Environmental Agency (EPA).

PURPOSE: To meet National Environmental Policy Act and Clean Water Act requirements for consideration of environmental impacts associated with the modification/reissuance of a NPDES permit.

SUMMARY: In 1982, the EPA prepared an EIS on its decision to issue NPDES permits for the Henry W. Pirkey Power Plant Unit 1 and the SMC's South Hallsville Mine No. 1. The EPA's Supplemental EIS will cover SMC's expansion activities not covered by the original EPA document. The 33,500 acre expansion is located east of, and contiguous to, the existing SMC South Hallsville Mine No. 1. The expansion will provide an estimated four million tons per year of lignite to fuel the Pirkey Plant through the year 2020.

ALTERNATIVES: The EPA may issue or deny NPDES permit authorization for waste water discharges from the proposed expansion.

SCOPING MEETING: The EPA will hold a public meeting on Tuesday, March 19, 1996, at 7:00 p.m. at the Marshall Civic Center, located at 2501 East End Boulevard (U.S. Highway 59), in Marshall, Texas, to receive public input on environmental issues that should be addressed in the Draft SEIS.

FOR SCOPING COMMENTS, ADDITIONAL INFORMATION, OR TO BE PLACED ON EIS MAILING LIST CONTACT: Mr. Robert D. Lawrence, Chief, Office of Planning and Coordination, EPA (6EN–XP), 1445 Ross Avenue, Dallas, Texas 75202–2733; telephone (214) 665–2258.

ESTIMATED DATE OF DRAFT EIS RELEASE: July, 1996.

RESPONSIBLE OFFICIAL: Jane N. Saginaw, Regional Administrator.

Anne Norton Miller,

Deputy Director, Office of Federal Activities.

[FR Doc. 96–2267 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5413–2]

South Bay International Wastewater Treatment Plant Intent To Prepare Two Draft Supplemental Environmental Impact Statements (SEISs)

AGENCIES: U.S. Environmental Protection Agency (EPA) U.S. Section, International Boundary and Water Commission (IBWC).

ACTION: Notice of Intent to prepare two Supplemental Environmental Impact Statements (SEISs) to examine interim disposal options and secondary treatment alternatives for the South Bay International Wastewater Treatment Plant, San Diego, CA.

AUTHORITY: In accordance with Section 510 of the Water Quality Act of 1987, as amended, and Section 102(2)(c) of the National Environmental Policy Act (NEPA). EPA and the IBWC have identified a need to prepare two SEISs and therefore issue this Notice of Intent pursuant to 40 CFR 1501.7, 1508.22, 6.404(a), and 6.105(e).

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Ms. Elizabeth Borowiec, U.S. EPA, Region 9, 75 Hawthorne Street, Mail Code W–2–2, San Francisco, California 94105, (415) 744–1948.

SUMMARY: In July 1990, the IBWC and Mexico signed Minute 283 which outlined a plan for the treatment of renegade sewage flows emanating from Tijuana, Mexico and crossing into the United States along the U.S/Mexican border in San Diego. In the Minute, the two countries agreed to construct an international wastewater treatment plant (IWTP) on the U.S. side of the border. In May of 1991, EPA and the IBWC issued a draft Environmental Impact Statement (DEIS) which examined alternatives to implementing the Minute. After receiving public comment on the DEIS, a final EIS (FEIS) was issued in February of 1994 recommending the construction of a full secondary treatment wastewater treatment plant to be located on a 75-acre site just west of San Ysidro, CA near the intersection of Dairy Mart and Monument Roads. The FEIS also

recommended the construction of the South Bay Ocean Outfall for effluent disposal. In May of 1994, the agencies signed the Record of Decision (ROD) selecting the recommended alternative in the FEIS.

The IWTP, also called the South Bay or Tijuana International Wastewater Treatment Plant, is designed to treat an average flow of 25 million gallons per day of wastewater to a secondary level, with the capacity to treat an additional 50 million gallons per day to the advanced primary level during peak flows.

Since the issuance of the FEIS and the ROD, the EPA and IBWC have decided to prepare two Supplemental Environmental Impacts Statements (SEISs) to address proposed project changes. The first SEIS, or Interim SEIS, will address, among other things, a proposal to operate the IWTP and discharge effluent in the interim period after completion of the advanced primary component but before completion of the secondary treatment component and/or the South Bay Ocean Outfall. The Interim SEIS will also address other issues such as any new information on flows from Mexico, de/chlorination impacts, and toxic monitoring data. The second SEIS, or Long-Term SEIS, will address a proposal to evaluate alternatives to activated sludge as a method for secondary treatment. It will also address issues such as any new information concerning Mexico's progress in implementing sludge disposal and industrial pretreatment programs.

Alternatives

Interim SEIS

1. No Action

The IWTP would not be activated until the 25 mgd full secondary treatment facilities and the South Bay Ocean Outfall (SBOO) are completed.

2. Operate the IWTP as an Advanced Primary Facility

The IWTP would be used for advanced primary treatment and storage in primary settling tanks with disposal via the emergency pipeline connection to the City of San Diego's Point Loma Wastewater Treatment Plant. Treated flows in excess of the capacity of the emergency connection (13 mgd) would be returned to Mexico, if possible, and/or released to the Tijuana River.

3. Operate the IWTP as an Advanced Primary Facility With Earthen Basin Storage for Flow Equalization

The IWTP would be used for advanced primary treatment with disposal via the emergency pipeline connection to the City of San Diego's Point Loma Wastewater Treatment Plant. During peak flow periods, the capacity of the emergency connection may be exceeded. Those treated flows could be stored in an earthen basin until additional flow capacity is available in the emergency connection. Once the capacity of the earthen basins are exceeded, treated sewage could be returned to Mexico or discharged into the Tijuana River.

4. Operate the IWTP With Treated Flows Returned to Mexico for Discharge to the Pacific Ocean at Punta Banderas

The IWTP would be used for advanced primary treatment with discharge to the Pacific Ocean at Punta Banderas in Mexico.

5. Operate the IWTP With Disposal Through the SBOO

The IWTP would be utilized for advanced primary treatment with discharge to the Pacific Ocean via the completed South Bay Ocean Outfall.

6. Operate the IWTP Utilizing a Phased Disposal Approach

The IWTP would be utilized for advanced primary treatment with a phased disposal approach dependent on flows from Mexico and the completion of SBOO. For flows less than 13 mgd, Alternative 2 would be the disposal alternative used. For flows above 13 mgd, Alternative 3 would be used until SBOO is completed. Finally, Alternative 5 would be selected once SBOO is on line.

Long Term SEIS

1. No Action

The IWTP would be constructed for a 25 mgd mechanical secondary facility as discussed in the 1994 FEIS and the ROD. Peaks above 25 mgd, up to 75 mgd, would receive only advanced primary treatment.

2. Operate the IWTP With Flow Equalization

The IWTP would be constructed for a 25 mgd mechanical secondary IWTP as discussed in the FEIS and ROD, with the addition of flow equalization facilities. Flow equalization would allow for flow storage of advanced primary effluent during peak hours of the day with secondary treatment of these stored flows at off-peak hours. Flow equalization facilities would be designed to equalize flows from the primary to the secondary treatment facilities to a constant rate of 25 mgd.

3. Operate the IWTP With an Expansion to the Mechanical Secondary Facilities

As stated in the FEIS and ROD, the mechanical secondary system has a maximum capacity of 25 mgd. This alternative would consider expanding the mechanical secondary capacity to handle flow peaks of up to 50 mgd (i.e., a 2 to 1 peaking factor).

4. Operate the IWTP With an Alternative to Mechanical Secondary Treatment

Alternatives under consideration include ponds (biological treatment ponds) and trickling filters.

4a. Use of trickling filters with a design capacity of 25 mgd. The trickling filters would be designed with either a 2 to 1 peaking factor or with flow equalization facilities that would equalize peak flow rates of up to 75 mgd from the advanced primary treatment facilities to a constant rate of 25 mgd to the trickling filters.

4b. Use of ponds sized to equalize and treat peak flows up to 75 mgd.

5. Maintain the IWTP at the Advanced Primary Treatment Level

The IWTP would be built with advanced primary facilities only as discussed in the FEIS and ROD (25 mgd average, 75 mgd peak); no secondary facilities would be constructed. Advanced primary treated effluent would be released to the Pacific Ocean through the SBOO.

SCOPING: Although scoping meetings are not required for SEISs, the EPA and the IBWC have held a meeting on August 31, 1995 in San Diego for the Interim SEIS. A scoping meeting for the general public regarding the Long-Term SEIS is planned for San Diego in February 1996.

PROPOSED DATE OF RELEASE:

Interim SEIS—Draft-Spring 1996, Final-Fall 1996

Long-Term SEIS—Draft-Summer 1997, Final-Winter 1997.

RESPONSIBLE OFFICIALS:

Felicia Marcus, Regional Administrator, U.S. Environmental Protection Agency, Region 9

John Bernal, Commissioner, U.S. Section, International Water and Boundary Commission.

Anne Norton Miller,

Deputy Director, Office of Federal Activities.

[FR Doc. 96–2268 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5412–7]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing its Winter meeting of the Ozone Transport Commission to be held on February 13, 1996.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on February 13, 1996 from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at: The Madison Hotel, 15th and M Streets, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: EPA: Susan Studlien, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3800.

THE STATE CONTACT: Host Agency: Donald Wambsgans, District of Columbia Environmental Regulation Administration, 2100 Martin Luther King, Jr., Avenue, SE., Washington, DC 20020–5732, (202) 645–6093.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, NW., Suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the Commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on February 13, 1996. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 on Tuesday, February 6, 1996. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 96–2223 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44621; FRL–4996–5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on refractory ceramic fibers (RCFs) (CAS No. 142844–00–6), submitted pursuant to a Testing Consent Order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–541A, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with the procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for refractory ceramic fibers were submitted by three member companies of the Refractory Ceramic Fiber Coalition (Carborundum Company, Premier Refractories and Chemicals, Incorporated, and Thermal Ceramics, Incorporated) pursuant to a Testing Consent Order at 40 CFR 799.5000. They were received by EPA on January 11, 1996. The submission describes workplace exposure monitoring data from RCFC company facilities, as well as from their customers' facilities. The customers selected include those chosen at random and those who specifically requested monitoring. Air monitoring samples were collected from employees engaged in RCF fiber production and processing, or use in functional categories such as forming, finishing, and installation.

RCFs are used as insulation for industrial insulation applications such as high temperature furnaces, heaters, and kilns. RCFs are also used in automotive applications, aerospace uses, and in certain commercial appliances such as self-cleaning ovens.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44621). This record includes copies of all data reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: January 26, 1996.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 96–2237 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Arthur W. Cousatte; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 16, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Arthur W. Cousatte, Miami, Oklahoma; to acquire an additional 11 percent, for a total of 30.49 percent, of the voting shares of Welch Bancshares, Inc., Welch, Oklahoma, and thereby indirectly acquire Welch State Bank, Welch, Oklahoma.

Board of Governors of the Federal Reserve System, January 29, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–2175 Filed 2–1–96; 8:45 am]

BILLING CODE 6210–01–F

GOVERNMENT PRINTING OFFICE

The Federal Register Online via GPO Access; Meeting and Demonstration for Federal Agencies

The United States Government Printing Office (GPO) will hold a meeting for Federal agencies interested in an overview and demonstration of the Government Printing Office's award-winning online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstration will be held at the National Archives Building, 5th Floor Theater, 7th and Pennsylvania Avenue NW., Washington, DC on Thursday, February 22, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. The National Archives Building is located at the Archives-Navy Memorial Metro stop on the Green and Yellow Lines. There is no charge to attend.

The online Federal Register service offers access to the daily issues of the Federal Register by 6 a.m. on the day of publication at no charge to the user. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database. Documents are available as ASCII text files and in typeset form as Adobe Acrobat Portable Document Format (PDF) files. Graphics are included in the PDF files and are also available as separate files in the TIFF format. The online Federal Register is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through GPO Access include the *Government Manual, Congressional Record; Congressional Record Index,* including the *History of Bills; Congressional Bills; Public Laws; U.S. Code; GILS; and GAO Reports;* and a growing list of important Government documents on the same day of publication.

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262. Seating reservations for Federal agencies will be accepted through Friday, February 16. From February 20–21, reservations will be accepted from the general public on a space available basis.

January 23, 1996.

Michael F. DiMario,

Public Printer.

[FR Doc. 96–2204 Filed 2–1–96; 8:45 am]

BILLING CODE 1505–02–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KD, The Regional Offices of the Administration for Children and Families (60 FR 34284), as last amended, June 30, 1995. This reorganization realigns the functions in Region 7 to support their streamlining plan. This Chapter is amended as follows:

1. KD.10 Organization. Regions 1, 3, 4, 8 through X are organized as follows:

Office of the Regional Administrator (KD1A, KD3A, KD4A, KD8A through KDXA)

Office of Financial Operations (KD1B, KD3B, KD4B, KD8B through KDXB)

Office of Family Security (KD1C, KD3C, KD4C, KD8C through KDXC)

Office of Family Supportive Services (KD1D, KD3D, KD4D, KD8D through KDXD)

After the end of KD6.20 Functions, Paragraph C, insert the following:

2. KD7.10 Organization. The Administration for Children and Families, Region 7, is organized as follows:

Office of Regional Administrator (KD7A)

Office of State and Tribal Operations (KD7E)

Office of Community Operations (KD7F)

Office of Program Support (KD7G)

KD7.20 Functions. A. The office of the Regional Administrator is headed by a Regional Administrator. In addition, the Office of the Regional Administrator has a Deputy Regional Administrator who reports to the Regional Administrator. The Office provides executive leadership and directives to state, county, city, territorial and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs. The office takes action to approve state plans and submits recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The Office contributes to the development of national policy based on perspectives on all ACF programs. It oversees ACF operations, the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are met and departmental and agency initiatives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. The Office represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Administrator, The Operations Support team, consisting of administrative staff, assist the Regional Administrator and Deputy Regional Administrator in providing day-to-day support for

regional administrative functions, including budget, performance management, procurement, property management internal systems, employee relations and human resource development activities.

B. The Office of State and Tribal Operations is headed by a Director who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of ACF formula, block and entitlement programs such as Aid to Families with Dependent Children (AFDC), Child Support Enforcement (CSE), Job Opportunities and Basic Skills Training (JOBS), Child Care, Foster Care and Adoption Assistance, Child Welfare, Child Abuse and Neglect and Developmental Disabilities. The Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. State plans are reviewed and recommendations concerning state plan approval or disapproval are made to the Regional Administrator. The Office provides technical assistance to entities responsible for administering these programs to resolve identified problems, ensures that appropriate procedures and practices are adopted, monitors the programs to ensure their efficiency and effectiveness, establishes regional financial management priorities and reviews cost allocation plans, and oversees the management and coordination of office automation systems in the region and monitors state systems projects for the CSE, AFDC, Child Welfare and JOBS programs. The Office provides financial management services for ACF formula and entitlement grants in the region. The Office also reviews cost estimates and reports for ACF entitlement and formula grant programs and recommends funding levels. The Office performs systematic fiscal reviews and makes recommendations to the Regional administrator to approve, defer or disallow claims for federal financial participation in ACF formula and entitlement grant programs. As applicable, recommendations are made on the clearance and closure of audits of state programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office represents the Regional Administrator in dealing with the ACF Program Offices on all program and financial policy matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

C. The Office of Community Operations is headed by a Director who reports to the Regional Administrator. The Office is responsible for providing centralized management, financial management services, and technical administration of ACF discretionary grant programs such as Head Start and Youth Programs. In that regard, the Office provides policy guidance to state, county, city or town and tribal governments and public and private organizations to assure consistent and uniform adherence to federal requirements. The Office provides technical assistance to entities responsible for administering these programs to ensure that appropriate procedures and practices are adopted, and monitors the programs to ensure their efficiency and effectiveness. The Office performs systematic fiscal reviews; and makes recommendations to the Regional Administrator to approve or disallow costs under ACF discretionary grant programs. The Office issues certain discretionary grant awards based on a review of project objectives, budget projections, and proposed funding levels. As applicable, recommendations are made on the clearance and closure of audits of grantee programs, paying particular attention to financial management deficiencies that decrease the efficiency and effectiveness of the ACF programs and taking steps to monitor the resolution of such deficiencies. The Office oversees the management and coordination of office automation systems in the region such as the PC Cost and HS Cost systems for budget analysis on Head Start Applications and monitors grantee systems projects such as the Head Start Program Information Report, Head Start Management Tracking System and the Youth Development and Head Start Bulletin Board. The Office represents the Regional Administrator in dealing with ACF program offices on all program policy and financial matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications on the programs.

D. The Office of Program Support is headed by a Director who reports to the Regional Administrator. The Office is responsible for providing centralized management of the program quality and outcome leadership initiatives, such as child welfare and special populations, early childhood development and self sufficiency. The Office provides cost allocation and audit support to the Office of State and Tribal Operations and the Office of Community Operations. The Office provides leadership, coordination, program expertise and planning for the outcome leadership functions. The Office provides technical assistance and team leadership regarding the outcome leadership initiatives to entities responsible for administering ACF programs, as well as to the Office of State and Tribal Operations and the Office of Community Operations. The Office conducts analyses of State and Federal performance, including those associated with the Quality Control/Quality Assurance functions. The Office represents the Regional Administrator in dealing with ACF Offices on all program and financial policy matters under its jurisdiction. Alerts or early warnings are provided to the Regional Administrator regarding problems or issues that may have significant implications for the programs.

Dated: January 24, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 96–2212 Filed 2–1–96; 8:45 am]

BILLING CODE 4184–01–M

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Cancer Institute Initial Review Group:

Purpose/Agenda: To review individual grant applications.

Committee Name: Manpower and Training Subcommittee.

Date: February 4–7, 1996.

Time: 6:30 p.m.

Place: The Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007.

Contact Person: Dr. Mary Bell, Scientific Review Administrator, Executive Plaza North, Room 611A, Bethesda, MD 20892–7405, Telephone: 301/496–7978.

This notice is appearing less than 15 days prior to the above meeting due to the partial shutdown of the Federal Government and the urgent need to meet timing limitations imposed by the review and funding cycle.

Committee Name: Education Subcommittee.

Date: February 20–21, 1996.

Time: 8:30 a.m.

Place: The Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007.

Contact Person: Dr. Neal B. West, Scientific Review Administrator, Executive Plaza North, Room 611D, Bethesda, MD 20892–7405, Telephone: 301/402–2785.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 30, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–2302 Filed 2–1–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3778–N–70]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available. In accordance with the Pryor Act Amendment suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army Corps of Engineers: Gary Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, Pulaski Building, 20 Massachusetts Avenue, NW., Room 4133, Washington, DC 20314–1000; (202) 761–0520; (This is not a toll-free number).

Dated: January 26, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 02/02/96

Suitable/Available Properties

Buildings (by State)

California

Bldgs. 4440, 4430
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 3296100001
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 4-story, presence of asbestos, most recent use—residential and dining

Bldgs. 4432, 4434, 4436
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610002
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 4-story, presence of asbestos, most recent use—residential

Bldgs. 4442, 4444, 4446
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610003
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 10,374 sq. ft. each, presence of asbestos, most recent use—residential

5 Bldgs.
POM Annex, Fort Ord
Bldgs. 4451, 4452, 4454, 4456, 4457
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610004
Status: Pryor Amendment

Base closure Number of Units: 5
Comment: 17,858 sq. ft. each, presence of asbestos, most recent use—residential

5 Bldgs.
POM Annex, Fort Ord
Bldgs. 4466, 4467, 4469, 4471, 4472
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610005
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: over 34,000 sq. ft. each possible asbestos, most recent use—residential

Bldgs. 4562, 4552
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610006
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 35,775 sq. ft. each, 4-story, presence of asbestos, most recent use—office, residential

Bldg. 3877
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610007
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2423 sq. ft., possible asbestos, most recent use—dining

Bldgs. 4453, 4470
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610008
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 7466 sq. ft. and 5165 sq. ft., presence of asbestos, most recent use—dining

Bldg. 4572
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610009
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 1309 sq. ft., possible asbestos, most recent use—dining

Bldgs. 4465, 4474
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610010
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 4000 sq. ft. and 3707 sq. ft., possible asbestos, most recent use—office

Bldgs. 4450, 4458, 4464, 4473
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610011
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: over 9500 sq. ft. each, possible asbestos, most recent use—office

Bldgs. 4438, 4448, 4550, 4560
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610012
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 4952 sq. ft. each, presence of asbestos, most recent use—office

Bldg. 4423
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610013
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2729 sq. ft., possible asbestos, most recent use—office

Bldg. 4420
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610014
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2170 sq. ft., possible asbestos, most recent use—office

Bldgs. 4418, 4408
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610015
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 5816 sq. ft. and 6673 sq. ft., presence of asbestos, most recent use—office

Bldg. 3891
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610016
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 3781 sq. ft., presence of asbestos, most recent use—recreation

Bldg. 3895
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610017
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 18,249 sq. ft., presence of asbestos, most recent use—recreation

Bldg. 4480
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610018
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 17,428 sq. ft., possible asbestos, most recent use—gym

Bldg. 3723
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610019
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 20,689 sq. ft., presence of asbestos, most recent use—clinic w/o beds

Bldg. 3786
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610020
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 25,900 sq. ft., presence of asbestos, most recent use—bank

Bldg. 4481
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610021
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 5803 sq. ft., possible asbestos, most recent use—thrift shop

Bldg. 4483
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610022
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 6676 sq. ft., possible asbestos, most recent use—chapel

Bldgs. 4492, 4492A, 4492C
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610023
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 21,227 sq. ft., most recent use—garage skill ctr.

Bldgs. 4490, 4491
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610024
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 13,433 sq. ft., presence of asbestos, most recent use—storage/supply

Bldgs. 3803, 3804, 3805
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610025
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: various sq. ft., most recent use—storage

Bldg. 3859
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610026
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2741 sq. ft., possible asbestos, most recent use—vehicle storage

Bldg. 3860
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610027
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 877 sq. ft., presence of asbestos, most recent use—storage

Bldg. 3861
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610028
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 877 sq. ft., possible asbestos, most recent use—storage

Bldgs. S–3898, S–3897
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610029
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 5870 sq. ft. each, presence of asbestos, most recent use—storage

5 Bldgs.
POM Annex, Fort Ord
Bldgs. 3854, 3855, 3856, 3857, 3858
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610030
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: various sq. ft., possible asbestos, most recent use—maintenance shop

Bldg. 3865
POM Annex, Fort Ord
Seaside Co: Monterey CA 93944–5006
Landholding Agency: COE—BC
Property Number: 329610031
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 936 sq. ft., most recent use—maintenance shop.

[FR Doc. 96–2030 Filed 2–1–96; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. FR–4020–D–01]

Redelegation of Authority by the Mortgagee Review Board to Conduct Hearings Pursuant to Section 202(c)(4) of the National Housing Act, 12 U.S.C. 1708(c)(4), as Implemented by 24 CFR Part 25

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Mortgagee Review Board (''Board'') within the Department of Housing and Urban Development redelegates to the Assistant Secretary for Housing-Federal Housing Commissioner, in his/her capacity as chairperson to the Board, the authority to serve as the Board's ''hearing official'' for appeals of certain sanctions by Mortgagees. The chairperson retains the right to redelegate the authority accompanying the ''hearing official'' position, to a specific designee on a case-by-case basis.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Georjan D. Overman, Trial Attorney, Office of General Counsel, Office of Program Enforcement, administrative Proceedings Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10251, Washington, DC 20410, (202) 708–4248. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 202(c)(4) of the National Housing Act, 12 U.S.C. 1708(c)(4), authorizes the Board to ''hold a hearing on the record'' concerning certain sanctions it has taken against a mortgagee, if the mortgagee so requests within thirty (30) days notice of the Board's action. Section 202(c)(4) is implemented by HUD regulations published at 24 CFR Part 25. On August 1, 1995, Part 25 was amended to allow the Board to redelegate its hearing authority to a ''hearing official.'' 60 FR 39236 (August 1, 1995) (effective August 31, 1995). The ''hearing official'' reviews submissions by the mortgagee, conducts informal hearings, and prepares findings of fact and a recommended decision to the Board. 60 FR 39238, August 1, 1995 (to be published at 24 CFR 25.8). The present redelegation is intended to allow the Assistant Secretary for Housing/Federal Housing Commissioner, in his/her capacity as chairperson to the Board, to serve as the ''hearing official'' for appeals of certain sanctions by mortgagees. It also makes clear that the chairperson retains the right to redelegate the authority accompanying the ''hearing official'' position, to a specific designee on a case-by-case basis. This further redelegation will be accomplished in the form of a written notice from the chairperson of the Board to the affected mortgagee.

Accordingly, the Mortgagee Review Board redelegates authority as follows:

Section A. Authority Redelegated

To the Assistant Secretary for Housing/Federal Housing Commissioner, in his/her capacity as chairperson of the Mortgagee Review Board, there is redelegated the authority of the Mortgagee Review Board to serve as the ''hearing official'' pursuant to 60 FR 39236, August 1, 1995 (to be published at 24 CFR Part 25).

Section B. Authority to Further Redelegate From the Chairperson to a Specific Designee Only

The chairperson may redelegate to a specific designee all authority granted in Section A., above, except for the authority to further redelegate the authority granted. The redelegation from the chairperson to the specific designee shall be accomplished on a case-by-case basis in the form of a written notice from the chairperson of the Board to the affected mortgagee.

Authority: Sec. 202(c), National Housing Act (12 U.S.C. 1708(c)); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 17, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

Dated: December 12, 1995.

Nelson A. Díaz,

General Counsel.

Dated: January 23, 1996.

Kevin G. Chavers,

President, Government National Mortgage Association.

Dated: January 23, 1996.

Marilynn A. Davis,

Assistant Secretary for Administration.

Dated: January 24, 1996.

John A. Knubel,

Chief Financial Officer.

Dated: January 25, 1996.

Elizabeth K. Julian,

Acting Deputy Assistant Secretary for Policy and Initiatives, Office of Fair Housing and Equal Opportunity.

[FR Doc. 96–2220 Filed 2–1–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–024–096–1220–04]

Closure of Public Land to Camping in Yavapai County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands to camping.

SUMMARY: Notice is hereby given that the following described lands are temporarily closed until further notice for camping for the protection of public health and safety under the provisions of 43 CFR 8364.1.

Gila and Salt River Meridian, Arizona

T. 14N., R. 1W.,
Sec. 31, lots 17, 18, 21, 22, 25, and 26.

EFFECTIVE DATE: This order became effective on the lands described above, on August 22, 1995—the date of signature of the Land Closure Order by the authorized officer.

T. 14N., R. 1W.,
Sec. 33, W½W½NW¼.

EFFECTIVE DATE: This order became effective on the lands described above, on October 31, 1995—the date of signature of the Land Closure Order by the authorized officer.

SUPPLEMENTARY INFORMATION: The public lands involved (approximately 80 acres) are adjacent to areas of expanding urban development. Unregulated and extended overnight camping use is not consistent with the orderly growth of the communities and presents health and safety problems.

Order: Notice is hereby given that the above described public lands, upon their respective effective dates, are closed to camping until further notice.

FOR FURTHER INFORMATION CONTACT: Kathy Pedrick, Recreation Planner, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, AZ 85027, (602) 780–8090.

Dated: January 25, 1996.

David J. Miller,

Associate District Manager.

[FR Doc. 96–2167 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–32–P

[AZ–020–7122–00–5499; AZA 28639]

Notice of Availability of Final Environmental Impact Statement (EIS), Proposed Tailings & Waste Rock Disposal Areas, Cyprus Bagdad Copper Corporation, Bagdad, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, Final Environmental Impact Statement (FEIS).

SUMMARY: The Bureau of Land Management, Phoenix District, in response to a Mining Plan of Operations (MPO) filed by Cyprus Bagdad Copper Corporation (CBCC), has prepared an Environmental Impact Statement (EIS) in compliance with the Federal Land Policy and Management Act of 1976, as amended, 43 CFR 3809, and Section 102(2)(c) of the National Environmental Policy Act of 1969. The proposed action involves development of a new tailings impoundment, expansion of an existing waste rock disposal area, and continuation of expansion of the existing open pit in order to continue copper mining and milling operations in Bagdad, Arizona for 35 years. The proposed action would affect private lands owned by CBCC and approximately 320 acres of public lands administered by the Bureau of Land Management (BLM). In response to comments received on the Draft EIS, the BLM made minor factual corrections and the Final EIS is an abbreviated Final document to be read in conjunction with the Draft EIS. The BLM has selected the proposed action as its preferred alternative. The Final EIS is now available to the public.

ADDRESSES/FOR FURTHER INFORMATION, CONTACT: Copies of the Final EIS may be requested from: Mary Johnson, Project Manager, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027, or telephone (602) 780–8090, ext. 564. Copies of the Final EIS are available for public use/review at the following locations: BLM, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027; BLM, Kingman Resource Area, 2475 Beverly Ave., Kingman, Arizona 86401; BLM, Arizona State Office, Public Room, 3707 N. 7th St., Suite 300, Phoenix, AZ 85014; Cyprus Bagdad Copper Corporation, Lower Main Street, Environmental Dept., Bagdad, Arizona 86321; Mohave County District Library, 3269 N. Burbank St., Kingman, Arizona; Prescott Public Library, 215 E. Goodwin St., Prescott, Arizona 86303.

DATES: On or before March 4, 1996 the BLM will be issuing a Record of Decision. This will be followed by a 30-day appeal period.

Dated: January 23, 1996.

David J. Miller,

Associate District Manager.

[FR Doc. 96–2127 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–32–P

[NV–050–1430–01; N–59112]

Notice of Realty Action: Amendment of Notice of Realty Action N–59112

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Pahrump, Nye County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The South Valley Baptist Church proposes to use the land for church facility. This action was previously published as a portion of Lot 1, resurvey of the property has created the following description and increased the acreage by 1.965 acres.

Mount Diablo Meridian, Nevada

T. 21 S., R. 53 E.,

Sec. 24: Government Lot 5

Containing 6.965 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 23, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–2165 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Notice of Receipt of Application for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–810274

Applicant: Eco-Tech, Inc., Frankfort, Kentucky, Hal Bryan, President and Senior Ecologist

The applicant requests a permit to take (capture, radio-tag selected individuals, and release) Indiana bats, Myotis sodalis, and gray bats, M. grisescens, in Kentucky, Tennessee, Georgia, Ohio, Virginia, New Jersey, and Indiana for the purpose of enhancement of survival of the species.

PRT–810273

Applicant: Dr. Timothy J. Gaudin, University of Tennessee at Chattanooga, Chattanooga, Tennessee

The applicant requests a permit to take (capture and release) Indiana bats, Myotis sodalis, and gray bats, M. grisescens, in Tennessee for the purpose of enhancement of survival of the species.

PRT–810271

Applicant; Sunlight Gardens, Andersonville, Tennessee

The applicant requests a permit to sell in interstate commerce Tennessee purple coneflower, Echinacea tennesseensis, and Cumberland rosemary, Conradina verticillata, that have been reared from propagated stock.

PRT–810270

Applicant; Mr. Stuart W. McGregor, Geological Survey of Alabama, Tuscaloosa, Alabama

The applicant requests a permit to take (collect dead shells of each species) endangered mussels throughout the Southeastern United States for the purpose of enhancement of survival of the species.

PRT–810267

Applicant; Aquatic Resources Center, Franklin, Tennessee

The applicant requests a permit to take (capture and relocate) Nashville crayfish, Orconectes shoupi, in Mill Creek, Davidson County, Tennessee; and to take (capture and relocate) Anthony's riversnail, Athearnia anthonyi, in the Tennessee River, Jackson County, Alabama for the purpose of enhancement of survival of the species.

PRT–810269

Applicant; Dr. Jeffrey R. Walters, Virginia Polytechnic Institute and State University, Blacksburg, Virginia

The applicant requests a permit to take (capture for banding and to translocate selected individuals) red-cockaded woodpeckers, Picoides borealis, in North Carolina and Florida for the purpose of enhancement of survival of the species.

PRT–810266

Applicant; Dr. Jerome A. Jackson, Mississippi State University, Mississippi

The applicant requests a permit to take (capture for banding and collecting feather and blood samples) red-cockaded woodpeckers, Picoides borealis, in Louisiana, Mississippi, and Alabama for the purpose of enhancement of survival of the species.

PRT–810277

Applicant; David S. Addison, The Conservancy, Naples, Florida

The applicant requests a permit to take (harass while attaching and removing radio and sonic transmitters) loggerhead sea turtles, Caretta caretta, in Florida for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: January 26, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–2214 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–55–P

Letters of Authorization to Take Marine Mammals

AGENCY: Bureau of Fish and Wildlife, Interior.

ACTION: Notice of issuance of letters of authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
BP Exploration (Alaska) Inc., Milne Point Unit	Exploration	December 6, 1995.
Geco-Prakla, Hemi Springs Area	Exploration	December 8, 1995.
ARCO Alaska, Inc., Colville Delta area	Exploration	December 14, 1995.
BP Exploration (Alaska) Inc., Sourdough #3	Exploration	December 14, 1995.
Western Geophysical, Colville River Delta	Exploration	December 14, 1995.

FOR FURTHER INFORMATION CONTACT: John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3800.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities'' (58 FR 60402; November 16, 1993).

Dated: January 24, 1996.

David B. Allen,

Acting Regional Director.

[FR Doc. 96–2164 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Texas Eastern Transmission Corporation Padre Island National Seashore Kenedy and Kleberg County, Notice of Availability of Plan of Operations and Environmental Assessment Continuing Operation of a 12-inch Natural Gas Pipeline and Abandonment of a 4-inch Natural Gas Pipeline

The National Park Service has received from Texas Eastern Transmission Corporation, a Unit of Panhandle Eastern Corporation, a Plan of Operations for the continuing operation of a 12-inch pipeline and the abandonment of a 4-inch pipeline within Padre Island National Seashore, Kenedy and Kleberg Counties, Texas.

Pursuant to § 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B (36 CFR 9B), the Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas. Copies of the documents are available from the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418–5597, and will be sent upon request.

Dated: January 25, 1996.

Ernest W. Ontega,

Superintendent, Southwest System Support Office.

[FR Doc. 96–2158 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion of Human Remains in the Possession of the Anchorage Museum of History and Art, Anchorage, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of an inventory for Native American human remains from Little Diomede Island, Alaska, currently in the possession of the Anchorage Museum of History and Art, Anchorage, AK.

A detailed inventory and assessment has been made by members of the professional staff of the Anchorage Museum of History and Art in consultation with representatives of the Inalik Native Corporation.

Limited provenience information indicates this human remain was excavated from a cemetery on Little Diomede Island. In 1970, Ms. Helen McCullen donated the human remains to the Anchorage Museum of History and Art.

The human remains consist of one skull fragment representing one individual. No known individual was identified. No associated funerary objects are present.

The Inalik Native Corporation represents the villages of Little Diomede Island for repatriation purposes. The Inalik Native Corporation has identified the island as the traditional occupation territory for the Little Diomede Islanders since pre-contact times. There is no evidence to indicate otherwise.

Based on the above mentioned information, officials of the Anchorage Museum of History and Art have determined that, pursuant to 43 CFR 10.10 (b)(1)(i), the human remains listed above represent the physical remains of one individual of Native American ancestry. Museum officials have further determined that, pursuant to 25 U.S.C. 3001 (a)(2), there is a relationship of shared group identity which can be reasonably traced between the human remains and the Inalik Native Corporation.

This notice has been sent to officials of the Inalik Native Corporation. Representatives of any other Indian tribe or Native Alaskan village or corporation which believes itself to be culturally affiliated with the human remains should contact Patricia B. Wolf, Museum Director, Anchorage Museum of History and Art, 121 W. 7th Avenue, Anchorage, Alaska, 99501, telephone (907) 343–4326, fax (907) 343–6149 before *March 4, 1996*. Repatriation of the human remains to the Inalik Native Corporation may begin after this date if no additional claimants come forward.

Dated: January 29, 1996

Veletta Canouts

Deputy Chief, Archeology and Ethnography Program

[FR Doc. 96–2161 Filed 2-1-96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Bureau of Reclamation, Upper Colorado Regional Office, Salt Lake City, UT

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory for Native American human remains and associated funerary objects from four sites in New Mexico currently in the control of the Bureau of Reclamation, Upper Colorado Regional Office, Salt Lake City, UT.

Under contract with the Bureau of Reclamation, a detailed inventory and assessment has been made by members of the professional staff of Southern Methodist University, where the remains and associated funerary objects were originally curated, the Museum of New Mexico, and the Utah Museum of Natural History in consultation with representatives of Nambe Pueblo. Meetings with representatives from Nambe Pueblo have been held at Nambe Pueblo on three occasions during 1994–95, in addition to many phone conversations during this period.

During 1973–75, the National Park Service was contracting for the Bureau of Reclamation, who planned to build a dam and reservoir at Nambe Falls on tribal lands owned by Nambe Pueblo. Southern Methodist University, under contract with the National Park Service, Southwest Cultural Resource Center, Santa Fe, Contract #CX 700030194, conducted data recovery investigations at four sites around Nambe Falls under the authority of the National Historic Preservation Act of 1966. Under agreement with the National Park Service, the collections resulting from this work were accessioned by Southern Methodist University. In 1995, in consultation with representatives of Nambe Pueblo, the Bureau of Reclamation deaccessioned the collections from Southern Methodist University and transferred them to the Museum of New Mexico.

Human remains from Site X29SF17 consist of four individuals. Two adults and an infant were interred together just above the floor of the pithouse. One fragmentary scapula from a fourth individual, an older adult, was found nearby. No known individuals were identified. Cultural items associated with these burials were the remains of three dogs.

Site X29SF17 consisted of three structures: a pithouse, an associated surface room block, and a fieldhouse. Cultural materials excavated from the site include stone tools and debris, ceramic sherds, manos and metates, and faunal remains. Based on ceramic seriation, archaeologists estimated that the site dates to the Developmental Period, ca. A.D. 900–1100.

Human remains from Site X29SF7 include the extremely fragmentary remains of one individual. No known individuals were identified. No funerary objects were present.

Site X29SF7 consists of a pueblo with 26 surface rooms and one kiva. Cultural materials excavated from the site include flaked stone tools and debris, ceramic sherds, pieces of ground stone, and faunal remains, including bone awls. Based on ceramic seriation, archaeologists estimated that the site dates to the Coalition Period, ca. A.D. 1200–1300.

Human remains from Site X29SF10 consist of one tooth from 1 older adult individual. No known individuals were identified. No funerary objects were present.

Site S29SF10 consisted of a pueblo with 32 surface rooms and one kiva. Cultural materials excavated from the same site includes flaked stone tools and debris, ceramic sherds, and pieces of ground stone. Based on ceramic seriation, archaeologists estimated that the site dates to the Coalition Period, ca. A.D. 1251–1269.

Human remains from Site X29SF47, Agawano Ouinge, consist of one parietal fragment of one adult individual collected from the surface of the site. No known individuals were identified. No funerary objects were present.

Site X29SF47 consists of a large adobe-walled pueblo with three room blocks arranged around a plaza and kiva depressions. Based on ceramic seriation of cultural material from the site, archaeologists estimated that the site dates to the Coalition/Classic Period, ca. A.D. 1350–1425.

All the human remains from these sites are identified as Puebloan, and all are believed to be ancestral to present day Nambe Pueblo people based on the archaeological context of their collection or excavation. All four sites are located near the Rio Nambe and Nambe Falls, approximately five miles from the present-day Nambe Pueblo, on Nambe Pueblo lands. The cultural affiliation of these individuals can be considered ancestral to the northern Rio Grande Pueblos based on the application of the Wendorf and Reed 1955 chronologic framework, as modified by Skinner et al 1980. Skinner et al concluded that the movement of Puebloan people into this area occurred sometime prior to A.D. 1200 and the population eventually was consolidated in the vicinity of the modern Nambe Pueblo.

Based on the above-mentioned information from these four sites, the Bureau of Reclamation's Upper Colorado Regional Archaeologist has determined that, pursuant to 43 CFR 10 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. The Bureau of Reclaimation's Upper Colorado Regional Archaeologist has also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the remains of three dogs listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, the Bureau of Reclamation's Upper Colorado Regional Archaeologist has determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and Nambe Pueblo.

This notice has been sent to the pueblos of Acoma, Cochiti, Hopi, Isleta, Jemez, Laguna, Picuris, Pojoaque, San Felipe, San Ildefonso, San Juan, Sandia, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, and Zuni. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Signa Larralde, Regional Archaeologist, Upper Colorado Region, Bureau of Reclamation, 125 S. State St., Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–6292 #6 before March 4, 1996. Repatriation of these human remains to Nambe Pueblo may begin after this date if no additional claimants come forward.

Dated: January 26, 1996

Veletta Canouts

Deputy Chief, Archeology and Ethnography Program

[FR Doc. 95–2159 Filed 2–1–96; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 Code of Federal Regulations, part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimated of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) Type of information collection. Existing collection in use without an OMB control number.

(2) The title of the form/collection. Postgraduate Evaluation of the FBI National Academy Survey Booklet.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form Number: None. Federal Bureau of Investigation, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local or Tribal Governments. Other: None. This is program evaluation data collected to verify the appropriateness of courses offered at the FBI Academy to state and local law enforcement officers. Respondents are graduates of the FBI National Academy Program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 907 responses per year at .45 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection. 680 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: January 30, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–2219 Filed 2–1–96; 8:45 am]

BILLING CODE 4410–18–M

Drug Enforcement Administration

[Docket No. 95–39]

Edward L.C. Broomes, M.D.; Revocation of Registration

On March 27, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Edward L.C. Broomes, M.D., (Respondent) of East Chicago, Indiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AB2703925, under 21 U.S.C. 824(a)(4), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). Specifically, the Order to Show Cause alleged that:

1. Information provided to DEA and the Indiana State Police by several confidential informants indicates that since 1989, [the Respondent has] written prescriptions for controlled substances to numerous individuals for other than legitimate medical purposes. These informants stated that a group headed by a James Marshall regularly drives to East Chicago, Indiana, from Pennsylvania, provides names to [the Respondent] and/or [his] employees to be used on prescriptions, obtains the prescriptions from [his] medical office, fills the prescriptions at specific pharmacies in Gary, Indiana, and sells the controlled substances in Pennsylvania. The informants identified the drugs obtained as Desoxyn and Percocet, both Schedule II controlled substances. The informants also identified some of the names used by James Marshall in this scheme as Houston Abbott, David Abbott, Michael Johnson, Jason Brown, Beverly Abbott, and Patricia Armstrong.

2. [The Respondent] continued to write prescriptions for controlled substances in the names of at least two (2) individuals, Sean Abbott and James Quisenberry, for several years after their deaths.

3. Review of triplicate prescription records maintained by the State of Indiana indicates that between September 1989 and April 1994, [the Respondent] wrote prescriptions totalling over 6,600 dosage units of Schedule II controlled substances to the six (6) individuals identified by the informants. Many of these individuals obtained prescriptions for Desoxyn at least once a month for a period of over three (3) years.

4. [The Respondent] prescribed Desoxyn and Percocet on a regular basis to at least one (1) drug-addicted individual.

5. On December 22, 1992, eight (8) prescriptions issued by [the Respondent] were filled at a Gary, Indiana, drug store. Each of the prescriptions was for 400 dosage units of Dilaudid. None of the prescriptions contained a date of issue as required by 21 CFR 1306.05.

6. Many prescriptions written by [the Respondent] listed nonexistent addresses for the patients. For example, none of the addresses provided on the eight (8) prescriptions listed in the preceding paragraph was in existence as of October 1994. In addition, between January 1, 1993 and July 31, 1993, [the Respondent] wrote at least sixteen (16) prescriptions for controlled substances, including Percocet and Desoxyn, for James Marshall. The address provided on each of the prescriptions, 4930 Alden in East Chicago, Indiana, does not exist. Information provided by a confidential informant and corroborated by the Pennsylvania Bureau of Motor Vehicles indicates that James Marshall is a resident of Aliquippa, Pennsylvania.

7. On October 4, 1994, investigators executed a federal search warrant at [the Respondent's] office. The following violations were noted:

a. [The Respondent] had presigned controlled substance prescriptions for James Marshall in violation of 21 CFR 1306.05(a).

b. Patient files indicated that [the Respondent had] maintained narcotic addicts on methadone without obtaining a separate registration in violation of 21 CFR 1301.22.

c. Patient files revealed that [the Respondent had] prescribed Desoxyn, a Schedule II controlled substance, to treat obesity, in violation of Indiana law.

On May 30, 1995, the Respondent filed a reply to the show cause order, but he did not indicate whether he was requesting a hearing. On May 31, 1995, the Hearing Clerk sent a letter to the Respondent, advising him that he had until June 14, 1995, to request a hearing, and on June 30, 1995, Chief Judge Mary Ellen Bittner issued an order terminating proceedings before her, noting that the Respondent had failed to request a hearing by that date. Accordingly, the Deputy Administrator now enters his final order in this matter pursuant to 21 CFR 1301.54(e) and 1301.57, without a hearing and based on the investigative file and the written Reply submitted by the Respondent.

The Deputy Administrator finds that the Respondent is licensed to practice medicine in Indiana, and he has a Certificate of Registration with the DEA as a practitioner in Schedules II through V. The Respondent's registered location is the Lakeside Medical Clinic in East Chicago, Indiana. In February 1992, an investigation was initiated by the Indiana State Police because the Respondent had purportedly authorized an unusually large number of Schedule II controlled substance prescriptions according to information provided by the Indiana Health and Professions Bureau. DEA was asked to assist in this investigation, and it was found that the Respondent had issued prescriptions for Schedule II substances as late as April 1991, to an individual who had died on December 9, 1988. In his Reply, the Respondent wrote: ''Attention has been drawn to the fact that two of my patients were receiving prescriptions of Ritalin although they had been dead for some time. I did not know of the demise until reading of it in the letter.''

On October 5, 1994, a federal search warrant was executed at the Lakeside Medical Clinic, and presigned controlled substance prescriptions were found. Further, patient files indicated that the Respondent had maintained narcotic addicts on methadone, even though he was not registered to participate in such a program.

Further, two of the clinic's employees, as well as the Respondent, were interviewed during the search of the Respondent's clinic. The interviewing officer noted that the Respondent sometimes talked about matters unrelated to his questioning. Further, he was concerned when the Respondent appeared to fall asleep during the interview, although the Respondent assured him that he wished to continue, and the interview lasted only approximately one hour. The Respondent stated that during 1994 he had been in the hospital in January, August, and September, when he had remained for about 10 or 11 days. Further, the Respondent admitted to prescribing controlled substances to a known drug addict, stating that he

would rather have her obtain such substances from him than from someone ''on the street.'' The Respondent also admitted that he had prescribed Desoxyn for appetite control. Desoxyn is a brand name for a product containing methamphetamine, a Schedule II controlled substance, and according to the Physicians' Desk Reference, if it is prescribed for treatment of obesity, it should be used on a short-term basis. Yet a survey of the Respondent's prescriptions revealed that he had issued prescriptions for Desoxyn to individuals for a period of time in excess of three years.

A colleague of the Respondent's (Colleague), whose medical license was then under probation in Indiana and who was under the Respondent's supervision, was also interviewed. He stated that patients were taken into the Respondent's office when he could hardly walk, and that it was unknown what type of examination, if any, was conducted on these patients. in the Colleague's opinion, the Respondent was no longer competent to practice medicine and was a danger to his patients.

Another of the Respondent's employees was interviewed, and she stated that a box of approximately 40 patient records were segregated in the file room, and office personnel referred to these files as the ''druggie files.'' She stated that these patients came to the clinic solely to get controlled substance prescriptions, specifically Schedule II controlled substance prescriptions, for which they paid an additional fee. The investigator interviewed another of the Respondent's employees who corroborated this information. This second employee also reported that the clinic had had several thefts of entire stock bottles of controlled substances, which were in the clinic to dispense to patients. However, these thefts had not been reported to DEA, State, or local police.

Subsequently, investigators interviewed cooperating individuals who had received controlled substance prescriptions from the Respondent. Two such individuals reported that on several occasions they had been given prescriptions for Schedule II substances of their choice, and that no physical examinations had been conducted. After filling these prescriptions, they had given the substances to James Marshall, who paid them for their participation in his scheme. The individuals were told by Mr. Marshall that he sold these controlled substances to individuals in another State. On one occasions, an individual assisting Mr. Marshall was told to choose a local address from the telephone book in the Respondent's office and to give that address for the prescription. Following up on this information, investigators noted that in numerous instances the addresses appearing on the multiple prescription forms signed by the Respondent for Schedule II controlled substances, when investigated, did not exist. The Respondent did not address these allegations in his Reply.

In his Reply, the Respondent wrote that he was 81 years old, and that he generally denied the allegations in the show cause order. Although he described in general his treatment practices, the Respondent did not factually refute specific allegations in the order. He disputed the evidence providing a numerical analysis of his prescribing practices, but he did not rebut the specific allegations concerning the conduct by James Marshall or his associates. He merely denied that such conduct could occur, given his general office procedures. He did not deny (1) prescribing Desoxyn to treat obesity, (2) having pre-signed controlled substance prescriptions for James Marshall in his clinic, or (3) prescribing methadone to narcotic addicted patients.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke the Respondent's DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, factors two, four, and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' the Deputy Administrator has previously found that a prescription for a controlled substance ''must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a); see also Harlan J. Borcherding, D.O, 60 FR 28796, 28798 (1995). Here, the Respondent issued prescriptions for Schedule II substances to deceased individuals, showing a blatant disregard for the requirement that controlled substance prescriptions be issued for a legitimate medical purpose. Further, the investigative file contains evidence that the Respondent issued controlled substance prescriptions to individuals upon their request, to include the substance of their request, without performing any physical examinations or other clinical tests. He also accepted additional payment for these prescriptions. The Deputy Administrator has previously found that prescriptions issued under such circumstances were not for a legitimate medical purpose. Ibid.

As to factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' Indiana passed a statute in 1988 which made it unlawful to prescribe controlled substances ''to any person for purposes of weight reduction or for control in the treatment of obesity.'' See Indiana Code 25–22.5–2–7. However, the Respondent admitted that he had prescribed Desoxyn, a Schedule II controlled substance, as part of his treatment for his obese patients, and the evidence demonstrated that he issued such prescriptions through 1994. Further, a separate DEA registration is required to treat drug addicted patients with methadone, but the Respondent engaged in such treatment without obtaining the required registration, in violation of the Controlled Substances Act and its implementing regulations. See 21 U.S.C. 823(g); 21 CFR 1301.22. Also, the Respondent failed to report to the DEA the theft of large quantities of controlled substances from his clinic, despite the requirement to do so. See 21 CFR 1301.76(b). Finally, he kept pre-signed controlled substance prescription forms prepared for James Marshall. Such practices violate 21 CFR 1306.05(a), which states in relevant part:

''(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued * * * [and] the prescribing practitioner is responsible in case the prescription

does not conform in all essential respects to the law and regulations.''

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator gives some weight to the Colleague's opinion concerning the danger the Respondent's practices creates for his patients. Although the Colleague had also experienced professional difficulties, his observations as to the Respondent's impaired abilities to treat his patients were corroborated by other office personnel, by interviewing investigators, and by the Respondent himself in discussing his health problems in 1994. Such impairment, coupled with his past prescribing practices, creates doubt as to the Respondent's ability to comply with DEA regulations in issuing prescriptions for controlled substances. Also, his failure to provide any basis for the Deputy Administrator to believe that his professional practices would be altered in the future, weighs heavily in favor of revoking the Respondent's DEA Certificate of Registration at this time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB2703925, previously issued to Edward L.C. Broomes, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective March 4, 1996.

Dated: January 29, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–2170 Filed 2–1–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–35]

Therial L. Bynum, M.D.; Revocation of Registration

On March 11, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Therial L. Bynum, M.D., (Respondent) of Murfreesboro, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration, BB2042048 and AB8535087, under 21 U.S.C. 824(a), and deny any pending applications for renewal of such registrations as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

> [The Respondent] materially falsified required applications as set forth in 21 U.S.C. 824(a)(1); [the Respondent had] been convicted of a felony relating to controlled substances as set forth in 21 U.S.C. 824(a)(2); [the Respondent had] had a state license suspended or revoked by competent State authority and [is] no longer authorized to handle controlled substances in one of the states that [he is] operating as set forth in 21 U.S.C. 824(a)(3); and [the Respondent has] committed acts which render [his] registrations inconsistent with the public interest as set forth in 21 U.S.C. 824(a)(4).

By letter dated April 8, 1994, the Respondent replied to the show cause order, requesting a hearing. On May 16, 1994, Government counsel filed a prehearing statement, and on June 24, 1994, the Respondent filed his prehearing statement. However, on May 4, 1995, Administrative Law Judge Paul A. Tenney issued an order, Notice of Cancellation of Hearing, noting that the Respondent had failed to reply to several of his previous orders, notifying the Respondent that his inaction was being deemed a waiver of his hearing right and an implied withdrawal of his request for a hearing, and giving the Respondent until May 31, 1995, to request reconsiderations of the matter. However, the Respondent failed to reply, and by order dated June 1, 1995, Judge Tenney closed the case file and removed this matter from his active docket. By letter also dated June 1, 1995, Judge Tenney informed the Deputy Administrator of his actions, and the case file was transmitted for issuance of a final order.

The Deputy Administrator has considered the prehearing statements of the parties and the investigative file. Accordingly, he now enters his final order in this matter, without a hearing and based upon this record, pursuant to 21 C.F.R. 1301.54(e) and 1301.57.

Initially, the Deputy Administrator finds that the Respondent has two active DEA Certificates of Registration as a practitioner: BB2042048 for his practice in Murfreesboro, Tennessee, and AB8535087, for his practice in Omaha, Nebraska.

On November 30, 1988, the Respondent was convicted in the Circuit Court, Cook County, State of Illinois, of conspiracy with intent to commit the offense of ''[k]ickbacks in the amount of more than $10,000.'' Specifically, the Respondent, then a Medicaid provider, acted to accept remuneration from an individual representing a laboratory which was also a Medicaid provider, in exchange for referring specimens to this laboratory. Subsequently, effective April 26, 1991, the Department of Professional Regulation, State of Illinois, indefinitely suspended the Respondent's state medical license. Although the Respondent, in his prehearing statement, wrote that he had appealed this suspension, he did not submit any documentation reflecting the appeal, and the investigative record does not contain any such record.

On June 19, 1991, the Respondent submitted an application to renew his Nebraska DEA Certificate of Registration, and in response to a question on that application, indicated that he had never had a state professional license revoked, suspended, restricted or denied, when, in fact, his Illinois medical license had been suspended effective April 26, 1991. That registration was renewed June 27, 1991. In his prehearing statement, the Respondent wrote that he was living in Tennessee at the time he submitted his renewal application, and that he had not received notification of the Illinois action, although he had been represented by legal counsel before that forum.

In March of 1992, the Division of Health Related Boards, Department of Health, State of Tennessee, suspended the Respondent's medical license, and on June 4, 1992, the Tennessee Board of Medical Examiners (Tennessee Board) revoked the Respondent's state medical license. The Tennessee Board found that the Respondent had been treating patients with a ''secret drug that [he] claimed can 'cure' AIDS.'' He sold this '' 'drug' to patients for an initial payment of $10,000.00, with additional payments of this magnitute (sic.) for treatment of the disease at later stages. * * * Some patients were directed to stop taking AZT while taking the 'drug.' * * * The Respondent[] made representations about the effectiveness of [his] AIDS 'drug' to induce friends and relatives of the AIDS victims to pay for the 'drug.' '' During the course of an undercover operation, a dose of this ''drug'' was obtained and analyzed, and the Tennessee Board found that ''[t]he drug does not cure AIDS. There is no known drug which will have the effect on AIDS that the Respondent[] claim[s] for [his] drug. * * * Precluding an AIDS victim from taking AZT would have a harmful effect on that patient's health. Furthermore, the 'drug' contains medications which could be harmful to the immune system of AIDS patients.'' The Tennessee Board concluded that the Respondent's acts had violated the Tennessee Medical Practice Act. The Respondent appealed the Tennessee Board's action, and the Chancery Court

for the State of Tennessee affirmed the Tennessee Board's order.

On June 26, 1992, the Respondent submitted an application to renew his Tennessee DEA Certificate of Registration, and in response to a question on that application, indicated that he was then authorized to prescribe, dispense, conduct research or otherwise handle controlled substances under the laws of the State in which he was operating or proposing to operate, Tennessee, when in fact his Tennessee medical license had been under suspension effective March 16, 1992, and permanently revoked effective June 4, 1992.

On October 27, 1993, the Respondent was convicted based upon a jury verdict in the U.S. District Court, Middle District of Tennessee, of one count of knowingly or intentionally furnishing false or fraudulent material information in, or omitting material information from, a renewal application for a DEA Certificate of Registration, pursuant to 21 U.S.C. 843(a)(4)(A). On October 5, 1994, his appeal of that decision was dismissed by the U.S. Court of Appeals for the Sixth Circuit.

The Drug Enforcement Administration lacks statutory authority to issue or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his practice. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Charles L. Novosad, Jr., 60 Fed. Reg. 47,182 (1995); Dominick A. Ricci, M.D., 58 Fed. Reg. 81,104 (1993); James H. Nickens, M.D., 57 Fed. Reg. 59,847 (1992); Roy E. Hardman, M.D., 57 Fed. Reg. 49,195 (1992). Here, the Respondent's medical license in the State of Tennessee has been revoked, and he is no longer authorized to practice medicine, to include prescribing controlled substances. Therefore, having considered the facts and circumstances in this matter, the Deputy Administrator concludes that Dr. Bynum's DEA Certificate of Registration for Tennessee should be revoked due to his lack of authorization to handle controlled substances in that state.

As for his Certificate of Registration in Nebraska, there is no evidence in the investigative file or in the Respondent's prehearing statement either proving or disproving that the Respondent is still licensed to handle controlled substances in Nebraska. However, assuming he is, then 21 U.S.C. 824(a)(1) is relevant, stating:

(a) A registration pursuant to section 823 of this title to . . . distribute, or dispense a controlled substance may be suspended or revoked . . . upon a finding that registrant—

(1) has materially falsified any application filed pursuant to or required by his subchapter . . .

It has been previously noted that the Deputy Administrator may revoke or suspend the Respondent's registration upon a showing that he ''materially falsified'' any application filed pursuant to the applicable Controlled Substances Act provisions. See, e.g., Terrence E. Murphy, M.D., Docket No. 94–19, 61 FR 2841, Jan. 29, 1996. The appropriate test for determining whether the Respondent materially falsified any application is whether the Respondent materially falsified any application is whether the Respondent ''knew or should have known'' that he submitted a false application. See Bobby Watts, M.D., 58 Fed. Reg. 46,995 (1993); accord Herbert J. Robinson, M.D., 59 Fed. Reg. 6,304 (1994).

Here, written on the Respondent's June 1991 DEA renewal application for his Nebraska certificate, was a false answer to the question regarding his state medical licenses. Specifically, the Respondent had failed to acknowledge the adverse action taken in Illinois against his professional license. As has been previously noted, such an omission is material, for ''if the Respondent correctly had checked 'YES' to the question, that would have been a red flag to [the] DEA to go check with the [State] licensing authorities . . . Cf. . . . Gonzales v. United States, 286 F.2d 118, 120 (10th Cir. 1960) (addressing a statute concerning ''material false statements . . . ., i.e., statements that could affect or influence the exercise of a governmental function''), cert. denied, 365 U.S. 878, 81 S. Ct. 1028, 6 L. Ed. 2d 190 (1961).'' Murphy, supra.

The Respondent attempted to mitigate this falsification by writing that he was unaware of the Illinois action at the time he prepared this renewal application. The Deputy Administrator finds this statement, without any corroborating information, incredible, for the Illinois Board order was effective two months before the Respondent's renewal application to DEA was submitted, the Respondent was represented by legal counsel before the Illinois Board, and the Respondent provided no information to show that the Illinois Board failed to provide timely notification of their adverse action.

Further, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or profession disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 Fed. Reg. 16,422 (1989).

In this case, factors one, three, and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the Deputy Administrator finds it significant that Illinois has indefinitely suspended the Respondent's medical license for cause, and that Tennessee has revoked the Respondent's medical license for cause.

As to factor three, the Respondent's ''conviction record under Federal or State laws relating to the . . . dispensing of controlled substances,'' the Deputy Administrator finds relevant the Respondent's conviction in Federal Court of knowingly or intentionally furnishing false or fraudulent material information in his application to renew his DEA registration. As noted by the Administrator in Bobby Watts, supra: ''Since DEA must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated.''

As to factor five, ''[s]uch other conduct which may threaten the public health or safety, the Respondent's acts of Medicaid fraud are relevant. See, Leonard Merkow, M.D., Docket No. 93–62 60 Fed. Reg. 22,075 (1995). Further, the Respondent's actions in Tennessee in prescribing a 'drug', for the payment of $10,000.00, which he falsely claimed was an AID's cure, creates a threat to the public interest inconsistent with his retaining his DEA Certificates of

Registration. Finally, the Respondent has failed to provide any information which would indicate that his future behavior would not continue to be a threat to the public interest.

Therefore, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's DEA Certificates of Registration and denying any pending applications. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration BB2042048 and AB8535087, previously issued to Therial L. Bynum, M.D., be, and they hereby are, revoked and any pending applications are denied. This order is effective March 4, 1996.

Dated: January 29, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–2239 Filed 2–1–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' are listed by Volume and State:

Volume IV:

Michigan
MI950063 (Feb. 02, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

New Jersey
NJ950002 (Feb. 10, 1995)
NJ950003 (Feb. 10, 1995)
NJ950004 (Feb. 10, 1995)
NJ950007 (Feb. 10, 1995)
NJ950015 (Feb. 10, 1995)
New York
NY950010 (Feb. 10, 1995)
NY950013 (Feb. 10, 1995)
NY950017 (Feb. 10, 1995)
NY950041 (Feb. 10, 1995)

Volume II:

Pennsylvania
PA950040 (Feb. 10, 1995)
Virginia
VA950015 (Feb. 10, 1995)

Volume III:

Florida
FL950008 (Feb. 10, 1995)
FL950009 (Feb. 10, 1995)
FL950011 (Feb. 10, 1995)
FL950044 (Feb. 10, 1995)
FL950045 (Feb. 10, 1995)

Volume IV:

Michigan
MI950003 (Feb. 10, 1995)
MI950007 (Feb. 10, 1995)
MI950030 (Nov. 03, 1995)

Volume V:

Iowa
IA950001 (Feb. 10, 1995)
IA950002 (Feb. 10, 1995)
IA950016 (Feb. 10, 1995)
IA950031 (Feb. 10, 1995)
IA950037 (Feb. 10, 1995)
Missouri
MO950018 (Feb. 10, 1995)
Nebraska
NE950001 (Feb. 10, 1995)
NE950059 (Apr. 28, 1995)
Texas
TX950018 (Feb. 10, 1995)
TX950057 (Feb. 10, 1995)
TX950114 (Feb. 10, 1995)

Volume VI:

Alaska
AK950001 (Feb. 10, 1995)
Arizona
AZ950004 (Feb. 10, 1995)
Idaho
ID950004 (Feb. 10, 1995)

ID950005 (Feb. 10, 1995)
ID950013 (Jul. 28, 1995)
ID950014 (Jul. 28, 1995)
Oregon
OR950001 (Feb. 10, 1995)
OR950004 (Feb. 10, 1995)
OR950017 (Dec. 15, 1995)
Washington
WA950001 (Feb. 10, 1995)
WA950002 (Feb. 12, 1995)
WA950003 (Feb. 12, 1995)
WA950007 (Feb. 12, 1995)
WA950008 (Feb. 12, 1995)
Wyoming
WY950004 (Feb. 10, 1995)
WY950008 (Feb. 10, 1995)
WY950009 (Feb. 10, 1995)
WY950011 (Feb. 10, 1995)
WY950021 (Feb. 10, 1995)
WY950023 (Feb. 10, 1995)
WY950024 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 26th day of January 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–1913 Filed 2–1–96; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58 issued to The Cleveland Electric Illuminating Company, et al. (the licensee), for operation of the Perry Nuclear Power Plant, Unit No. 1 located in Lake County, Ohio.

The proposed amendment would change the Technical Specification surveillance frequency for the drywell bypass leakage rate test from 18 months to 120 months (10 years) with a more frequent testing requirement if performance degrades. Additionally, specific leakage limits would be deleted for the air lock seal and barrel tests. Also, surveillance frequencies for the air lock interlock test and seal pneumatic system leak test would be changed from 18 months to 24 months. Finally, the surveillance frequencies for the air lock barrel test would be changed from ''each COLD SHUTDOWN if not performed within the previous 6 months'' to ''at least once per 24 months'' and from 18 months to 24 months. The licensee requested that this amendment be approved for use during the current refueling outage which began on January 27, 1996.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes in frequency for the drywell bypass leakage and drywell air lock surveillances will continue to ensure that no paths exist through drywell boundary components that would permit gross leakage from the drywell to bypass the containment pressure-suppression feature (the suppression pool) and result in exceeding the primary design basis limit. The Mark III primary containment system satisfies General Design Criterion 16 of Appendix A to 10 CFR Part 50. Maximum drywell bypass leakage was determined previously by reviewing the full range of postulated primary system break sizes. The limiting case was a primary system small break LOCA that yielded a design allowable drywell bypass leakage rate limit of approximately 58,000 scfm. The Technical Specification acceptable limit for the bypass leakage following a surveillance is less than 10% of the design basis value. The most recent bypass leakage value was approximately 0.2% of the design allowable leakage rate limit for the limiting event. Programmatic and oversight controls are maintained that ensure drywell bypass leakage remains a fraction of the design allowable leakage limit.

The drywell is exposed to essentially 0 psig during normal plant operation and 2.5 psig during drywell bypass leak rate testing. These pressures are considerably lower than the structural integrity test pressure and are not likely to initiate a crack or cause an existing crack to grow. Visual inspections of the accessible drywell surfaces that have been performed since the structural integrity tests have not revealed the presence of abnormal cracking or other abnormalities. Therefore, drywell degradation is not expected due to testing or operation and it is not considered credible for the passive drywell structure to begin to leak sufficiently to impact the design drywell bypass leakage limit.

The primary containment's ability to perform its safety function is fairly insensitive to the amount of drywell bypass leakage, thereby providing a margin to loss of the drywell safety function that is not normally available for safety systems. This insensitivity is demonstrated by the extremely high limiting event design basis allowable leakage for the drywell (approximately 58,000 scfm as discussed above). An even higher allowable leakage can be accommodated by the primary containment due to containment design margin. It would take valves in multiple penetration flow paths leaking excessively to cause the primary containment to fail as a result of overpressurization. Therefore, the probability that drywell isolation valve leakage will result in primary containment failure due to excessive drywell bypass leakage is not significant and this drywell/primary containment failure mode is not credible.

The proposed Technical Specification changes have no significant impact on the IPE conducted in accordance with NRC Generic Letter 88–20. The IPE considered

primary containment overpressurization failure as part of the primary containment performance assessment. Due to the magnitude of acceptable drywell bypass leakage and the extremely low probabilities of experiencing excessive leakage, preexisting excessive drywell bypass leakage was considered a non-significant contributor to primary containment failure. In a beyond-design-basis ''severe accident,'' the surveillance frequencies for the air lock failure can occur with or without preexisting excessive drywell bypass leakage. This is due to physical phenomena associated with potentially extreme environmental conditions inside primary containment following a severe accident. However, the calculated frequency of such extreme conditions is very small. The proposed changes do not impact the IPE evaluated phenomena causing primary containment overpressurization failure and do not significantly increase the probability that the drywell has preexisting excessive leakage. The proposed changes therefore, would not contribute to these accident scenarios.

The movement of the air lock leakage rate tests to the Drywell Specification and the elimination of the Notes in the Improved Technical Specifications are proposed because drywell leakage rate requirements are the essence of drywell operability. Leakage rates discovered outside limits will always clearly result in entering the actions for drywell inoperability. Additionally, the requirements for the drywell air lock seal and barrel tests to meet specific leakage limits are deleted since the ability of the drywell to perform its safety function is not dependent on the air lock meeting a specific leakage limit. The limiting case for drywell bypass leakage is based on total leakage through all drywell paths other than the suppression pool vents. Total drywell bypass leakage from such paths (including the air lock) should not exceed the acceptable design limit of drywell bypass leakage. The proposed Technical Specifications will still require performance of seal and barrel leak tests. Additionally, the proposed changes include minor administrative changes which clarify the requirement format or change the requirement to match the plant design bases.

For the reasons discussed above, the proposed changes do not have any significant risk impact to accidents previously evaluated and do not significantly increase the consequences of an accident previously evaluated. Additionally, drywell bypass leakage is not the initiator of any accident evaluated; therefore, changes in the frequency of the surveillance for drywell bypass leakage does not increase the probability of any accident evaluated.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will impact the test frequencies and will not result in any change in equipment response in the unlikely event of an accident. The changes do not alter equipment design or capabilities. The changes do not present any new or additional failure mechanisms. The drywell is passive in nature and the surveillance will continue to verify that its integrity has not degraded. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

Drywell integrity and reliability have been demonstrated during past drywell bypass leakage surveillances. Appropriate design basis assumptions will be maintained. Drywell integrity will continue to be tested by the proposed periodic drywell bypass leakage test, the drywell air lock door latching and interlock mechanism surveillance, and additional surveillances including exercising the drywell isolation valves. In combination, these surveillances will provide adequate assurance that drywell bypass leakage will not exceed the design basis limit. Margins of safety will not be reduced. Therefore, the proposed change does not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in preventing startup of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 4, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 16, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 29th day of January 1996.

For the Nuclear Regulatory Commission.

Jon B. Hopkins, Sr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–2206 Filed 2–1–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–331]

IES Utilities, Inc; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49 issued to IES Utilities Inc. for operation of the Duane Arnold Energy Center (DAEC) located in Palo, Iowa.

The proposed amendment would modify the requirements for testing an emergency diesel generator (EDG) when the other is inoperable. The amendment would correct an editorial error in the DAEC Operating License and would correct an erroneous reference in the Technical Specifications (TS).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes are administrative in nature and are consistent with previously-published NRC guidance. The proposed revision does not change any accident analysis, plant safety analysis or calculations; degrade existing plant programs; or modify any functions of safety related systems or accident mitigation functions for which the DAEC has previously been credited. The proposed revision to the Surveillance Requirements will continue to assure OPERABILITY as required, but eliminate unnecessary operation of an EDG and is consistent with the requirements of the Improved Standard TS, NUREG–1433.

2. The proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revision does not

alter any plant parameters, revise any safety limit setpoint, or provide any new release pathways. In addition, the proposed revision does not modify the operation or function of any safety-related equipment, nor introduce any new modes of operation, failure modes, or physical changes to the plant.

3. The proposed revision does not involve a significant reduction in a margin of safety. The proposed revision does not alter any plant parameters, revise any safety limit setpoint, or provide any new release pathways. In addition, the proposed revision does not modify the operation or function of any safety-related equipment, nor introduce any new modes of operation, failure modes, or physical changes to the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 4, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street SE, Cedar Rapids, Iowa. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman, Kathleen H. Shaw; Morgan, Lewis & Bockius, P.C.; 1800 M Street NW., Washington, DC 20036, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendment dated July 21, 1995, August 8, 1995, and December 15, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street SE, Cedar Rapids, Iowa.

Dated at Rockville, Maryland, this 29th day of January 1996.

For the Nuclear Regulatory Commission.

Glenn B. Kelly,

Project Manager,

Project Directorate III–3 Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 96–2205 Filed 2–1–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36783; File No. SR–NASD–95–53]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Requiring Members That Participate in the Transfer of Limited Partnership Securities to Use Standard Transfer Forms

January 29, 1996.

I. Introduction

On December 15, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder.[3] The rule change amends Section 1 and adds new Section 73 and Exhibit A to the NASD's Uniform Practice Code (''Code'').

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release [4] and by publication in the Federal Register.[5] No comments were received in response to the Commission release. This order approves the proposed rule change.

II. Description

The NASD intends to standardize the format for gathering transfer information by registered representatives and eliminate delays and inefficiencies in the transfer and settlement process by requiring the use of standardized transfer forms.[6] Under new Section 73 of the Code, each member that participates in the transfer of limited partnership securities, as defined in Article III, Section 34 of the NASD's Rules of Fair Practice, will be required to use the forms. This new section will not apply to limited partnership securities which are traded on The Nasdaq Stock Market or a registered national securities exchange. Although only NASD members would be required to use the standardized forms under the proposed amendments, the NASD has worked closely with various transfer agents, and the Investment Program Association, a trade organization for the partnership industry, to build a general consensus favoring the use and recognition of the forms throughout the industry.[7]

The standard transfer forms will be set forth in Exhibit A to new Section 73. The four forms are as follows: (1) the ''Transferor's (Seller's) Application For Transfer;'' (2) the ''Transferee's (Buyer's) Application for Transfer;'' (3) the ''Registration Confirmation Form;'' and (4) the ''Distribution Allocation Agreement.'' The Transferor and Transferee forms are each two pages in length and contain important information, including customer identification, partnership identification, tax identification, quantity transferred, broker-dealer and registered representative identification, and signature execution.

The Registration Confirmation Form acts to confirm to the buyer/transferee that the transfer has been completed. This form contains information including the partnership's NASD symbol, CUSIP number, tax identification number, total number of units transferred, and the effective/admission date.

The Distribution Allocation Agreement is designed to be completed at the time the transfer documents are completed and sent to the general partner of the limited partnership security to be transferred. The agreement contains certain affirmations on which the transferor and transferee agree, and is intended to act as a contract between the buyer and seller setting forth their agreement regarding all unpaid distributions. The agreement specifies when the unitholder of record is entitled to cash distributions and capital distributions, as well as the party

[1] The proposed rule change was initially submitted on November 8, 1995, but was subsequently amended on December 11, 1995, and again on December 15, 1995, in order to clarify that the proposed rule change does not apply to limited partnership securities that are traded on The Nasdaq Stock Market or a registered national securities exchange.

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 36611 (December 20, 1995).

[5] 60 FR 67146 (December 28, 1995).

[6] The NASD has requested an effective date for the proposed rule of 60 days after the date on which SEC approval of the proposed rule is announced in a NASD Notice to Members, which announcement shall be made no later than 45 days after the date of Commission approval.

[7] The NASD's Direct Participation Program Committee and the special Ad Hoc Committee on Uniform Settlement and Transfer Procedures for Direct Participation Program Securities have gathered and assessed information in order to develop forms with universal applicability. In addition, both the NASD staff and the members of the NASD's Direct Participation Program Committee are planning to explore other initiatives designed to develop a broad, accessible framework through which the transfer and distribution process for limited partnership securities will become more efficient and consistent. *See* Securities Exchange Act Release No. 36611 (December 20, 1995) at 9–10.

responsible of correcting a distribution made to the wrong party.

III. Discussion

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[8] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

Historically, limited partnership securities were not structured to be transferred freely in secondary market transactions, unless the issuer listed the securities on an exchange or qualified them for inclusion in Nasdaq. Over-the-counter markets now exist, however, for many limited partnership securities, and trading volumes reportedly have increased. As a result, quick and accurate processing of the transfer of limited partnership securities has become even more critical.

Generally, before the transfer of a limited partnership interest may take place, it must be approved by the general partner(s). The elements for a valid transfer are dictated by the terms of partnership agreements under various state limited partnership statutes. As a result, when transferring limited partnership interests, NASD members are currently confronted with transfer requirements unique to each partnership which may vary widely on the type and amount of documentation necessary for the valid transfer of a limited partnership interest. This, in turn, results in non-standardized transfers of limited partnerships that, in some instances, may take many weeks or even months to become finalized.

In addition, partnership terms for record dates and distribution or dividend payment dates are equally varied. Transfer delays and non-standardized payment provisions have caused or contributed to delays or mistakes in the allocation of cash distributions between buyers and sellers. For example, a seller of a limited partnership interest, as the recordholder of the securities until a change is made on the records of the partnership, often receives distributions that rightly should have accrued to the buyer. Particularly problematic are special distributions other than cash distributions (*e.g.*, proceeds from capital transactions, capital distributions, sale or refinancing proceeds, liquidating distributions) which, under many partnership agreements, are paid to the owner of record of the partnership unit in the prior quarter. Thus, under current transfer standards and practices, buyers and sellers of limited partnership securities in the secondary market are unable to protect their rights to such distributions.

The use and recognition of standardized forms will bring greater consistency and certainty in transactions involving limited partnership securities. Such forms should act to significantly reduce the time and effort required by member firms to process the transfer of limited partnership securities. In addition, the use of the Distribution Allocation Agreement will provide certainty to the buyer/transferee and seller/transferor regarding the method for handling various distributions of the limited partnership.

To be effective, however, the forms approved today must meet the legitimate needs of issuers and transfer agents. The Commission encourages the NASD to monitor the currency of the forms on a periodic basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–95–53 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2221 Filed 2–1–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. § 78*o*–3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

[Release No. 34–36782; International Series Release No. 923; File No. SR–Philadep–96–01]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change to Appoint the West Canada Depository Trust Company as a Correspondent Depository

January 26, 1996

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 25, 1996, the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–Philadep–96–01) as described in Items I and II below, which items have been prepared primarily by Philadep. On January 25, 1996, and on January 26, 1996, Philadep filed amendments to the proposed rule change.[2] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through June 30, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow Philadep to appoint the West Canada Depository Trust Company (''WCDTC'') as Philadep's nonexclusive agent and custodian in receiving Philadep.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow Philadep to authorize WCDTC to act as a nonexclusive agent and custodian for Philadep in receiving securities deposited by certain WCDTC sponsored participants for credit to their respective subaccounts in WCDTC's omnibus account at Philadep. These participant and custodial arrangements will be effectuated by contracts executed between Philadep and WCDTC and as to the Philadep participant arrangement by the rules and procedures of Philadep.

At or before 12:45 p.m. (Philadelphia time) on any business day Philadep is open, WCDTC will notify Philadep via facsimile transmission or through

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from William W. Uchimoto, General Counsel, Philadep, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (January 25, 1996 and January 26, 1996).

Philadep's Automated Deposit System of initiated and pending instructions to Canadian transfer agents to transfer various Canadian securities held by WCDTC into Philadep's nominee name. Philadep will credit WCDTC's account(s) for Canadian issues at the time of this notification. Philadep will credit WCDT's account(s) for incoming deposits of U.S. issues (received by WCDTC and designated for physical delivery and deposit to its Philadep account(s)) at the time of physical receipt of the securities by Philadep. Philadep has created a new screen and functionality to reduce the processing time required on the part of WCDTC for U.S. issues. Therefore, this credit upon receipt approach provides a faster and more efficient credit procedure than the former Midwest Securities Trust Company (''MSTC'')/WCDTC arrangement approved by the Commission.

With regard to Canadian issues, WCDTC will cause the Canadian transfer agent to reregister the shares in Philadep's nominee name and to deliver them to WCDTC as agent and custodian of Philadep. With respect to acting as Philadep's agent for interfacing with Canadian transfer agents, WCDTC has more direct knowledge of and familiarity with Canadian transfer agents. WCDTC has a Canadian address and is expected to obtain receipt of certificates faster than Philadep would obtain receipt through the international postal system. Earlier receipt of certificates means earlier certainty with respect to the value and validity of deposited certificates. This is a benefit to Philadep because the earlier Philadep receives notice of defects in a certificate the sooner it can reverse the credit to the WCDTC's account and the better it can limit the risk that the securities will have been transferred out of the account before the reversal of the credit can take place.

For Canadian issues returning to WCDTC from the Canadian transfer agent, WCDTC will safeguard the deposited securities and will hold them with deposit tickets attached and segregated from other securities held by WCDTC until forwarded to Philadep via licensed air courier or other carrier agreed upon by the parties. Securities held overnight will be deposited in WCDTC's vault. If WCDTC fails to deliver these securities to Philadep, Philadep will apply a short charge to WCDTC's account for the full value of the fails. For fails to deliver resulting from settled CNS transactions, Philadep will short the participant's CNS account with the Stock Clearing Corporation of Philadelphia (''SCCP''), Philadep's affiliated clearing corporation. SCCP will mark to market all short positions and collect marks daily.

If the deposited securities are U.S. securities, WCDTC will forward the securities directly to Philadep on the day the securities are reported to Philadep. Securities will be shipped to Philadep via licensed air courier or other carrier agreed upon by the parties.

WCDTC and Philadep have agreed that securities placed within the custody and control of WCDTC on behalf of Philadep will not be subject to any right, charge, security interest, lien or claim of any kind in favor of WCDTC or any person claiming through WCDTC. WCDTC and Philadep have further agreed that WCDTC will have no legal or equitable right, title, or interest in or to such securities including but not limited to any right, title, or interest in or to any principal or interest coupons, redemption proceeds, payments or payable amounts relating to any securities. In addition, WCDTC will maintain adequate insurance coverage with respect to any securities which are in its custody on behalf of Philadep. Furthermore, WCDTC will make a participants fund contribution of $750,000, which is in excess of the minimum amount required under the applicable formulae, and WCDTC's parent organization, the Vancouver Stock Exchange, has committed to and is in the process of executing an irrevocable standby letter of credit in the amount of $2 million (Canadian Dollars) to be issued to Philadep securing its guaranty obligations.[3]

Philadep believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the rule proposal fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and further assures the safeguarding of securities and funds in its custody or control or for which Philadep is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. Philadep will notify the Commission of any written comments received by Philadep.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[4] The Commission believes that Philadep's designation of WCDTC as a correspondent depository is consistent with Philadep's obligations under Section 17A(b)(3)(F) because the proposed rule change should help foster cooperation and coordination between the U.S. and Canadian clearance and settlement systems by facilitating a link between Philadep and WCDTC.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow Philadep to immediately enter into a custodial arrangement with WCDTC thus allowing WCDTC to continue to settle without any disruption securities transactions between U.S. broker-dealers and Canadian broker-dealers. Currently, WCDTC acts as a corresponding depository for and conducts clearance and settlement with the Midwest Securities Trust Company (''MSTC'') and the Midwest Clearing Corporation (''MCC''). The arrangement among WCDTC, MSTC, and MCC, including WCDTC's correspondent depository arrangement, will cease on January 26, 1996, as a result of MSTC's and MCC's decision to withdraw from the depository and clearance and settlement business.

The Commission is granting temporary approval of the proposed rule change through June 30, 1996, so that Philadep and the Commission can continue to monitor and analyze the development of WCDTC as a correspondent depository before granting permanent approval. During this period, the Commission will monitor the correspondent depository arrangement between Philadep and WCDTC to ensure that proper risk management procedures are in place. In this regard, the Commission requests that Philadep submit prior to filing for continued approval a report concerning specific surveillance measures that Philadep has implemented with regard

[3] During the temporary approval of the proposed rule change, the current value of WCDTC's participants fund contribution or letter of credit should not be reduced.

[4] 15 U.S.C. § 78q–1(b)(3)(F)(1988).

to the WCDTC account. Such a report should include but should not be limited to a detailed report outlining the risk management procedures implemented specifically to monitor the WCDTC account, including any staff or systems additions, and an analysis of any impact on Philadep's business, including effects on liquidity needs from the acceptance of WCDTC as a participant. Furthermore, Philadep will be required to file monthly reports analyzing activity in WCDTC's omnibus account and subaccounts. In addition, while the Commission believes that approval of the proposed rule change at this time is necessary to prevent the disruption of services for the clearance and settlement of certain transactions between U.S. and Canadian broker-dealers, the Commission recognizes that the period for public comment was brief. Because the Commission is encouraging public comment on these proposals, the Commission believes that it is appropriate to permit additional opportunities for public comment in the future.[5] For these reasons, the Commission is temporarily approving the proposed rule change through June 30, 1996. The staff of the Board of Governors of the Federal Reserve System have concurred with the Commission's granting of accelerated approval.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–Philadep–96–01 and should be submitted by February 23, 1996.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the proposed rule change (File No. SR–Philadep–96–01) be, and hereby is, approved through June 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2173 Filed 2–1–96; 8:45 am]

BILLING CODE 8010–01–M

[5] Prior to June 30, 1996, Philadep will be required to file a proposed rule change pursuant to Section 19(b) (2) of the Act to seek continued approval of the proposed rule change.

[6] Telephone conversation between Don Vinnedge, Manager, Trust Activities Program, Board of Governors of the Federal Reserve Board, and Jonathan Kallman, Associate Director, and Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (January 26, 1996).

[7] 17 CFR 200.30(a) (12) (1994).

[Release No. 34–36781; File Nos. SR–Philadep–96–02 and SR–SCCP–96–01]

Self-Regulatory Organizations; Philadelphia Depository Trust Company and Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Changes to Provide for the Application of Article 8 of the New York Uniform Commercial Code

January 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 25, 1996, the Philadelphia Depository Trust Company (''PHILADEP'') and the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR–PHILADEP–96–02 and SR–SCCP–96–01) as described in Items I and II below, which Items have been proposed primarily by Philadep and SCCP. The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposed rule changes on a temporary basis through June 30, 1996.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

Philadep proposes to adopt Rule 32 and to amend Rule 1 of its rules, and SCCP proposes to adopt Rule 41 and to amend Rule 1 of its rules to govern the choice of law to be elected in certain transactions effecting Philadep, SCCP, their participants, and pledgees.

[1] 15 U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, Philadep and SCCP included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. Philadep and SCCP have prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Philadep and SCCP hereby propose to adopt Rules 32 and Rule 41, respectively, and to amend Rule 1 of their rules to codify their decision to elect certain New York commercial code provisions to govern certain transactions for the purpose of providing a uniform, consistent, and predictable body of law. Specifically, Rule 32[2] and rule 41 will assure that the rights and obligations of Philadep and SCCP, their participants, and their pledgees with respect to transfers and pledges of securities, to the extent Article 8 of the Uniform Commercial Code (''UCC'') applies thereto, will be governed by and construed in accordance with Article 8 of the UCC of New York in effect from time to time. The definition of ''security'' under Rule 1 of the Philadep's and SCCP's rules also will be amended to cite to New York UCC Article 8 as opposed to Pennsylvania UCC Article 8.

Philadep and SCCP note that uncertainty exists whether New York law or Pennsylvania law may apply to any particular transfers and whether some transfers within Philadep's or SCCP's systems may be governed by Pennsylvania's UCC Article 8 while other transaction within such systems may be governed by New York's UCC Article 8. With so many of the transactions for which Philadep and SCCP provide depository, clearance, and settlement services potentially being affected (*e.g.*, those transactions effected through interface with broker-dealers, banks, and other institutions which are participants in The

[2] In its filing, Philadep mistakenly cites proposed Rule 41. The correct reference is to proposed Rule 32. Telephone conversation between J. Keith Kessel, Compliance Officer, SCCP and Philadep, and Cheryl O. Tumlin, Staff Attorney, Division of Market Regulation (''Division''), Commission (January 25, 1996).

Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC'') systems), it is problematic that different rules of law under Article 8 of the UCC may govern the rights and obligations of parties to such transfers. Philadep and SCCP, therefore, have chosen to elect the application of New York's UCC Article 8 rather than Pennsylvania's UCC Article 8. The choice of New York law also assures that DTC, NSCC, and their respective participants and pledgees will find harmonious commercial code provisions governing their extensive dealings with Philadep and SCCP, their participants, and pledgees in this area as the former New York based groups already are subject to New York law.

Philadep and SCCP believe the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities, to remove impediments to and perfect the mechanism of a national market system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statements on Burden on Competition

Philadep and SCCP do not believe that the proposed rule changes will impact or impose a burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments have been solicited or received. Philadep and SCCP will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Section 17A(b)(3)(F) [3] of the Act requires the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities. The Commission believes the proposed rule changes are consistent with these requirements because adoption of Article 8 of the New York UCC should help provide certainty with respect to the substantive rights and obligations under UCC Article 8 that are applicable to Philadep and SCCP and their participants particularly with respect to transactions with broker-dealers, banks, and other institutions that are participants of DTC and NSCC.

Philadep and SCCP have requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will enable Philadep and SCCP to admit West Canada Clearing Corporation and the West Canada Depository Trust Company (collectively ''West Canada'') as participants of Philadep and SCCP. With West Canada as participants, transactions in certain Canadian and U.S. securities between Canadian and American brokers can be cleared and settled through the facilities of Philadep and SCCP. Currently, such clearance and settlement is conducted between West Canada and the Midwest Securities Trust Company (''MSTC'') and Midwest Clearing Corporation (''MCC''). Because MSTC and MCC are withdrawing from the clearance and settlement business, they will cease providing clearance and settlement services to West Canada on January 26, 1996. SCCP and Philadep's ability to commence clearing and settlement services in an arrangement with West Canada by January 26, 1996, should prevent disruption in the clearance and settlement of transactions by U.S. and Canadian broker-dealers. The staff of the Board of Governors of the Federal Reserve System has occurred with the Commission's granting of accelerated approval.[4]

The Commission is granting temporary approval of the proposed rule changes because the Commission believes the adoption of Article 8 of the New York UCC should continue to be examined, especially in the area of third parties that are not Philadep or SCCP participants, before the selection of such governing law is permanently approved. The Commission is requiring SCCP and Philadep to submit an opinion of counsel to address, among other things, the effect of the choice of law provisions upon third parties. In addition, while the Commission believes that approval of the proposed rule changes at this time is necessary to prevent the disruption of services for the clearance and settlement of certain transactions between U.S. and Canadian broker-dealers, the Commission recognizes that the period for public comment was brief. Because the Commission is encouraging public comment on these proposals, the Commission believes that it is appropriate to permit additional opportunities for public comment in the future. [5] For these reasons, the Commission is temporarily approving the proposed rule changes through June 30, 1996. During this period, the Commission will continue to analyze the developments and the application of Article 8 of the New York UCC and to review and assess public comments concerning the rule changes.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such findings will also be available for inspection and copying at the principal offices of Philadep and SCCP. All submissions should refer to File Nos. SR–PHILADEP–96–02 SR–SCCP–96–01 and should be submitted by February 23, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–PHILADEP–96–02 and SR–SCCP–96–01) be, and hereby are, approved through June 30, 1996.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[6]

[3] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[4] Telephone conversion between Don Vinnedge, Manager, Trust Activities Program, Board of Governors of the Federal Reserve System, and Jonathan Kallman, Associate Director, and Jerry Carpenter, Assistant Director, Division, Commission (January 26, 1996).

[5] Prior to June 30, 1996, Philadep and SCCP will be required to file proposed rule changes pursuant to Section 19(b)(2) of the Act to seek continued approval of the current changes.

[6] 17 CFR 200.30–3 (a)(12)(1994).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2174 Filed 2–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21712; No. 811–8336]

United of Omaha Separate Account B

January 29, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANT: United of Omaha Separate Account B.

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on September 20, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 23, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission 450 5th Street, NW., Washington, DC 20549. Applicant, Attn: Variable Products Counsel, 3-Law Mutual of Omaha Plaza, Omaha, Nebraska 68175–1008.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is organized as a Nebraska corporation, and is registered under the 1940 Act as a unit investment trust.

2. On February 4, 1994, Applicant filed a notification of registration under Section 8(a) of the 1940 Act and a registration statement on Form N–4 under Section 8(b) of the 1940 Act and under the Securities Act of 1933 (File No. 33–75000) registering an indefinite amount of securities in connection with the offering of a variable annuity contract (''Contract''). The registration statement has not become effective and no securities have been offered or sold.

3. Applicant currently has no assets, has no security holders or shares outstanding, and is in the process of winding up its affairs. Applicant has not issued any Contracts and does not intend to make a public offering of the Contracts.

4. Applicant is not a party to any litigation or administrative proceeding, and is not now engaged, nor does it intend to engage, in any business activities other than those necessary for winding-up of its affairs.[1]

5. Applicant has no liabilities.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust.

7. Applicant does not intend to request that its registration statement be declared effective. The Applicant has not distributed any prospectuses to the public. Applicant intends to make an application under Rule 477 under the 1933 Act to withdraw its registration statement.

8. Applicant states that it is current with all of its filings under the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–2222 Filed 2–1–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant will amend the Application during the notice period to make this representation.

SMALL BUSINESS ADMINISTRATION

[(Declaration of Disaster Loan Area #2817)]

Florida; Declaration of Disaster Loan Area (Amendment #1)

The above numbered Declaration is hereby amended, effective January 9, 1996, to extend the deadline for filing applications for physical damage until January 31, 1996. All other information remains the same; i.e., the termination date for filing applications for economic injury is July 29, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 26, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–2211 Filed 2–1–96; 8:45 am]

BILLING CODE 8025–01–P

[(Declaration of Disaster Loan Area #2813)]

Florida; Declaration of Disaster Loan Area (Amendment #3)

The above numbered Declaration is hereby amended, effective January 9, 1996, to extend the deadline for filing applications for physical damage until January 31, 1996. All other information remains the same; i.e., the termination date for filing applications for economic injury is July 5, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 26, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–2210 Filed 2–1–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Economic Injury Disaster Loan Area #8735]

State of Rhode Island (and a Contiguous County in Connecticut); Declaration of Disaster Loan Area

Washington County and the contiguous counties of Kent and Newport in the State of Rhode Island and New London County in the State of Connecticut constitute an economic injury disaster area as a result of an oil spill which occurred on January 19, 1996 off the shores of Rhode Island. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on October 24, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to this disaster for the State of Connecticut is 873600.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 24, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–2209 Filed 2–1–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96–511, as amended (P.L. 104–13 effective October 1, 1995), The Paperwork Reduction Act. The information collection listed below, which was published in the Federal Register on December 8, has been submitted to OMB.

(Call the SSA Reports Clearance Officer on (410) 965–4142 for a copy of the form(s) or package(s), or write to her at the address listed after the information collections.)

SSA Reports Clearance Officer: Charlotte S. Whitenight

1. Inquiry to File An SSI Child's Application—0960–NEW. The information collected on the form will be used by the Social Security Administration to document the earliest possible filing date and to determine potential eligibility for SSI child's benefits. The respondents are claimants for SSI benefits.

Number of Respondents: 2,100

Frequency of Response: 1

Average Burden Per Response: 10 minutes

Estimated Annual Burden: 350 hours

Written comments and recommendations regarding this information collection should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, Washington, DC 20503

(SSA)

Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: January 29, 1996.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–2156 Filed 2–1–96; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 1/26/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1018
Date filed: January 22, 1996
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 776 Amend Rounding Units for Mozambique r-1- 024d r-2- 033d Intended effective date: April 1, 1996

Docket Number: OST–96–1024
Date filed: January 24, 1996
Parties: Members of the International Air Transport Association
Subject:
TC3 Telex Mail Vote 777 Korea-Guam/Saipan fares r-1- 072a r-2- 085t Intended effective date: February 15, 1996

Docket Number: OST–96–1027
Date filed: January 24, 1996
Parties: Members of the International Air Transport Association
Subject:
TC12 Fares 0497 dated January 14, 1996 US-UK Add-ons Intended effective date: April 1, 1996

Docket Number: OST–96–1032
Date filed: January 26, 1996
Parties: Members of the International Air Transport Association
Subject:
TC31 Reso/P 1098 dated January 23, 1996 South Pacific Reso 002a Intended effective date: March 1, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–2195 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–02–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 26, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1019
Date filed: January 22, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 19, 1996
Description: Application of Panagra Airways, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Panagra to conduct interstate charter air transportation operations.

Docket Number: OST–96–1020
Date filed: January 22, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 19, 1996
Description: Application of Panagra Airways, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Panagra to conduct foreign charter air transportation operations.

Docket Number: OST–96–1023
Date filed: January 24, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 21, 1996
Description: Application of Gulf and Caribbean Cargo, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Gulf & Caribbean to provide scheduled interstate and overseas air transportation of persons, property and mail.

Docket Number: OST–96–1034
Date filed: January 26, 1996
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1996
Description: Application of DHL Aero Expreso, S.A., pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for a foreign air carrier permit, to provide scheduled foreign air transportation of property and mail between the Republic of Panama to Miami, Florida, and to provide all-cargo foreign air transportation under charter subject to 14 CFR Part 211.

Paulette V. Twine,

Chief, Documentary Services Division

[FR Doc. 96–2196 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Notice of Meeting

AGENCY: Department of Transportation, Office of the Secretary.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on February 14, 1996, at 9 a.m., at the Department of Transportation, Nassif Building, room 10,234–10,238, 400 Seventh Street, SW, Washington, DC 20590. The room is located on the 10th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: John E. Budnik or Jean B. Lenderking, Labor-Employee Relations Office, Department of Transportation, Nassif Building, 400 Seventh Street, SW, room 9107, Washington, DC 20590, (202)-366-9439 or 202-366-8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to brief the Council on recommendations and implementation plans for career transition efforts at DOT consistent with the President's directive. In partnership with labor, DOT is establishing a career transition program to provide assistance to displaced and surplus employees. The Council will review and discuss career transition plans as well as provide recommendations for implementation to the Secretary.

Public Participation

We invite interested persons and organizations to submit comments on the principles and features that should be embodied in DOT career transition plans. We are especially interested in suggestions and ideas that ensure a successful career transition program for all DOT employees. Mail or deliver your comments or recommendations to Mr. John Budnik or Ms. Jean Lenderking at the address shown above. Comments should be received by February 9 in order to be considered at the February 14 meeting.

Issued in Washington, D.C., on January 26, 1996.

For the Department of Transportation.

John E. Budnik,

Chief, Office of Employee and Labor Relations.

[FR Doc. 96–2194 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Cyril E. King Airport; Charlotte Amalie, VI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Cyril E. King Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gordon A. Finch, Executive Director, of the Virgin Islands Port Authority at the following address: Virgin Islands Port Authority, P.O. Box 1707, St. Thomas, VI 00803–1707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Virgin Islands Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, P.E. Programs Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827, 407–648–6582. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Cyril E. King Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 26, 1996, the FAA determined that the application to use the revenue from a PFC submitted by Virgin Islands Port Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 10, 1996.

The following is a brief overview of PFC Application No. 96–04–U–00–STT.

Level of the PFC: $3.00.

Charge effective date: December 1, 1995.

Charge expiration date: July 31, 1997

Estimated PFC revenues to be used on the project for this application: $1,900,000.

Brief description of proposed project(s): Design and build an Aircraft Rescue and Fire-Fighting Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Virgin Islands Port Authority.

Issued in Orlando, Florida on January 26, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 96–2252 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 96–003; Notice 1]

Michelin North America, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) of Greenville, South Carolina, has determined that some of its tires fail to comply with the labeling requirements of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Michelin has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49

U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 109, Paragraph S4.3(b) requires that tires be labeled with the maximum permissible inflation pressure.

From the 27th through the 37th week of 1995, Michelin produced approximately 247 tires which had incorrect maximum inflation pressure information in pounds per square inch (psi) on the label. The subject tire is a P185/75R14 X Radial BW. The label on these tires incorrectly gives the maximum inflation pressure as 33 psi. The maximum inflation pressure should be 35 psi. The tires are correctly labeled with a maximum inflation pressure of 240 kilopascals (kPa). All tires are sold only in the replacement market.

Michelin supports its application for inconsequential noncompliance with the following:

[Michelin does] not believe that this minor error on the tire sidewall will impact motor vehicle safety since the pressure is correctly marked in kPa on the tire sidewall. Furthermore, the vehicle owners manual and/or vehicle placard, as required by 49 CFR Part 571.111 S4.3(c), instructs the user of the correct pressure to be used in the tire. Additionally, many publications, instructing the user to inflate tires to the recommended inflation found on the placard, are available to the public. Examples of these documents include:

1. Tire Industry Safety Council (CTG–1/94)—''Motorist's Tire Care and Safety Guide''—''The correct air pressure is shown on the tire placard (or sticker) attached to the vehicle-door edge, door post, glove box, or fuel door.''

2. Tire Industry Safety Council—April 4, 1995 release—''Owners should inflate tires for normal operation to the vehicle manufacturer's recommended inflation pressure found on the door post, glove box, or in the owner's manual.''

3. Rubber Manufacturers Association (ALT 8–87)—''Care and Service of Automobile and Light Truck Tires,'' ''Proper tire inflation is shown on the vehicle's tire placard. If there is no tire placard, consult the vehicle owner's manual or check with the tire or vehicle manufacturer for the proper inflation.''

Interested persons are invited to submit written data, views, and arguments on the application of Michelin described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested that ten copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: March 4, 1996.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 30, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–2269 Filed 2–1–96; 8:45 am]

BILLING CODE 4910–59–M

Surface Transportation Board [1]

[STB Finance Docket No. 32856]

Burlington Northern Railroad Company—Trackage Rights Exemption—Iowa Interstate Railroad Ltd.

Iowa Interstate Railroad Ltd. has agreed to grant overhead trackage rights to Burlington Northern Railroad Company over 2.24 miles of rail line, (a) between milepost 177.25 and milepost 178.51 at or near Moline, IL, and (b) between milepost 180.42 and milepost 181.40 at or near Rock Island, IL. The trackage rights were to become effective on January 24, 1996.

This notice relates to a function that is subject to the Board's jurisdiction pursuant to 49 U.S.C. 11323. This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Board and served on: Michael E. Roper, Associate General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102–5384.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: January 25, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–2217 Filed 2–1–96; 8:45 am]

BILLING CODE 4915–00–P

This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[STB Finance Docket No. 32859]

Wisconsin Central Ltd. and Fox Valley & Western Ltd.—Joint Relocation Project Exemption—Oshkosh, WI

On January 17, 1996, Wisconsin Central Ltd. (WCL) and Fox Valley & Western Ltd. (FVW) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to enter into a project to relocate lines of railroad in Oshkosh, WI. Both WCL and FVW are Class II railroads commonly controlled by Wisconsin Central Transportation Company. The proposed transaction is to be consummated on or after January 27, 1996.

WCL and FVW own and operate parallel lines of railroad through Oshkosh, WI. The joint relocation will reroute operations from, and allow removal of, several miles of duplicative rail line. WCL's current rail line runs through Oshkosh from milepost 168.8 near East Fisk Avenue to milepost 176.6 near Harrison Road in north Oshkosh.

Under the terms of joint project, WCL and FVW agree to the following: (1) Crossovers will occur at each end of the segment of the track to be relocated, connecting WCL's rail line to FVW's rail line at FVW milepost 190.00 near East Fish Avenue and at FVW milepost 197.05 near Harrison Road; (2) WCL will acquire trackage rights from FVW between FVW milepost 190.00 and FVW 197.05, a distance of 7.05 miles; and (3) WCL will acquire trackage rights from FVW between FVW milepost 181.6 and 190.00, a distance of 8.4 miles, which will allow WCL to access the relocated track at two connection points. WCL will acquire trackage rights from FVW totaling approximately 15.45 miles.

In addition, two small track segments will remain to allow WCL to serve shippers from the relocated line. One segment runs from approximately WCL milepost 169.36 (FVW milepost 190.52) to WCL milepost 172.05. The other runs from approximately WCL milepost 175.80 to WCL milepost 176.32 (FVW milepost 196.85).

The notice states that the joint relocation project will simplify rail operations within Oshkosh and will accommodate the efforts of the City of Oshkosh to reduce interference with

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board).

vehicular traffic. It also states that no shippers are located on the rail line that will be removed as part of this joint project.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. See *City of Detroit* v. *Canadian National Ry. Co., et al*, 9 I.C.C.2d 1208 (1993), aff'd, 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. See *D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Any pleadings must be filed with the Board and served on: Janet H. Gilbert, Assistant General Counsel, Wisconsin Central Ltd. and Fox Valley & Western Ltd., 6250 North River Road, Suite 9000, Rosemont, IL 60018.

Decided: January 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–2216 Filed 2–1–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Domestic Finance; Notice of Open Meeting of the Advisory Committee U.S. Community Adjustment and Investment Program

The Department of the Treasury, pursuant to the North American Free Trade Agreement (''NAFTA'') Implementation Act (Pub. L. No. 103–182), established an advisory committee (the ''Advisory Committee'') for the community adjustment and investment program (the ''Program''). The Program will provide financing to businesses and individuals in communities adversely impacted by NAFTA to create new jobs. The charter of the Advisory Committee has been filed in accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. No. 92–463), with the approval of the Secretary of the Treasury.

The Advisory Committee consists of nine members of the public, appointed by the President, who collectively represent: (1) Community groups whose constituencies include low-income families; (2) scientific, professional, business, nonprofit, or public interest organizations or associations, which are neither affiliated with, nor under the direction of, a government; and (3) for-profit business interests.

The objectives of the Advisory Committee are to: (1) Provide informed advice to the President regarding the implementation of the Program; and (2) review on a regular basis, the operation of the Program, and provide the President with the conclusions of its review. Pursuant to Executive Order No. 12916, dated May 13, 1994, the President established an interagency committee to implement the Program and to receive, on behalf of the President, advice of the Advisory Committee. The committee is chaired by the Secretary of the Treasury.

A meeting of the Advisory Committee, which will be open to the public, will be held in Los Angeles, California, at the Whittier Hilton Convention Center, 7320 Greenleaf Avenue, Whittier, California , from 9 a.m. to 3 p.m. on Friday, February 23, 1996. The room will accommodate approximately 75 persons and seating is available on a first-come, first-serve basis, unless space has been reserved in advance. Due to limited seating, prospective attendees are encouraged to contact the person listed below prior to February 20, 1996. If you would like to have the Advisory Committee consider a written statement, material must be submitted to the U.S. Community Adjustment and Investment Program, Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 1124, Washington, DC 20220 no later than February 16, 1996. If you have any questions, please call Dan Decena at (202) 622–0637. (Please note that this telephone number is not toll-free.)

Mozelle W. Thompson,

Deputy Assistant Secretary, Government Financial Policy.

[FR Doc. 96–2172 Filed 2–1–96; 8:45 am]

BILLING CODE 4810–15–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Sacred Realm: The Emergence of the Synagogue in the Ancient World'' (see list), [1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed objects at Yeshiva University Museum, New York, New York, from on or about February 18, 1996, to on or about February 28, 1997, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: January 30, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–2301 Filed 2–1–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–5997, and the address is Room 700, United States Information Agency, 301 4th Street, SW, Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 61, No. 23
Friday, February 2, 1996

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, February 6, 1996, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of actions approved by an officer of the Corporation pursuant to authority delegated by the Board of Directors.

Corporate Investment Portfolio Status Report.

Memorandum and resolution re: Final amendments to Part 353 of the Corporation's rules and regulations, entitled ''Reports of Apparent Crimes Affecting Insured Nonmember Banks,'' concerning the reporting of known or suspected criminal and suspicious activities by insured state nonmember banks.

Discussion Agenda

Memorandum and resolution re: Interim final amendments to the Corporation's rules and regulations in the form of a new Part 366, entitled ''Contractor Conflicts of Interest,'' which are applicable to private sector contractors, including law firms, which submit offers to provide services to the Corporation; would govern conflicts of interest, ethical responsibilities, and the use of confidential information by such contractors; and provide guidance to Corporation contracting personnel.

Memorandum and resolution re: Proposed amendments to Part 336 of the Corporation's rules and regulations, entitled ''Employee Responsibilities and Conduct,'' which would implement the requirements contained in section 19 of the Resolution Trust Corporation Completion Act, which amended the Federal Deposit Insurance Act, to prohibit any person from becoming employed or providing services to or on behalf of the Corporation who does not meet minimum standards of competence, experience, integrity, and fitness.

Memorandum and resolution re: Final Policy Statement on the Fitness and Integrity of Lessors of Real Property to the Corporation, which establishes the standards of fitness and integrity for lessors who lease space to the Corporation.

Memorandum and resolution re: Final Policy Statement on Securing Leased Space, which establishes the procedures that the Corporation will use when it leases space.

Memorandum and resolution re: Final amendments to the Corporation's rules and regulations in the form of a new Part 359, to be entitled ''Golden Parachute and Indemnification Payments,'' and final amendments to Part 303 of the Corporation's rules and regulations, entitled ''Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation,'' which limit the golden parachute and indemnification payments to institution-affiliated parties by insured depository institutions and depository institution holding companies; and (2) delegate to the Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, the authority to approve or deny certain requests.

Memorandum and resolution re: Final amendments to Part 346 of the Corporation's rules and regulations, entitled ''Foreign Banks,'' which restrict the amount and types of initial deposits of less than $100,000 which could be accepted by an uninsured state-licensed branch of a foreign bank.

Memorandum and resolution re: Final amendments to Part 363 of the Corporation's rules and regulations, entitled ''Annual Independent Audits and Reporting Requirements,'' in order to conform the rule with the Riegle Community Development and Regulatory Improvement Act of 1994.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: January 30, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–2320 Filed 1–31–96; 11:13 am]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 7, 1996.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Consideration of a possible approach to setting capital requirements for market risk (proposed earlier for public comment; Docket No. R–0886).
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–2320 Filed 1–31–96; 10:19 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, February 7, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–2321 Filed 1–31–96; 10:19 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the February 13, 1996 special meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Wednesday, February 21, 1996 at 10:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: January 30, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–2308 Filed 1–30–96; 5:13 am]

BILLING CODE 6705–01–P

Corrections

Federal Register
Vol. 61, No. 23
Friday, February 2, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RP95-396-004]

Tennessee Gas Pipeline Company; Notice of Motion to Place Tariff Sheets Into Effect

Correction

In notice document 96–936, beginning on page 1918, in the issue of Wednesday, January 24, 1996, the Docket Number should read as cited above.

BILLING CODE 1505–01–D

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

Correction

In notice document 96–918 beginning on page 1934 in the issue of Wednesday, January 24, 1996, make the following correction:

On page 1934, in the second column, in the second paragraph, *Agreement No.*: ''202–011497–001'' should read ''202–011407–001''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36730; File No. SR-CHX-95-18]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Priority and Precedence of Agency and Professional Orders

Correction

In notice document 96–1032, beginning on page 1958, in the issue of Wednesday, January 24, 1996, make the following corrections:

1. On page 1959, in the third column, before the FR document line, the signature line was omitted and should have appeared as follows:

Margaret H. McFarland,

Deputy Secretary.

2. On the same page, in the same column, in the FR document line, ''95-1032'' should read ''96-1032''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36714; File No. SR-NSCC-95-13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Enabling Members Settling Mutual Fund Transactions in Same Day Funds to Settle Through a Settling Bank

Correction

In notice document 96–793 beginning on page 1807, in the issue of Tuesday, January 23, 1996, make the following correction:

On page 1806, in the first column, before the FR document line, the signature line was omitted and should have appeared as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

federal register

Friday
February 2, 1996

Part II

Department of Justice

Antitrust Division

Public Comments and Response on Proposed Final Judgment, United States v. Sprint Corporation and Joint Venture Company; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 95–1304]

Public Comments and Response on Proposed Final Judgment, United States v. Sprint Corporation and Joint Venture Company

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Sprint Corporation, et. al.*, Civil Action No. 95–1304, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, telephone: (202) 514–2481, and at the office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Comments Relating to Proposed Final Judgment and Response of the United States to Comments

United States of America, Plaintiff, v. *Sprint Corporation and Joint Venture Company,* Defendants.

[Civil Action No. 95–1304 (TPJ)]

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h)) (''APPA''), the United States of American hereby files the public comments it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comments. The United States has carefully reviewed the public comments on the proposed Final Judgment. While the United States remains convinced that entry of the proposed Final Judgment is in the public interest, in this Response the United States clarifies the meaning of several provisions of the proposed Final Judgment in response to issues raised by the public comments to ensure that there is no uncertainty as to how the proposed Final Judgment will operate. The United States also explains why other provisions of the proposed Final Judgment that were questioned or criticized in the public comments need not be changed in light of the factual circumstances, including developments in France and Germany and actions taken by the European Commission and the Federal Communications Commission.

At this time, it would be premature for the Court to render a decision on entry of the proposed Final Judgment. The Joint Venture must first be made a party to the Stipulation consenting to entry of judgment, and the United States must have this Response and the public comments published in the Federal Register, certify that all of the requirements of the Tunney Act have been met, and move for entry of judgment. It is anticipated that these steps will be completed in a period between two weeks to a month from this filing. The filing of this Response has been delayed as a result of the shutdown of government functions in December and early January due to lack of funding. Before the United States moves to enter the Final Judgment, the United States and defendants expect to arrange with the Court for the scheduling of a status conference, in order to determine what further procedures the Court may wish to follow to complete the proceedings under the Tunney Act.

I

Background

A. The Proceedings in This Case

This action was commenced on July 13, 1995, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the proposed acquisition of 20% of the stock of Sprint Corporation (''Sprint'') by France Telecom (''FT'') and Deutsche Telekom AG (''DT''), and the proposed formation by Sprint, FT and DT of a joint venture to provide international telecommunications services, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges that because of the market power held by FT and DT in telecommunications services in France and Germany, the acquisition and the joint venture may substantially lessen competition in two markets: (1) provision of international telecommunications services between the United States and France, and between the United States and Germany, and (2) provision of seamless international telecommunications services.

Also on July 13, 1995, the United States submitted a proposed Final Judgment and a Stipulation, and this Court subsequently approved the Stipulation for filing. In the Stipulation, defendant Sprint and the United States have consented to entry of the proposed Final Judgment by the Court after completion of the procedures required by the APPA, and agreed to certain other preconditions for consummation of the transactions between Sprint, France Telecom and Deutsche Telekom.[1] After the Joint Venture has been formed, and before the Court is requested to enter the proposed Final Judgment, the United States and all defendants expect to file an amended version of the Stipulation including consent to entry of judgment by the Joint Venture.[2]

On August 14, 1995, the United States filed a Competitive Impact Statement explaining the basis for the Complaint and the provisions of the proposed Final Judgment, including their anticipated effect on competition in relevant markets. The terms and conditions imposed by the Final Judgment are intended to safeguard against discriminatory and other anticompetitive practices that would favor the defendants over competing United States providers of international telecommunications services and harm competition. The Competitive Impact Statement addresses the reasons why entry of the proposed Final Judgment would be in the public interest.

The proposed Final Judgment would subject Sprint and the Joint Venture to various restrictions affecting their relationship with FT and DT. These restrictions operate in two distinct phases, lessening over time as

[1] The United States has been advised by FT and DT that one of those preconditions, the divestiture of the Initial Tranche of FT's and DT's shares of Infonet Services Corporation, has now been completed.

[2] Paragraph 6 of the July 13, 1995 Stipulation signed by the United States and Sprint provides that ''Joint Venture Co. is necessary as a defendant in this action, together with Sprint, for the relief specified in the proposed Final Judgment to be effective.'' It further sets out required conditions pertaining to Joint Venture Co. including ''that Joint Venture Co. (i) has been created as a legal entity, (ii) is subject to suit and is within the reach of the jurisdiction of the United States courts, and (iii) will have full authority and power to carry out all of the obligations imposed upon it by the proposed Final Judgment as those obligations take effect, and Joint Venture Co. has consented to and executed this Stipulation on the same terms as Sprint, without reservation or qualification, * * *'' The stipulation further provides that until these conditions pertaining to Joint Venture Co. are satisfied, the United States ''shall be under no obligation to move for entry of the Final Judgment and may withdraw its consent to entry of the Final Judgment, and defendants shall not move for entry of the Final Judgment.'' The original stipulation signed by both Sprint and the United States essentially makes the formation of the joint venture and its execution of the Stipulation consenting to entry of the proposed Final Judgment preconditions for entry of the Final Judgment.

competition develops in France and Germany. During Phase I, while DT and FT still have monopoly rights in Germany and France and competitors have not been licensed, Sprint and the Joint Venture may not acquire ownership or control of certain types of facilities from FT and DT, may not provide services in which FT or DT have special rights except in limited, non-exclusive circumstances, and may not benefit from discriminatory treatment, disproportionate allocation of international traffic, or cross-subsidization by FT and DT. In addition, access to the French and German public switched networks and public data networks cannot be limited in such a way as to exclude competitors of Sprint and the Joint Venture.

During both Phase I and Phase II, after FT and DT face licensed competitors in all areas of services and facilities in France and Germany, Sprint and the Joint Venture must make certain information on their relationships with FT and DT available to competitors, will be precluded from receiving competitively sensitive information that FT and DT obtain from the competitors of Sprint and the Joint Venture, and may not offer particular services between the United States and France and Germany unless other United States providers also have or can readily obtain licenses from the French and German governments to offer the same services. These provisions of the decree will remain in effect for five years beyond the end of the first phase.

B. Other Significant Developments Affecting These Transactions

In the Competitive Impact Statement, the United States noted that both the competition authorities of the Commission of the European Union, and the Federal Communications Commission in the United States, had pending investigations of these transactions. See *Competitive Impact Statement,* 60 Fed. Reg. 44049, at 44065 (Aug. 24, 1995). The issues in these separate investigations overlapped to a certain extent with those considered by the United States under the Clayton Act, but also differed significantly in some respects, both for jurisdictional and substantive reasons. The European Commission and the FCC now have both resolved their separate investigations of these transactions. Both of these authorities have determined that the transactions should be allowed to proceed, subject to various modifications, limitations and safeguards addressing the concerns within their areas of responsibility. Other relevant developments have also taken place in the European Union and in France and Germany indicating further progress toward removal of legal barriers to competition and the establishment of effective regulatory regimes to protect competition.

1. The European Commission Decision

The competition authorities of the European Commission considered not only the transactions between Sprint, France Telecom and Deutsche Telekom leading to the formation of the ''Phoenix'' alliance referred to in the proposed Final Judgment as Joint Venture Co., but also the formation of the strategic alliance between France Telecom and Deutsche Telekom in Europe known as ''Atlas,'' which was outside the scope of U.S. antitrust review. Their decision, first reached and announced in October 1995 shortly before the end of the public comment period on the proposed Final Judgment, was officially published on December 15, 1995.[3] It is subject to an ongoing public comment period before it is finalized, which will likely occur sometime in the first half of 1996.

The European Commission recognizes in its decision that other competitors of the Atlas and Phoenix ventures will be dependent in France and Germany on the monopoly services of FT and DT, including the public switched telephone network (PSTN) and other reserved services such as leased lines. Moreover, FT and DT already have very high market shares in various types of services in their home countries that the parties had planned to provide through Atlas and Phoenix, including standardized low-level packet-switched data communications services. The European Commission gives DT's share of data communications services in Germany as 79%, and FT's share of data communications services in France as 77%. In order for the Atlas and Phoenix transactions to be exempted from the prohibitions of European competition law and enabled to proceed, FT and DT accepted various conditions and modifications to the transactions, while the French and German governments also committed to make important changes in their national laws.

First, the French and German governments have made a written commitment to the European Commission to permit competition in the provision of telecommunications infrastructure for services other than public switched voice by July 1, 1996, and to permit full competition for voice telephone services and all types of telecommunications infrastructure by January 1, 1998. This early liberalization for infrastructure used for services other than public switched voice will authorize competitors in France and Germany to begin developing and operating alternative telecommunications networks a year and a half before the date of full liberalization in France and Germany, and also considerably before the earliest time that a shift from Phase I to Phase II could occur under the proposed Final Judgment. For Phase II to begin in either France or Germany, there must have been, among other things, complete removal of all legal prohibitions on competition, which would not occur before January 1, 1998 at the earliest based on current schedules for liberalization in France and Germany.

Second, FT is precluded from integrating its Transpac public switched X.25 data network in France into Atlas, and DT similarly is precluded from integrating its Datex-P public switched X.25 data network in Germany into Atlas, until January 1, 1998, the planned date of full liberalization. Atlas may not acquire any form of legal ownership or control over the Transpac network in France or the Datex-P network in Germany before that date, although certain international operations of Transpac outside of France can be contributed to Atlas. In essence, the European competition authorities have extended to Atlas the prohibition on integrating the Public Data Networks into Phoenix during Phase I that is contained in Section III.B of the proposed Final Judgment.[4] The Transpac and Datex-P networks in France and Germany are to be wholly owned subsidiaries of FT and DT during the period before they can be integrated into Atlas, while Atlas will have subsidiaries of its own in France and

[3] Case No. IV/33,337—Atlas, *Notice pursuant to Article 19(3) of Council Regulation No. 17 and Article 3 of Protocol 21 of the European Economic Area Agreement concerning a request for negative clearance or an exemption pursuant to Article 85(3) of the EC Treaty and Article 53(3) of the EEA Agreement,* 1995 O.J. No. C 337/2 (Dec. 15, 1995), and Case No. IV/35,617—Phoenix, *Notice pursuant to Article 19(3) of Council Regulation No. 17 and Article 3 of Protocol 21 of the European Economic Area Agreement concerning a request for negative clearance or an exemption pursuant to Article 85(3) of the EC Treaty and Article 53(3) of the EEA Agreement,* 1995 O.J. No. C 337/13 (Dec. 15, 1995). For convenience these decisions have been attached to this Response as Exhibit H.

[4] There are minor differences between these integration prohibitions. The European authorities have opted for a fixed date on which the prohibition terminates, whereas the termination of Phase I is flexible and depends on the satisfaction of certain conditions, and also can differ for France and for Germany. Also, the definition of the Public Data Networks in Section V.S. of the proposed Final Judgment, with respect to Germany, is broader than the Datex-P network and also includes some other data services.

Germany to provide its other services. FT and DT will have the ability to cooperate with respect to Transpac and Datex-P, using Atlas as a manager, only in certain specified areas involving the development of common products and technical network elements, including network planning and information systems.

Third, FT has committed to divest its Info AG data network in Germany, instead of integrating it into Atlas. This responds to concerns on the part of the EU competition authorities about loss of horizontal competition between Info AG and DT in Germany in data services, similar to the concern of the United States about the loss of competition between Sprint and Infonet Services Corporation in the U.S., which was addressed by FT's and DT's agreement to divest their interest in Infonet.

Fourth, Atlas and Phoenix will not act as agents for the international half-circuits of DT and FT, a change to the original agreements of the parties. These international half-circuits will continue to be sold by DT and FT directly.

Fifth, the non-compete agreements of the parties to the Phoenix joint venture will not apply to long distance services, except for competition with entities providing long distance services that are controlled by Phoenix.

Sixth, Atlas, Phoenix, DT, FT and Sprint and their affiliates are precluded from making a telecommunications operator's ability to use the Phoenix international carrier services (*i.e.*, sales of switched transit capacity to other telecommunications carriers), or the commercial terms on which such services are offered, conditional upon use or distribution by that telecommunications operator of services of Atlas, Phoenix, DT, FT or Sprint.

Seventh, DT and FT have committed directly for Atlas, and DT, FT and Sprint have committed for Phoenix, to certain undertakings regarding forms of behavior that could have anticompetitive effects. These undertakings, enforceable by the European competition authorities, are similar in many respects to the obligations that would be made binding on Sprint and the Joint Venture directly, and indirectly affect FT's and DT's conduct, under the terms of the proposed Final Judgment. They do not conflict with the proposed Final Judgment in any way.

Several of these undertakings are directed at preventing discrimination in public switched telephone network (PSTN) and reserved services, such as leased lines. FT and DT will be required to give similar terms and conditions of service (including availability, price, quality of service, usage conditions, delays for installation and repair and maintenance) to Atlas and Phoenix and other providers of similar services, with respect to FT's and DT's PSTN services and other reserved services. Atlas and Phoenix are not to be granted terms and conditions or to be exempted from usage restrictions regarding the PSTN and other reserved services that would enable them to offer services that competing providers are prevented from offering. DT and FT are prohibited from discriminating between Atlas and Phoenix and any competing service provider in connection with substantial modifications to interfaces for reserved services or the disclosure of technical information relating to the operation of the PSTN. DT and FT also are prohibited from discriminating between Atlas and Phoenix and other competitors regarding the disclosure of commercial information, including customer information derived from operating the PSTN or providing reserved services, that would confer a substantial competitive advantage and is not readily available elsewhere. While these restrictions presumably would cease to apply to particular services as they lose their reserved status, they would continue to apply to the PSTN with no specific time limit.

Other undertakings are intended to ensure that access to the DT and FT national public switched data networks remains available to competitors. These services, though not considered to be PSTN or reserved services, nonetheless are ones for which DT and FT remain the dominant providers in their home countries. DT and FT will be required, as of January 1, 1996, to establish and maintain third-party access to their public switched data networks in Germany and France on a non-discriminatory, open, and transparent basis, for all other providers of X.25 packet-switched data communications services. In order to ensure such non-discriminatory access to their national public switched data networks, DT and FT will be required to establish and maintain interfaces based on the X.75 standard (a form of protocol for interconnection between data networks that is commonly used as an international standard and is suitable for the provision of end-to-end X.25 services) or any other generally used standard interconnection protocol that may modify, replace or co-exist with the X.75 standard. Access based on such protocols is to be offered on publicly available standard non-discriminatory terms including price, availability of volume or other discounts, and quality of interconnection, and FT and DT are required to make available to the European competition authorities the terms of any agreements concerning access. Atlas, Datex-P and Transpac will not be prohibited, however, from developing additional proprietary interfaces between their networks, provided that access granted to Atlas through such interfaces is economically equivalent to the access that third parties are able to obtain. Apart from a prohibition on the sharing of customers' confidential interconnection information between Transpac, Datex-P and Atlas, which would be lifted once these networks can be combined into Atlas, the obligations regarding access to the public data networks do not expire at any predetermined time.

Further undertakings are directed at preventing cross-subsidization by FT and DT of the Atlas and Phoenix ventures as well as Datex-P and Transpac. These obligations last until the telecommunications infrastructure and service markets in France and Germany are fully liberalized, as is expected to occur by January 1, 1998. All entities formed pursuant to the Atlas and Phoenix ventures must be distinct and separate from DT and FT. Atlas, Phoenix, Datex-P and Transpac must obtain their own debt financing, with certain exceptions similar to those in the proposed Final Judgment. They are also prohibited from allocating directly or indirectly any part of their operating expenses, costs, depreciation, or other business expenses to any parts of FT's or DT's business units, again with provisos similar to the proposed Final Judgment. They are required to keep separate accounting records identifying payments and transfers to and from FT and DT, and are prohibited from receiving any material subsidy or any investment or payment from FT or DT that is not recorded in their books as an investment in debt or equity.

Atlas, Transpac and Datex-P will be subject to regular auditing obligations to ensure that any transactions between them and FT or DT are on an arm's length basis. FT, DT, Phoenix and Atlas will also be subject to recording and reporting obligations, in order to enable FT's and DT's undertakings not to discriminate or cross-subsidize to be effectively monitored by the European Commission competition authorities. These conditions will last until full telecommunications liberalization takes place in France and Germany.

2. The FCC Decision

On December 15, 1995, the Federal Communications Commission announced its decision on the proposed

acquisition by FT and DT of 20% of the equity of Sprint, and the formation of the ''Phoenix'' joint venture between these three companies, under the ''public interest'' standard of the Communications Act of 1934 and relevant provisions of that statute, including 47 U.S.C. §§ 214 and 310(b).[5] The FCC, similarly to the United States, has recognized in its decision that the 20% investment in Sprint and formation of the Joint Venture will give FT and DT incentives that they would not otherwise have to engage in various types of anticompetitive behavior favoring Sprint and the Joint Venture over other U.S. competitors, potentially raising prices and reducing service quality and innovation.[6] Based on the recent policy shift by the French and German governments toward competitive telecommunications markets and the potential benefits of the transactions for consumers, the FCC has determined that allowing these transactions to be consummated would be in the public interest notwithstanding the present lack of ''effective competitive opportunities'' for U.S. providers in France and Germany. However, it has also imposed several significant conditions on the transactions.

First, the FCC has restricted Sprint's ability to operate new international circuit capacity to France and Germany for either its own use or that of the Joint Venture, beyond the existing and idle capacity it already has to those countries on several submarine cables, until (1) infrastructure liberalization for facilities used to provide services other than public switched voice has actually occurred in France and Germany (as the European Commission's settlement requires to take place by July 1, 1996), and (2) opportunities exist in France and Germany for basic public switched voice resale services to be provided on a competitive basis, including international traffic between France and Germany and the U.S.[7]

Second, Sprint will be subject to regulation as a ''dominant carrier'' with respect to traffic between the U.S. and France and Germany, due to its relationship with FT and DT, which are considered to be dominant carriers in their home markets, until Sprint demonstrates that there is no longer a substantial risk of anticompetitive effects in the U.S. arising from its relationship with FT and DT. This would mean that Sprint would be required to notify the FCC and obtain approval whenever it seeks to add new circuits to those countries, either for itself or the Joint Venture, whereas nondominant carriers only need obtain approval when first commencing service to a particular country and can thereafter add capacity freely. It would also mean that Sprint's tariffs filed with the FCC for basic telecommunications services, such as switched voice, to France and Germany would be subject to longer waiting periods before taking effect, and that Sprint would have to file quarterly traffic and revenuer reports.[8]

Third, Sprint will be obligated not to accept any ''special concessions'' directly or indirectly from any foreign carrier or administration, including FT or DT, with respect to traffic or revenue flows between the United States and any foreign country, including France or Germany. Other U.S. carriers that are considered to be affiliated with a foreign telecommunications carrier under 47 C.F.R. § 63.14 have a similar obligation. This requirement will remain in place indefinitely, unless removed by the FCC. ''Special concessions'' are defined by the FCC to include any arrangements that affect traffic or revenue flows to or from the United States that are offered to a particular U.S. carrier but not to other similarly situated U.S. carriers that are authorized to serve a particular route. 47 C.F.R. § 63/01(r)(3)(1). The FCC's decision illustrates the effect of this prohibition with detailed examples. Sprint would be precluded from accepting disproportionate amounts of return traffic, preferential changes in methods of allocating traffic, or discriminatory accounting rates from FT or DT.

Furthermore, if FT or DT were to grant an operating agreement or marketing arrangement to Sprint for a particular type of basic service but to withhold such agreements from other similarly situated U.S. carriers, or only offer agreements on discriminatory terms, Sprint would be in violation of the ''no special concessions'' requirement were it to offer service under the special operating agreement or marketing arrangement. Sprint will also be precluded from accepting any discriminatory interconnection or distribution arrangements from FT or DT, or arrangements for the joint handling of basic traffic involving third countries that are not available to other U.S. carriers. Sprint could not receive directly or through the Joint Venture (i) information about FT's or DT's basic network services that had not been publicly disclosed and that would affect U.S. carriers' provision of service, (ii) proprietary or confidential information that FT or DT have obtained from other competing U.S. carriers, or (iii) FT's or DT's telephone customer information that is not also available to U.S. competitors. In furtherance of this obligation not to accept special concessions, Sprint will also have to obtain a written commitment from FT and DT not to offer or provide any special concessions to Sprint or the joint venture relating to the provision of basic telecommunications services or facilities. Sprint also will be obligated to maintain records on its provisioning and maintenance of network facilities and services with FT and DT (including services or facilities procured on behalf of Joint Venture customers), to file various types of reports with the FCC on its numbers of circuits, revenues, numbers of messages and minutes for originating and terminating traffic between the U.S. and France and Germany, and to make available its contracts and agreements with FT and DT relating to routing of traffic and settlement of accounts on the U.S.-France and U.S.-Germany routes.[9] These conditions are similar to the obligations the FCC imposed on MCI in connection with its sale of 20% of its equity to British Telecommunications plc and formation of a joint venture in 1994.[10]

Fourth, Sprint will have to obtain a written commitment from France Telecom to lower its accounting rates for U.S.-France traffic within two years to the levels of the lower accounting rates between U.S. carriers and British carriers for U.S.-U.K. traffic, and between U.S. carriers and DT for U.S.-Germany traffic. The FFC has found that the U.S.-France rates are 28% above the level of the others and that this difference is unjustified.[11]

Fifth, Sprint will have to file annual reports, beginning in 1996, concerning the status of telecommunications markets and regulatory regimes in France and Germany.[12] These reports are intended to enable the FCC to evaluate how far France and Germany have progressed toward meeting the

[5] *In the matter of Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended,* File No. ISP–95–002, FCC 95–498 (released January 11, 1996) (hereinafter ''FCC Sprint Order''). Because this document is lengthy and is publicly available in the U.S., it has not been attached as an exhibit to this Response.

[6] *Id.,* ¶¶ 56–57.

[7] *Id.,* ¶¶ 109–115.

[8] *Id.,* ¶¶ 103–108.

[9] *Id.,* ¶¶ 116–127.

[10] *MCI Communications Corporation/British Telecommunications plc, Joint Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act of 1934, as amended,* 9 FCC Rcd 3960, 3973 (released July 25, 1994).

[11] FCC Sprint Order, ¶¶ 90–92, 131.

[12] *Id.,* ¶¶ 128–29.

''effective competitive opportunities'' criteria that the FCC has announced it will apply generally to foreign telecommunications carrier acquisitions of over 25% of the equity in U.S. telecommunications carriers leading to affiliation, or other investments likely to have competitive significance.[13] The reports will continue until the FCC finds that ''effective competitive opportunities'' exist in France and Germany, and the FCC has said that it will reconsider whether the public interest continues to be served by Sprint's authority to provide facilities to France and Germany if effective competitive opportunities are not available by 1998.[14]

3. Other Significant Actions by European Union Authorities

The Competitive Impact Statement addresses the European Union's overall plans for the introduction of full telecommunications competition by January 1, 1998, and infrastructure competition for services other than public switched voice in 1996. 60 Fed. Reg. at 44062. Over the past few months, the Commission of the European Union has proposed several other major directives, all of which are necessary steps on the road to full competition and an effective regulatory framework, and together indicate the substantial progress that is now being made toward telecommunications competition.

On July 19, 1995, the European Commission issued a proposed draft directive governing interconnection in telecommunications, which has now been submitted to the Parliament and the Council of Ministers who are responsible for adopting it.[15] This directive comprehensively addresses the manner in which Member States of the European Union, including France and Germany, would be required to ensure that telecommunications operators such as France Telecom and Deutsche Telekom provide interconnection to their networks for other telecommunications network and service providers. Under the terms of this directive, FT and DT, as entities with significant market power, would have to establish transparent, unbundled, cost-oriented interconnection charges, and would not be able to discriminate among providers in interconnection. They would have to publish tariffs for their standardized interconnection services, and not simply establish interconnection terms through commercial negotiation as is more typical today. Moreover, where any interconnection arrangements are negotiated, regulatory authorities would have to ensure that agreements are reached within specified times and provide for review with published decisions. This directive is scheduled for final adoption by the end of 1996, and member States, including France and Germany, would have to take the measures necessary to bring themselves into compliance before the end of 1997, so as to have an interconnection regulatory regime in place prior to the start of full competition.

On November 14, 1995, the European Commission also adopted a proposed draft directive, to be acted upon by the Parliament and Council of Ministers, to ensure a common framework in the European Union for the grant of general authorizations and individual licenses to provide telecommunications services by the Member States, including France and Germany.[16] This directive would apply to all types of telecommunications services as they become open to competition. Under this proposed directive, Member States would not be permitted to impose limits on the number of licenses granted to provide particular services or facilities, except as necessary in the case of radio-based services because of limits on the availability of spectrum. Licensing procedures would have to be open, transparent and nondiscriminatory, and any denials of licenses would have to be justified and subject to appeal. This directive is scheduled for final adoption by the fall of 1996, and Member States would have to take measures to bring themselves into compliance by July 1, 1997, six months before the start of full competition, so as to enable competitors to be licensed in a timely manner.

Other existing European Union directives governing telecommunications services are also being updated to account for the plans for full introduction of competition by 1998. Under proposed changes to the existing directive governing the framework for open network provision, announced on November 14, 1995 by the European Commission, Member States that retain a significant degree of ownership or control of a telecommunications provider, as France and Germany both still do, would have to take additional measures to ensure the effective separation of regulatory activities from activities of the government related to ownership or control of the telecommunications provider.[17] The regulatory authorities would have to be both legally distinct from and functionally independent of all organizations providing telecommunications networks or services, effective structural separation from any activities associated with ownership or control of such organizations would have to exist, and rights of appeal from the regulator to an independent body would have to be provided. These changes to the framework directive are also scheduled for final adoption by the fall of 1996, and Member States would have to take the measures needed to bring themselves into compliance by the end of 1997.

[13] The ''effective competitive opportunities'' criteria are explained fully in the FCC's decision in *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95–22, Report and Order (released Nov. 30, 1995). In summary, they are: (1) whether U.S. carriers can, as a matter of law, offer in the foreign country international facilities-based services, including the ability to obtain a controlling interest in a facilities-based provider and to offer basic International Message Telephone Service traffic; (2) the availability of reasonable and nondiscriminatory published charges, terms and conditions for interconnection to foreign domestic carriers' facilities for termination and origination of international services; (3) whether competitive safeguards exist in the foreign country to protect against anticompetitive conduct, including cost-allocation rules to prevent cross-subsidization, timely and nondiscriminatory disclosure of technical information needed to use or interconnect with carriers' facilities, and protection of carrier and customer proprietary information; and (4) whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other competitive safeguards, including separation between the regulator and the foreign operator of international facilities-based services, and the existence of fair and transparent regulatory procedures. A favorable competitive opportunities finding can be made if effective competitive opportunities currently exist or it is reasonably certain that they will be available in the near future. The FCC places greatest emphasis on the legal ability to provide international facilities-based service, but if any of the factors of the test are completely absent, the FCC will deny authority to provide facilities-based service on an international route where the foreign carrier is dominant at its end, unless other public interest factors lead to a different result. *Id.* at ¶¶ 42–55.

[14] FCC Sprint Order, ¶ 132.

[15] Commission of the European Communities, *Proposal for a European Parliament and Council Directive on Interconnection in Telecommunications*, COM (95) 379 final, O.J. No. C 313/7, November 24, 1995. Although only recently published, this directive was submitted by the Commission on August 31, 1995, shortly after the Competitive Impact Statement was filed in this case.

[16] Commission of the European Communities, *Proposal for a European Parliament and Council Directive on a Common Framework for General Authorizations and Individual Licenses in the Field of Telecommunications Services*, COM (95) 545, Nov. 14, 1995.

[17] Commission of the European Communities, *Proposal for a European Parliament and Council Directive amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaption to a competitive environment in telecommunications*, COM (95) 543 final, Nov. 11, 1995.

4. Progress Toward Competition in Germany and France

Notwithstanding these important developments at the level of the European Union, it is also necessary to consider actions taken by the German and French governments to move towards a competitive telecommunications environment. European Union measures must be transposed into law at the national level, and national regulatory authorities have the primary responsibility for implementing and enforcing them. Even though the European Union telecommunications directives do not discriminate among European and U.S.-owned providers in the rights that would be accorded to firms doing business in Europe, the Member States retain the authority to establish the terms on which international services to countries outside the European Union will be provided, as discussed in the Competitive Impact Statement, 60 Fed. Reg. at 44063. They may elect to liberalize these services partly or entirely on their own now, or to await the results of ongoing multilateral trade negotiations on telecommunications services.

a. *Germany.* The German government set out its proposals for liberalization in March 1995,[18] and these proposals are generally in line with the approach being taken by the European Union. Draft legislation for a new Telecommunications Act was to be prepared by fall 1995, and the United States understands that this process is on schedule. Draft legislation was in fact released by the German Post and Telecommunications Minister in June 1995 and now is under consideration at the highest levels of the German government. The legislation originally was scheduled to be adopted by both houses of the German federal legislature by summer 1996, and now is expected to be passed even earlier, in the late spring of 1996. By the spring of 1997, even more rapidly than the European Union would require, the German telecommunications regulator expects to have awarded licenses to applicants, and it will not restrict the numbers of licenses made available, except where necessary due to scarcity of resources such as frequencies, nor will it impose restrictions on foreign investment in licensees. The new telecommunications law will take effect by January 1, 1998. As part of the new legislation, the German government also is considering various alternatives to create a more independent telecommunications regulator.

Having agreed to authorize competition for infrastructure used to provide services other than public switched voice, the German government is also preparing legislation for this partial early liberalization, which is planned to be adopted by the German federal legislature by the spring of 1996, apparently as part of the larger telecommunications reform law. The German government informed the FCC by letter on October 17, 1995 that it is committed to allowing alternative facilities providers to commence operations as of July 1, 1996.[19] Also, in October 1995, the German telecommunications regulator adopted a licensing regulation, which is to be used to consider applications to operate competing telecommunications systems pending the enactment of the new law.[20]

The German government has confirmed, in a letter from the Bundesministerium für Post und Telekommunikation (BMPT), the German telecommunications regulator, to the Department of Justice,[21] that international telecommunications infrastructure, including submarine cable ownership interests, will be included within the partial liberalization of infrastructure planned to occur by July 1, 1996. At that time, providers other than Deutsche Telekom will acquire the right to set up and operate transmission lines for all services other than public voice telephony. The BMPT has stated that Germany does not require special licenses for submarine cable landing rights, and there will be ''non-discriminatory, open and transparent access regulation in Germany for submarine cables,'' without regard to the nationality of the operator or owner of the cable. Thus, U.S. firms should lawfully be able to acquire interests in the German end of submarine cables by mid-1996 and use such facilities for services other than public switched voice. The BMPT also has informed the Department that it intends to issue a draft regulation governing interconnection with public telecommunications networks immediately following the entry into force of the proposed new Telecommunications Act in 1996, although the draft of this regulation is not yet prepared and the exact date of its submission has not yet been scheduled.

In Germany, there are several large firms that are already providing some types of telecommunications services now open to competition, and have announced plans to become telecommunications carriers once they are able to obtain licenses, including Mannesmann/CNI, Thyssen, Vebacom, RWE and VIAG. Mannesmann is the major competing cellular radio provider and Thyssen also has a mobile radio license, while the other firms all have some amount of wireline and fiber-optic infrastructure that is used for their own internal or separate business purposes today and might be offered for telecommunications networks were they permitted to compete in this area. The German national railway, Deutsche Bahn, also has internal telecommunications capabilities and rights of way that it plans to make available to others for telecommunications networks. Vebacom and VIAG have already formed international alliances with the principal British telecommunications carriers, British Telecom and Cable & Wireless. In some major German cities, such as Frankfurt and Cologne, authorization has already been granted for firms other than Deutsche Telekom, including U.S. providers such as MFS, to establish local telecommunications networks serving business users.[22] These developments do not mean that Deutsche Telekom is in imminent danger of losing its dominant position in German telecommunications markets. For the reasons indicated in the Complaint and Competitive Impact Statement in this case, it is reasonable to expect that DT will continue to exercise market power for some time. But these developments do indicate that actual and potential competitors exist that may be willing to take advantage of early infrastructure liberalization in Germany and begin to develop alternative networks in advance of full liberalization.

b. *France.* Progress toward liberalization in France has not been as

[18] Federal Ministry for Post and Telecommunications, *Corner Stones of a Future Regulation Framework in the Telecommunications Sector,* March 27, 1995.

[19] FCC Sprint Order, ¶ 67, citing Letter from Dr. Wolfgang Boetsch, Federal Minister for Posts and Telecommunications, to Reed E. Hundt, Chairman, Federal Communications Commission (Oct. 17, 1995).

[20] Regulation on the Opening of Markets for Services as well as on the Content, Scope and Procedure of Licensing in the Telecommunications Sector, October 31, 1995.

[21] Letter from Dr. Witte, BMPT, to Carl Willner, Department of Justice (December 13, 1995). This letter is attached to this Response as Exhibit I.

[22] These networks are being established under an exception to the general DT monopoly still in effect on telecommunications infrastructure that permits separate facilities to be established to provide non-monopoly services, but only with a 25 kilometer limit. At present they must use DT leased lines for interconnections outside the 25 kilometer area.

rapid as in Germany. Privatization of FT, if it occurs at all, will only be partial, with the French government retaining a controlling interest. Unlike Germany, no privatization legislation has been introduced let alone enacted. Nor has the process of adopting legislation governing the transition to full competition progressed as rapidly as in Germany.

An important step, however, has been taken with the publication by the French Ministry of Information Technologies and Postal Services and the French telecommunications regulator, Direction Generale des Postes et Telecommunications (DGPT), in October 1995, of a consultative document outlining the steps to be taken and the timetable planned for introduction of competition.[23] This document indicates that the French government plans in March 1996 to introduce telecommunications reform legislation for the full introduction of competition by January 1, 1998, with passage of the legislation by Parliament expected during the spring of 1996. By the end of 1996, regulations reflecting the new law are to be established, along with the principles for interconnection and licensing of competitors. Licenses are to be issued to competing telecommunications operators in the spring of 1997. The consultative document outlines the types of services for which individual licenses, as opposed to general authorizations, will be required. According to the DGPT, the number of licenses for services or facilities should not be limited, unless this is justified by scarcity of resources such as frequencies. Some telecommunications operators, including France Telecom, will be required to publish their interconnection terms in advance, rather than relying merely on commercial negotiation, and the structure and pricing of their interconnection terms will be subject to regulatory approval based on auditable cost accounts. France Telecom will be expected to issue its interconnection tariffs by July 1997, according to the consultative document. This document also addresses the need for changes to give the telecommunications regulator greater independence as part of the opening of the French telecommunications markets to full competition and considers options to do so, suggesting that this could be done as early as January 1, 1997.

In one important respect, partial liberalization of infrastructure for services other than public switched voice, France is able to move more rapidly than Germany, since the regulator already has some statutory authority to permit greater competition without the need to pass new legislation as in Germany. The regulator has already granted experimental licenses for some competitive pilot projects, and one U.S. firm, MFS, has been authorized to establish competing local fiber-optic infrastructure for closed groups of business users in Paris. The French government has informed the FCC, by letter of October 20, 1995, that legislation to provide for alternative infrastructure liberalization for services other than public switched voice will be introduced in the French Parliament in the spring of 1996 and will take effect by July 1, 1996.[24]

To date, not as many large potential providers of competing telecommunications networks have emerged in France as in Germany. The French telecommunications regulator anticipates that France Telcom's dominant position will continue for some time.[25] One major firm that plans full-scale entry into liberalized telecommunications services and infrastructure, however, is Compaignie Generale des Eaux (CGE). This firm is already a provider of cable television infrastructure as well as the largest shareholder of France's principal competing mobile telephone services provider, SFR, and provides various types of business telecommunications services that are already open to competition in France. AT&T and the Unisource partners (the principal telecommunications providers in Sweden, the Netherlands, Spain and Switzerland) have reached an agreement to form a strategic alliance with CGE's telecommunications subsidiary IRIS, much as British Telecom has done with VIAG and Cable & Wireless with Vebacom in Germany. There are other cable television companies in France such as Lyonnaise Communications that are considering entering the telephone business using their networks, and the French national railroad, SNCF, also has an internal telecommunications network including fiber-optic cable that it plans to make available to telecommunications network providers.

In France, unlike Germany, it appears that international telecommunications facilities to the United States may not be liberalized automatically with the rest of the opening to partial infrastructure competition due to take place on July 1, 1996 under the agreement with the European Union. Although the French government has stated in a letter from DGPT to the Department of Justice[26] that it ''fully supports opening up all telecommunications services in all markets,'' whether this liberalization actually occurs in the case of international half-circuits and submarine cable landing rights for competing providers on the France—U.S. route will depend on the outcome of ongoing multilateral trade negotiations or separate bilateral agreements. However, draft legislation in France that will permit the granting of various experimental telecommunications service licenses in 1996, including public voice telephony services in geographically limited areas, does not contain any foreign ownership restrictions for wireline networks.

II

Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. § 16(b). In this case, the sixty-day comment period commenced on August 24, 1995, and terminated on October 23, 1995. During this period, the United States received comments by seven competitors of Sprint and the proposed joint Venture or other interested persons, including AT&T Corporation, MCI Communications Corporation, BT North America Inc., Cable & Wireless Europe, ACC Corp., Esprit Telecom United Kingdom Limited, and Prof. Charles M. Haar of the Harvard University Law School.[27] The United States responds herein to these comments. Upon publication in the Federal Register of these comments and the following response of the United States to these comments, pursuant to 15 U.S.C. § 16(d) of the APPA, the procedures required by the APPA prior to entry of the proposed Final Judgment will be completed. The United States expects to move for entry of the proposed Final Judgment after the public comments and this response of

[23] Ministry of Information Technology and Postal Services, *New Ground Rules for Telecommunications in France*, October 1995.

[24] FCC Spring Order, ¶65, citing Letter from Bruno Lasserre, Director General, DGPT, to Reed E. Hundt, Chairman, Federal Communications Commission, at 2 (Oct. 20, 1995).

[25] The October 1995 consultative document states that France Telecom will continue to have ''strong dominant market positions'' after 1998 in several important telecommunications market sectors and indicates that there may even be *de facto* monopolies in certain services or market segments. Ministry of Information Technology and Postal Services, *New Ground Rules for Telecommunications in France*, at 24.

[26] Letter from M. Bruno Lasserre, Director General of DGPT, to Carl Willner, December 8, 1995. This letter is attached to this Response as Exhibit J.

[27] These comments are attached as Exhibits A–G.

the United States have been published in the Federal Register and the Joint Venture has been formed and has executed the Stipulation, binding it as a party to the proposed Final Judgment under the terms specified in the Stipulation.[28]

III

Response to Public Comments

In consenting to the entry of the proposed Final Judgment in this case, the United States took into account various considerations bearing on the risks of competitive harm affecting U.S. consumers and the desirability of further litigation. These included the size of the planned 20% investment by Deutsche Telekom and France Telecom in Sprint, the potential for new services to be offered and other efficiencies realized by the Joint Venture, the increasing progress toward removal of legal and practical barriers to telecommunications competition in France and Germany, and the involvement of foreign telecommunications providers subject to distinct regulatory regimes in their home countries. Competitive Impact Statement, 60 Fed. Reg. at 44075.

The public comments express various types of concerns about the interpretation or the adequacy of the proposed Final Judgment, and several contend that the Final Judgment should not be entered unless substantial changes are made. It appears that many of these concerns are based on misunderstandings or uncertainties on the part of the commenters about the meaning of provisions of the proposed Final Judgment or their application to the agreements between Sprint, FT and DT, and conduct in which they might engage. The United States accordingly provides further clarification of the meaning and application of several provisions of the proposed Final Judgment below.

Some other concerns expressed in the public comments are simply not germane to the problems associated with these transactions that are identified in the Complaint and Competitive Impact Statement in this case. It is not the role of the Court, in a proceeding under the Tunney Act to approve an antitrust consent decree, to each beyond the terms of the complaint and consider whether other cases might have been brought and other violations alleged. *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459–60 (D.C. Cir. 1995).

A number of the comments question whether there is sufficient relief in the proposed Final Judgment to remedy the problems alleged by the United States, contending that further modifications should be made. These commenters overlook, however, the context in which these transactions take place. Two other government agencies in addition to the United States Department of Justice have reviewed these transactions, and have imposed additional relief that complements and reinforces in important respects the terms of the proposed Final Judgment. Moreover, an ongoing process of telecommunications reform and opening to competition is taking place in the European Union, France and Germany. In ruling whether this proposed Final Judgment is sufficient to satisfy the ''public interest'' standard of the Tunney Act, the Court should not limit its consideration to whether all of the potential competitive problems arising from the monopoly rights and market power of Deutsche Telekom and France Telecom in their home countries are fully corrected within the four corners of the proposed Final Judgment alone. Rather, it should ask whether the proposed Final Judgment satisfies the ''public interest'' bearing in mind that it will operate together with all of the other relief imposed by the European Union competition authorities and the FCC, and with the liberalization measures now planned in Germany and France. When the issue is properly understood in these terms, it is apparent that the proposed Final Judgment does indeed promote the ''public interest.''

Because the same types of issues are raised by many of the commenters, this Response is structured in terms of the issues raised rather than separately addressing each of the comments filed.

A. Transition from Phase I to Phase II of the Proposed Final Judgment

Several commenters, including AT&T, MCI, BT North America, Esprit Telecom and Cable & Wireless, raise the issue of whether the proposed Final Judgment will be effective in light of the possibility that the transition from Phase I to Phase II could occur while DT and FT, though deprived of their legal monopolies, still have *de facto* market power in Germany and France. They point out that effective competition could take substantial time to develop after removal of the monopoly rights and licensing of competitors. Some, including BT, Cable & Wireless and Esprit Telecom, are also concerned that the decree would not ensure that effective regulatory regimes are in effect in France and Germany at the time the transition to Phase II takes place to ensure rights such as interconnection with the networks of the dominant carriers. AT&T and MCI favor modifying the decree to keep the Phase I restrictions in effect until ''actual'' or ''effective'' competitive alternatives are found to exist in France and Germany, while BT proposes keeping the various Phase I restrictions in effect for the entire duration of the decree, essentially eliminating the distinction between Phase I and Phase II.[29] Esprit and Cable & Wireless also take the position that alternative infrastructure must be in place in France and Germany before these transactions are implemented, or at least before the Joint Venture is formed.

The United States has no fundamental disagreement with the commenters on the importance of effective competitive alternatives, or the crucial significance of the ability of competitors to interconnect their networks and facilities with those of DT and FT on reasonable, transparent and non-discriminatory terms. Nor does it disagree with the desirability of having effective regulatory regimes to complement the protections provided by competition, and afford a recourse to competitors who experience anticompetitive practices by DT and FT. But the United States parts company with the commenters at their evident assumption that all of these protections must be contained within the four corners of the proposed Final Judgment itself for it to be deemed in the ''public interest.''

The proposed Final Judgment operates in conjunction with the relief imposed by the European Commission and the FCC, and the various liberalization measures in the process of being enacted by the EU and the French and German governments. Early liberalization for provision of competing infrastructure for non-monopoly services, to take effect on July 1, 1996 in France and Germany, will give potential competitors the opportunity to begin establishing alternative networks a year and a half before the earliest time that Phase I is likely to expire, making possible the ''actual'' or ''effective'' competition that AT&T and MCI desire.

Because the EU and the German and French governments have all announced that they will be adopting open

[28] Until these events have taken place, and the United States has certified that the requirements of the Tunney Act have been met, the Court should not rule on entry of the proposed Final Judgment.

[29] Because many of BT's observations on the various provisions of the proposed Final Judgment are in fact reiterations of this same argument, not all of BT's comments about particular provisions of the decree are separately discussed in this Response.

licensing policies and will not restrict the numbers of licenses (except where necessary due to limits on radio frequencies, which would not affect landline fiber-optic networks), potential providers of alternative networks should not be deterred from entering the market now by the fear of being denied full use of their network for voice services for want of a license when full liberalization occurs. Moreover, both the German and French telecommunications regulators plan to license competitors during 1997, enabling them to prepare to provide services in advance of full liberalization.

BT is mistaken in believing that Phase I could terminate if only one competitor is allowed to provide competing facilities-based switched voice services in France and Germany. In fact, the definition of Phase II of the proposed Final Judgment is not intended to condone any form of legal duopoly (such as still exists in the U.K. for international facilities-based services but has otherwise been ended there). Section V.Q specifies that among the conditions necessary for Phase II to be reached, France and Germany must have ''removed all of the legal prohibitions'' on competing provision of public switched domestic and international voice services, and construction, ownership or control of both domestic and international telecommunications facilities and the use of such facilities to provide any services. The existence of artificial restrictions on the numbers of domestic or international licenses available for either telecommunications services or facilities in France or Germany would mean that the conditions for moving from Phase I to Phase II in that country would not be satisfied.[30] Moreover, should either France or Germany decline to remove all of the legal prohibitions on competition in international services and facilities to and from the U.S., even if liberalization within the EU has taken place as required by the planned directives, the transition to Phase II still would not take place for that country. Since both France and Germany have announced that they will grant licenses in 1997 under their planned open policies, and have not shown themselves to date unwilling to license large foreign firms to provide the types of services already open to competition (as evidenced by BT's ability to provide data services in both France and Germany today), BT's suggestion that the French and German governments might in practice license only a small number of ineffectual competitors seems conjectural.

The concerns expressed by commenters about the lack of an effective system of transparent and reasonable interconnection with FT and DT are addressed during Phase I by the nondiscrimination requirements of Section III.D as well as the provisions ensuring standardized access protocols in Sections III.H and III.I. The EU's planned interconnection directive will require Member States, including France and Germany, to have interconnection regimes in place that comply with the directive before January 1, 1998, the earliest that Phase I is likely to expire. Both the French and German telecommunications regulators are planning to have new interconnection regimes based on the EU principles in effect in their countries before that time.

The EU and the French and German governments all have recognized the need for more independent regulatory authorities where state ownership of telecommunications carriers continues, as will be the case for several years in Germany and indefinitely in France. Both France and Germany are contemplating changes to their regulatory systems before 1998 to address this problem. In the interim, the full protections of this decree and the EU settlement dealing with the various risks identified by the commenters, including discrimination and cross-subsidization, will be in effect as independent safeguards against anticompetitive conduct. Some of the EU's safeguards, in particular those involving nondiscrimination in access to and use of the FT and DT PSTNs and availability of standardized interfaces for Transpac and Datx-P, would continue beyond the date of full liberalization in France and Germany as they have no predetermined time limits. The FCC's general prohibition on ''special concessions,'' also will be available to reinforce nondiscriminatory interconnection rights, and the FCC's ability to act under its policy is not time-limited.

It is not practical or necessary for the United States antitrust authorities to maintain indefinitely the degree of oversight of the relationship between DT, FT and the Joint Venture contemplated by Phase I of the proposed Final Judgment, taking into account the clear policies of moving toward full liberalization and more effective regulation within a definite time that have been announced by the EU authorities and the governments of France and Germany, and the existence of other regulatory authorities, including the FCC, BMPT in Germany and DGPT in France, that have ongoing responsibility for regulatory oversight of the telecommunications industry. Fundamentally, what is at stake here is the reasonableness of the United States' judgment under the ''public interest'' standard that the transition to more effective competition and better regulatory safeguards is likely to continue to move forward in a reasonable time in France and Germany, so that it is not necessary to stop these transactions altogether or substantially alter the terms of the proposed settlement in order to safeguard against DT and FT using their continuing market power in anticompetitive ways to favor Sprint and the Joint Venture. This judgment continues to be reasonable, given that the policies and timetables that the EU and the French and German governments have announced for the transition to full competition include not only removal of legal barriers to competition and licensing of competitors, but also the other key measures such as an interconnection regime that are needed for real competition to develop. Moreover, AT&T, BT and Cable & Wireless all have been forming strategic alliances with the large firms that have entered telecommunications service markets in Germany or France and are planning networks in anticipation of full liberalization and licensing of competing providers. These alliances make available to the German and French partners resources, expertise and international access to customers that can help to make them more effective rivals to DT and FT.

The judgment that these transactions should not be stopped, given the progress of the liberalization process, is shared by the FCC and the European Commission. These authorities have also shared the concern of the United States about the ongoing ability of FT and DT to exercise market power to the detriment of competition, and have imposed their own remedies and safeguards to help ensure both that liberalization advances and that no harm occurs to international telecommunications competition during the transition period. In light of the circumstances of this transaction and the actions taken by other authorities, the United States does not believe that extending Phase I safeguards for several more years, imposing some form of ''effective competition'' test in the proposed Final Judgment, or precluding the transactions until significant

[30] This would not preclude France or Germany from having a limited number of licenses available for radio-based services justified for objective reasons of spectrum scarcity.

alternative infrastructure competition is ongoing are necessary steps to protect the ''public interest.'' The United States will retain the ability under this Final Judgment, pursuant to Section VIII, to seek modifications should new events, such as any major breakdown of the transition to competition underway in France and Germany, indicate the need for additional measures within the context of the Final Judgment to prevent substantial harm to competition and U.S. consumers.

B. Opening to Voice Resale Competition in France and Germany

ACC contends that entry and the effective date of the Final Judgment in this case should be conditioned on DT and FT agreeing to open their public switched voice services to resale competition. These services currently are provided on a monopoly basis in France and Germany, though DT and FT apparently could voluntarily open these services to some resale competition. The United States agrees with ACC that resale competition at the German and French ends of international routes with the U.S. would likely benefit United States consumers of international services to France and Germany, and indeed the FCC has made this one of the conditions for the removal of the freeze imposed on Sprint's ability to add circuits to France and Germany, in order to limit Sprint's advantage over other U.S. providers from being the only carrier with allies that can provide end-to-end service between the U.S. and France and Germany. But the question for purposes of this Tunney Act proceeding is whether, in light of the other restrictions in the proposed Final Judgment as well as the FCC's action and the announced intention of the European Union, Germany and France to remove all restrictions on voice competition by 1998, it is necessary to impose such a condition as part of this decree to prevent some *lessening* of competition that would otherwise occur. The United States does not view this as necessary for the decree to accomplish its purposes. The transition from Phase I to Phase II cannot occur for either Germany or France under this decree while any form of prohibition on voice competition, resale or facilities-based, remains in effect in that country. During Phase I, ACC and other prospective U.S. international providers of resale services will be able to avail themselves of all the protections against discrimination in Section III.D, if Germany or France permits resale competition (as the FCC's decision indicates is already legally permissible to some extent, based on representations by the German and French governments [31]) but DT or FT acts to favor its own affiliates over competitors in PSTN interconnection, leased lines, or other FT or DT Products and Services that would be used by switched voice resellers.[32] Moreover, during Phase I and Phase II, Section II.C of the proposed Final Judgment will ensure that neither Sprint nor the Joint Venture provide voice resale services, or any other type of services, or make facilities available to FT or DT to do so (other than under existing bilateral correspondent agreements that have also been made available to other U.S. competitors), if competitors cannot obtain licenses in France and Germany.

C. Non-Exclusive Licensing Requirement

BT proposes a number of changes to Section II.C, as does Esprit Telecom. This provision ensures that neither Sprint nor the Joint Venture receive exclusive licensing advantages directly from French or German authorities or indirectly by affiliation with FT or DT, and that neither Sprint nor the Joint Venture provide facilities to FT or DT enabling them to offer to the United States any services for which they have exclusive licenses in France or Germany, other than existing correspondent services that other U.S. providers can also offer under operating agreements with FT and DT. Some of the changes recommended by BT are already addressed implicitly within the language of the existing provision, while the United States believes that the remaining modifications are not necessary for this provision to accomplish its purposes.

A principal concern for BT is the language in Section II.C.3(i) requiring that, before Sprint, the Joint Venture, DT or FT are able to provide an international telecommunications service pursuant to an individual license granted by the French or German governments, ''one or more'' other U.S. international telecommunications service providers also have received a license. BT would prefer that at least three other licenses be granted before the Joint Venture be allowed to offer a service. However, BT's fear that under this provision the French or German governments might be able to mandate a duopoly, or arbitrarily delay granting licenses to all competitors but one, is not consistent with other language of Section II.C.3 or with the licensing policies announced by the French and German governments. Section II.C.3 also mandates, for any services that require individual licenses in France or Germany, that ''established licensing procedures are in effect as of the time of the offering of the service by which other United States international telecommunications providers are also able to secure a license.'' This means, as the United States and defendants have agreed, that there must be licensing procedures in place that are reasonable and neutral, that do not discriminate among providers or restrict the entry of U.S. providers, and that do not arbitrarily limit the number of licenses available. Clearly a duopoly licensing scheme for international services would not meet the terms of this provision, for once the one other license were awarded to a French or German firm, United States providers would not be able to secure a license. In any event, the EU authorities plan to mandate, and both the French and German governments have indicated that they will adopt, open licensing schemes that would meet the above criteria, and the French and German telecommunications regulators will make their decisions on licensing before 1998. Moreover, under Section II.C.3(ii), which ensures that where Sprint, the Joint Venture, FT or DT applies for a license first other competitors applying later can receive their licenses within no less time than was needed for the first license to be granted, the ''reasonable time'' provision can mean in particular cases that the time to grant additional licenses should be even less than for the first licensee, whose application presumably raised the most difficult regulatory issues about the service, if any.

BT expresses apprehension that the French or German governments may deny or fail to act on license applications of competitors who seek a license for a particular service before the Joint Venture does, so as to delay their entry until the Joint Venture is ready to enter the market. It does not, however, suggest a practical means of addressing this concern, since United States authorities are not in a position to direct the French or German governments to grant a license to any particular provider, but only to ensure that the parties to the transactions are not given

[31] FCC Sprint Order, ¶ 112.

[32] Contrary to the assertion of Cable & Wireless, the proposed Final Judgment's protections are not limited only to ''reserved'' monopoly services such as public switched voice. Most of the safeguards are defined in terms of FT and DT Products and Services, and Section V.L. expressly states that the services defined as being within this category will remain so regardless of whether the services are considered to be reserved exclusively to FT or DT under French or German law. Other safeguards, including Sections III.B. and III.I, apply to Public Data Networks, which are legally open to competition in France and Germany and are not even listed as FT and DT Products and Services.

an advantage over others in the timing of their licenses. The United States also believes that Esprit's proposal to require that German and French regulators commit to some expedited schedule for licensing, with suspension of Joint Venture services while any competitor applications have been pending for over 60 days, is impractical and should not be adopted, as it could perpetually postpone the entry of the Joint Venture into the market as each new applicant comes forward. In fact, under the proposals put forward by the EU authorities and the French and German governments, most types of telecommunications services will be subject to class licenses that will not require any individual approval. BT also recommends that the full range of regulatory reforms in France and Germany be in place before activities of the Joint Venture are permitted to commence under this provision. The United States continues to believe, however, that the service-specific approach is preferable. For example, if reasonable, nondiscriminatory open licensing procedures are in effect by which competitors can obtain licenses to operate a data service, it does not appear necessary or desirable to forbid the Joint Venture from offering that service to consumers under II.C. because rules are not yet in place governing a voice service.

D. Facilities Ownership Provisions

BT seeks clarification of the meaning of several aspects of Sections III.A and III.B, which preclude during Phase I any ownership or control by Sprint or the Joint Venture of (i) facilities in France or Germany legally reserved to FT or DT, (ii) international half-circuits terminating in France or Germany used for U.S.-France or U.S.-Germany telecommunications services, or (iii) the Public Data Networks, as defined in Section V.S.

The United States agrees with BT that the concept of ownership and control in this provision includes Indefeasible Rights of Use (IRUs), so that Sprint or the Joint Venture could not acquire IRUs in German or French half-circuits while other providers legally could not do so. The exclusion for ''publicly available leases or other publicly available uses'' in Section III.A was simply meant to ensure that the definition of ''control'' was not interpreted here to preclude Sprint or the Joint Venture from such normal forms of generally available usage as leasing a private line under tariff. Moreover, as a general matter, the preclusion on Sprint or the Joint Venture acquiring ownership or control over any facilities legally reserved to FT or DT would mean that Sprint and the Joint Venture could not acquire such interests in a type of facility (*e.g.*, submarine cable) or a form of ownership or control that remained reserved, even if some other type of facility that might compete with it in some respects (*e.g.*, a privately owned satellite) or some other form of ownership or control of the same facility is not reserved. The restriction on ownership of international half circuits, with the ''aggregate quantity'' exception, under Section III.A(ii) is in addition to the prohibition on ownership or control of reserved facilities, not an alternative to it. The United States does not agree with BT, however, on the interpretation of the ''aggregate quantity'' exception as limited to the quantity of half-circuits held by any other *single* provider. The FCC's freeze on operation of new capacity by Sprint on the U.S.-France and U.S.-Germany routes will help to counter BT's expressed fear that Sprint or the Joint Venture would be able to use a quantity of circuits far greater than those of any other single provider. Nor does the United States agree with BT that modification of the restriction on international half-circuits ''where plaintiff and defendants agree that meaningful competition exists'' can only be done after public comment and hearing procedures, but there is nothing to preclude the United States from seeking information from other interested persons before agreeing to a modification.

E. Antidiscrimination Provisions

1. ''Steering'' of Customers to Phoenix and Sprint

AT&T, MCI and Cable & Wireless all object to a provision of the Joint Venture Agreement between Sprint, FT and DT, Section 10.6(b). They are concerned that this provision would require DT and FT, when customers approach them for international facilities or services over which they have monopolies in their home countries, such as half-circuits, to take measures to ''steer'' the customers to Sprint or Phoenix to provide the U.S. end of these international facilities or services, *i.e.*, induce them to obtain the service from the Joint Venture and disclose their identities to the Joint Venture, even if they would prefer to use another U.S. carrier. AT&T requests that the anti-discrimination provisions of the proposed Final Judgment in Section III.D be clarified to preclude such activity.

AT&T has correctly understood the intent of Section III.D of the Proposed Final Judgment. Sprint and the Joint Venture are precluded by Section III.D from receiving more favorable terms from FT or DT than other similarly situated United States international telecommunications providers with respect to any FT or DT Products and Services, and are also precluded from benefitting from any more favorable term that FT or DT offer to any customer of FT or DT Products and Services, conditioned on Sprint or the Joint Venture being selected as the United States provider of a telecommunications or enhanced telecommunications service. FT or DT Products and Services, under Section V.L, are defined as correspondent services, transit services, leased lines or international half circuits, and interconnection to the PSTNs provided by FT or DT in France or Germany, or between the United States or France and Germany, regardless of whether the service is exclusively reserved to FT or DT as a matter of law. Accordingly, if FT or DT were to ''steer'' customers of FT or DT Products and Services to Phoenix or Sprint in the manner originally contemplated by Section 10.6(b), Sprint and the Joint Venture would be placed in violation of Section III.D of the Final Judgment. In order to eliminate any confusion on this point, Sprint, FT and DT have agreed to amend Section 10.6(b) of the Joint Venture Agreement, deleting any requirement that customers of FT or DT Products and Services be ''steered'' to the Joint Venture.[33] The FCC also has stated that its ''no special concessions'' requirement would preclude such ''steering'' with respect to basic services such as private lines.[34]

2. Effect of Exclusion of DT and FT as Parties

BT objects to the exclusion of DT and FT as parties to the proposed Final Judgment, even though BT similarly is excluded as a party under the separate decree governing its joint venture with MCI. BT's particular concern is that if the antidiscrimination provisions of Section III.D are read to include some form of ''knowledge'' or scienter requirement, it could prove difficult or impossible to enforce them without the ability to get information directly from FT and DT.

BT's concern is based on a misunderstanding of the antidiscrimination provisions of the proposed Final Judgment. There is no requirement that Sprint or the Joint Venture have known of any

[33] Letter from Kevin R. Sullivan to Carl Willner, Nov. 21, 1995, and attached amendment to Phoenix JVA Section 10.6(b). This letter and the modifying language are attached to this Response as Exhibit K.

[34] FCC Sprint Order, ¶ 125.

discrimination, for a violation of Section III.D.1 or III.D.2 to be found. Rather, it is merely necessary that the discrimination have occurred, as defined in Section III.D, for the United States to take action to enforce the decree. Indeed, in the negotiations leading to the proposed Final Judgment, the concept of requiring some knowledge of discrimination on the part of Sprint or the Joint Venture was explicitly rejected.[35] Ordinarily, whether discrimination has occurred would be evaluated by comparing the terms made available by DT or FT to a complaining competitor (with which it would be familiar) with the terms made available to Sprint or the Joint Venture (which could be ascertained using the visitorial and compliance powers of Section VI), and the disclosure requirements of Section II.A would facilitate detection and reporting of such discrimination by competitors. Thus, the United States reasonably concluded that the antidiscrimination provisions of the proposed Final Judgment were adequate without making DT and FT parties to the decree.

3. Other Issues Concerning the Antidiscrimination Provisions

BT recommends that Section III.D.1 be clarified to ensure that the protection against discrimination applies to all similarly situated providers. The United States agrees that the language prohibiting Sprint and the Joint Venture from obtaining FT and DT Products and Services on terms ''more favorable * * * than are made available to other similarly situated United States international telecommunications providers'' means that no similarly situated provider can be disfavored in any of the ways proscribed by this provision, even if some other similarly situated providers are being treated in the same way as Sprint and the Joint Venture.

BT also proposes that Section III.D.2's prohibition on Sprint or the Joint Venture receiving any ''benefit'' from more favorable terms offered by FT or DT to customers of FT or DT Products and Services, conditioned on Sprint or the Joint Venture being selected as a service provider, be clarified to apply to situations where FT or DT is acting as the distributor for the Joint Venture, and to cover both implicit and express conditioning. The United States agrees that Section III.D.2 reaches all such conditioning of terms for FT or DT Products and Services, express or implicit, and was intended to apply to situations where FT and DT are distributing Joint Venture products and services.

Esprit Telecom urges that DT and FT should be prohibited from providing leased lines for Joint Venture services unless such lines are provided in a nondiscriminatory manner, including equal treatment on all terms such as price and provisioning intervals, to all competitors. This is already accomplished by Section III.D, since leased lines are expressly treated as FT and DT Products and Services by Section V.L(iii). Esprit also contends that DT and FT should be required to provide leased lines at wholesale, cost-based rates to competing carriers on a priority basis. The proposed Final Judgment does not mandate that leased lines be provided at any particular price level, nor would it be practical to do so for FT's and DT's leased lines, which are located outside the U.S., are under the regulatory supervision of foreign authorities and are also subject to EU directives on open network provision and the terms of provisioning of leased lines. While the United States is cognizant of the evidence that FT's and DT's leased lines are priced far above U.S. levels and are generally provided much more slowly than in the U.S., the concern of the United States in this case is to ensure that neither those nor other potential abuses of FT's and DT's monopoly positions lead to advantages for Sprint or the Joint Venture that could harm competition. This Clayton Act case is not a vehicle for addressing all difficulties that competitors may face in doing business in France or Germany or all harms that U.S. consumers may experience as a result of having to use the services of the DT and FT monopolies. Whatever the prices at which leased lines may be provided in France or Germany, or the time needed to provide them, Sprint and the Joint Venture will not fare better than other competing providers under the terms of this proposed Final Judgment. Moreover, as competition develops in France and Germany due to alternative infrastructure liberalization in 1996 and full liberalization in 1998, leased line prices can be expected to decline substantially and provisioning times improve, as has occurred in the United States and the United Kingdom.

Cable & Wireless has brought to the attention of the United States new evidence that Colisee International, a subsidiary of FT engaged in reselling FT capacity, has behaved in an anticompetitive manner and that complaints about Colisee have been confirmed by findings of the French telecommunications regulator. These complaints and the regulator's findings of FT's noncompliance with French law, according to Cable & Wireless, relate to (i) sales by FT of leased lines and PSTN interconnection at rates below the official tariffs from which other competitors must buy capacity, and (ii) FT's grant of more favorable access arrangements to its International Transit Center for Colisee than for other competitors.[36] The United States has examined substantial information on this allegation, including the regulator's findings of noncompliance and FT's plans to make substantial changes to the Colisee service in response. In addition to being subject to challenge under French law, it appears that the types of discrimination alleged here are of the sort that would be covered by the antidiscrimination provisions of the proposed Final Judgment, if Sprint or the Joint Venture were to receive such favorable treatment through FT or any of its subsidiaries. No modification to the proposed Final Judgment is necessary to deal with this matter, but the Colisee International evidence indicates that the antidiscrimination provisions of the proposed Final Judgment are indeed focused on substantial competitive concerns.

F. Protections Against Cross-Subsidization

BT's principal arguments on this provision, favoring extending it through the life of the decree or until comprehensive protections against cross-subsidization are determined to be part of the French and German telecommunications regulatory systems, do not differ substantially from its general arguments for extending the duration of all of Section III, which the United States has already addressed and declined to accept. Cross-subsidy risks were perceived here, by both the United States and the European Commission competition authorities, to be particularly substantial while DT and FT still have three-quarters of their business legally protected from competition. During this time, DT and FT enjoy a very large base of revenues into which costs could be shifted, or from which subsidies could be obtained, without risk of increasing entry by competitors into the services which provide the subsidies and which would be priced at higher levels to generate them. The evidence of past cross-subsidies of the Datex-P data network by DT on a large scale, and the risk of use of cross-subsidization to put

[35] Issues of knowledge would thus only come into question to the extent that they are relevant under established legal principles to particular forms of culpability or sanctions, *i.e.*, criminal contempt, but would not affect civil enforcement.

[36] Comments of Cable & Wireless Europe, at 6.

competitors in a ''price squeeze,'' Competitive Impact Statement, 60 Fed. Reg. at 44064, 44072, support having these restrictions in the decree during Phase I. However, neither the United States nor the European Commission's competition authorities extended the structural separation of the Public Data Networks, or the specific cross-subsidy safeguards, into the period following full liberalization in France and Germany, when DT and FT will legally be subject to competition in all their areas of business and will face actual licensed competitors. At that point, while cross-subsidization potentially could still occur, the risks of it substantially harming competition over a sustained period will have been reduced owing to the possibility for competitive entry into the markets providing the subsidies, and policing cross-subsidization can with greater confidence be left to the national regulators, who by then should have greater independence as well.

BT also seeks to give competitors and other interested parties access to all of Sprint's and the Joint Venture's records to determine if cross-subsidization has occurred. The United States does not consider a modification of this sort to be necessary or desirable. The disclosure provisions of Section II.A of the proposed Final Judgment strike a careful balance between providing information competitors would need to detect discrimination, and protecting Sprint's and the Joint Venture's confidential business information from disclosure to competitors. BT's disclosure proposal would expose far more of Sprint's and the Joint Venture's business information to their competitors, in a way that if abused could harm rather than help competition. The United States notes, however, that nothing precludes it from using independent auditors under contract to assist in reviewing Sprint's and Joint Venture's documents for cross-subsidization, and that the EU competition authorities have imposed an auditing requirement on Atlas, Transpac and Datex-P during the pre-liberalization period.

Cable & Wireless argues that there should be structural separation between the Atlas and Joint Venture entities and their parents. In fact, the proposed Final Judgment already mandates such separation between FT and DT on the one hand, and the Joint Venture and Sprint on the other, through a combination of the facilities ownership provisions of Sections III.A and III.B, the non-exclusive agency provisions of Section III.C, the prohibitions on cross-subsidization in Section III.F, and the prohibitions on sharing of confidential information in Section II.B. The EU competition authorities have further reinforced this separation through their treatment of Atlas, Transpac and Datex-P.

Esprit Telecom urges that DT and FT be precluded from predatory pricing of end-user services. The cross-subsidization prohibitions of the proposed Final Judgment will help to achieve that objective, as will the EU's complementary safeguards, while predatory pricing remains independently actionable under the antitrust laws as well.

G. Treatment of Operating Agreements

AT&T and BT both have raised issues regarding the operation of Section III.G.1. This provision precludes Sprint from providing any correspondent telecommunications or enhanced telecommunications service between the United States and France or Germany pursuant to any operating agreement with FT or DT, unless at least one other U.S. international telecommunications provider has also obtained an operating agreement with FT and DT for the provision of that service.

AT&T has requested that the interplay of Section III.G and Section III.D.1(v), which prohibits discrimination between Sprint and other similarly situated providers in the ''terms of operating agreements for correspondent services and connection of international half-circuits,'' be clarified to preclude discrimination in the granting of operating agreements by FT and DT. BT is concerned about the risk of allowing Sprint to provide service if FT or DT has granted an operating agreement to only one competitor, particularly if that one competitor is an inadequate alternative.

The United States agrees that operating agreements already granted, or granted in the future, could not thereafter be modified or withdrawn on a discriminatory basis favoring Sprint or the Joint Venture, for to do so would amount to a discrimination in the ''terms of operating agreements'' prohibited under Section III.D.1(v). Existing operating agreements, particularly those covering International Message Telephone Service (IMTS) switched voice traffic and private lines, account for what will likely continue to be the bulk of telecommunications international traffic for the next several years at least. Moreover, the terms of all operating agreements granted must be nondiscriminatory, whatever the number of carriers that receive them. AT&T is thus correct insofar as it says that Section III.G.1 does not abrogate the requirement of nondiscrimination in the terms of operating agreements under Section III.D.1(v), or any of the other requirements of Section III.D.

Section III.G.1 affords an additional measure of protection with respect to any correspondent services where agreements have not yet been negotiated, or the service itself has not yet been developed, ensuring that Sprint will not be able to obtain the only operating agreement or to go first while entry of competitors is delayed, as a result of its special relationship with FT and DT. It was not written to require that all other carriers receive operating agreements for such new services, since U.S. carriers may vary considerably in traffic volumes and foreign carriers may be reluctant to incur the expense of providing a facilities-based interconnection with a low-volume provider. The counterpart Section III.G.2 provides a mechanism for such smaller carriers to have their traffic delivered at reasonable, nondiscriminatory rates accounting for the value of proportionate return traffic from France and Germany.

It is implicit in the concept of Section III.G.1 that the other U.S. international telecommunications provider that receives an operating agreement not be a sham or subterfuge to circumvent the Final Judgment, but a real provider capable of offering its own alternative service. Should FT or DT grant operating agreements for new correspondent services to Sprint and another alternative provider, but withhold them from other similarly situated U.S. international carriers, those carriers would still be able to complain to the FCC that Sprint was receiving improper ''special concessions.'' The FCC's policy is thus broader in one respect than that in the proposed Final Judgment, but does not explicitly mandate, as does Section III.G.1, that one other carrier already have an operating agreement before Sprint can provide a service. These policies operate together to ensure effective international competition by multiple U.S. carriers notwithstanding the affiliation of FT and DT with Sprint.

The United States understands that there are relatively few issues concerning the grant of operating agreements now outstanding between U.S. international carriers and DT and FT. For the major longstanding services such as IMTS, as well as for relatively new services such as International Virtual Private Networks (IVPNs), FT and DT have now granted operating agreements to multiple U.S. international telecommunications carriers in addition to Sprint. Accordingly, in light of the additional protections afforded by Section

III.D.1(v) and the FCC's ''special concessions'' prohibition, and available evidence on the current practice of FT and DT, the United States does not consider it necessary to modify Section III.G.1.

H. Standardized Interface Requirements

BT takes issue with the provisions ensuring the maintenance of standardized PSTN and data network interfaces by FT and DT, Sections III.H and III.I, which were closely followed by the EU competition authorities in their own settlement. Apart from its general arguments for extending these provisions through the duration of the decree, BT also objects to the opportunity that these provisions give to Sprint and the Joint Venture to develop proprietary interfaces with FT and DT. BT is concerned that this could allow the parties to these transactions to develop certain types of advanced services and interconnection protocols that would not be available to competitors.

To the extent that competitors are similarly situated, of course, the antidiscrimination provisions of Section III.D would remain available to address any handling of interconnection to the FT and DT PSTNs that disfavors competitors of Sprint and the Joint Venture. Sections III.H and III.I go beyond the antidiscrimination provisions in mandating availability of standard interfaces and protocols for FT and DT Products and Services, and for the Public Data Networks, without any proof of discrimination against similarly situated competitors. Neither the United States nor the European Union competition authorities, however, found it desirable to prohibit FT and DT from also developing any proprietary or nonstandardized protocols, in the way BT advocates. The various strategic alliances that have formed or are now forming to provide seamless international telecommunications services, including the BT–MCI partnership, AT&T's alliance with the Unisource partners in Europe, and the FT–DT-Sprint combination, all will be seeking to develop advanced telecommunications services which may require nonstandardized or proprietary protocols not currently available. Some competitive risks inhere in the ability of telecommunications providers with monopoly rights, such as DT and FT, or market power, such as BT in the UK, to develop nonstandardized protocols and interfaces that are not universally available and might be used to favor particular providers. In the case of these international strategic alliances, however, there are also substantial competitive benefits to consumers from the development of advanced seamless telecommunications services, and all of the alliances will be competing with each other to produce the most attractive advanced services and differentiate them from those of the other competitors. These benefits could be reduced if FT and DT were precluded from developing with their Joint Venture and Sprint any proprietary or nonstandardized interfaces and protocols for new services, as BT would have the United States do. Furthermore, the prospect of full liberalization in France and Germany two years from now and liberalization for alternative infrastructure used to provide services other than public switched voice within six months means that BT and other competitors should not remain indefinitely dependent on a single provider in France and in Germany to supply all telecommunications lines and network interconnections. Rather, they will be able to have their local allies in France and Germany adopt whatever proprietary and nonstandardized protocols they may develop that are inconsistent with those used by DT and FT.

I. Access to FT's ''Orange List'' Customer Information

Charles M. Haar, a professor at Harvard University Law School who is working as an expert for a company named Filetech, which is involved in litigation with France Telecom in the United States District Court for the Southern District of New York,[37] has filed comments requesting that entry of judgment in this case be conditioned on France Telecom making available to competitors certain information about customers, known as the ''Orange List,'' that it acquires in the course of its responsibilities for maintaining the French telephone directory.

The United States expresses no view on the merits of Filetech's litigation with France Telecom, but its allegations did not form any specific part of the complaint in this case. While the complaint is based on France Telecom's ability to use its monopoly rights and dominant position in France to favor Sprint and the Joint Venture over competitors in various ways, it does not appear that France Telecom would be able lawfully to use preferential access to the Orange List to favor Sprint or the Joint Venture, since France Telecom has represented in its litigation with Filetech that this information is confidential and under French law cannot be disclosed to others, except for the limited purpose of publishing telephone directories.[38] Moreover, the FCC has indicated that preferential disclosure of telephone customer information by DT and FT to Sprint would be an impermissible ''special concession.''[39] Thus, the United States does not believe that any modifications to the proposed Final Judgment are needed to address this issue.

IV

Standard of Review

Pursuant to 15 U.S.C. § 16(e), the proposed Final Judgment cannot be entered unless the Court determines that it is in the public interest. The focus of this determination is whether the relief provided by the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. *United States* v. *Bechtel Corp.*, 648 F.2d 660, 665–66 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1457–58, *see also* 56 F.3d at 1459–60 (D.C. Cir. 1995). In the recent *Microsoft* decision by the United States Court of Appeals for the District of Columbia Circuit, which reversed the district court's refusal to enter an antitrust consent decree proposed by the United States, the court of appeals held that the provision in Section 16(e)(1) of the Tunney Act allowing the district court to consider ''any other considerations bearing upon the adequacy of such judgment,'' does not authorize extensive inquiry into the conduct of the case. 56 F.3d at 1458–60. The court of appeals concluded that ''Congress did not mean for a district judge to construct his own hypothetical case and then evaluate the decree against that case.'' *Id.* To the contrary, ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' and so the district court ''is only authorized to review the decree itself,'' not other matters that the government might have but did not pursue. *Id.*

Under the public interest standard, the Court's role is limited to determining whether the proposed decree is within the ''zone of settlements'' consistent with the public interest, not whether the settlement diverges from the Court's view of what

[37] *Filetech S.A.R.L.* v. *France Telecom*, Civil Action No. 95–1848 (CSH) (S.D.N.Y.).

[38] *Filetech S.A.R.L.* v. *France Telecom*, Civil Action No. 95–1848 (CSH), Memorandum of Law of France Telecom and France Telecom Incorporated in Support of their Motion to Dismiss the Complaint at 10–15, and Declaration of Jacques Henrot (S.D.N.Y., filed June 2, 1995).

[39] FCC Sprint Order, ¶ 123.

would best serve the public interest. *United States* v. *Western Electric Co.*, 993 F.2d 1572, 1576 (quoting *United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990)); *United States* v. *Microsoft Corp.*, 56 F.3d at 1460. Moreover, the Court should give a request for entry of a proposed decree even more deference than a request by a party to an existing decree for approval of a modification, for in dealing with an initial settlement the Court is unlikely to have substantial familiarity with the market involved. *United States* v. *Microsoft Corp.*, 56 F.3d at 1460–61.

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977). The Court may reject the agreement of the parties as to how the public interest is best served only if it has ''exceptional confidence that adverse antitrust consequences will result. * * *'' *United States* v. *Western Electric Co.* 993 F.2d at 1577 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d at 1460.

V

Conclusion

After careful consideration of the comments, the United States continues to believe that, for the reasons stated herein and in the Competitive Impact Statement, the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint. There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with the public interest. Therefore, entry of the proposed Final Judgment should be found to be in the public interest, after the Joint Venture has been made a party to the stipulation for entry of judgment and the United States has completed the procedures mandated by the Tunney Act and moved for entry of judgment.

Dated: January 16, 1996.

Respectfully submitted,

Carl Wilner,

Joyce B. Hundley,

Attorneys, U.S. Department of Justice, Antitrust Division.

Certificate of Service

I hereby certify that on this date I have caused to be served by first class mail, postage prepaid, or by hand, if so indicated, a copy of the foregoing Response to Public Comment upon the following person, counsel for defendants in the matter of *United States of America* v. *Sprint Corporation:* Kevin R. Sullivan, Esquire, King & Spalding, 1730 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Counsel for Defendants, Sprint Corporation and Joint Venture Company.

Dated: January 16, 1996.

By Hand:

Carl Willner,

Attorney, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice.

United States of America Plaintiff, v. *Sprint Corporation and Joint Venture Co.,* Defendants

[Civil Action No. 95 CV 1304 (TPJ)]

Comments of AT&T Corp.

AT&T Corp. (''AT&T), pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (the ''Tunney Act''), hereby submits these comments on the proposed Final Judgment in the above-entitled action concerning the planned acquisition by France Telecom (''FT'') and Deutsche Telekom A.G. (''DT'') of 20 percent of the voting shares of Sprint Corporation (''Sprint''), and the proposed formation of a joint venture among Sprint, FT and DT to provide international telecommunications services (the ''Joint Venture'').

AT&T will be adversely affected by the proposed acquisition and joint venture. AT&T provides international telecommunications services to customers in the United States in competition with Sprint. Moreover, to provide these services, AT&T is required by law to sue the bottleneck monopoly services of FT and DT to terminate its telecommunications traffic to France and Germany respectively. AT&T and its customers will suffer competitive injury if the proposed transactions are allowed to proceed without the Department of Justice (the ''Department'') clarifying certain provisions and procedures in the proposed Final Judgment. Specifically, the Department should condition its continuing consent to the proposed Final Judgment on the adoption of clarifying changes making explicit that: (1) Sprint cannot offer a new correspondent service unless other U.S. carriers can provide such service with FT and/or DT on a non-discriminatory basis; (2) Sprint and the Joint Venture cannot provide services to customers who have been ''steered'' to Sprint or the Joint Venture by FT and/or DT; and (3) the Phase I conditions will not expire until practical alternatives, *i.e.*, competitive networks, exist in France and Germany for the termination of international telecommunications traffic, including basic switched voice services.

Introduction and Summary

The Department has accurately concluded that the proposed acquisition and Joint venture threaten U.S. competition and consumers. As described in the Department's Competitive Impact Statement, the acquisition and the joint Venture would provide FT and DT ''increased incentives and the ability using their monopolies and dominant positions in France and Germany respectively, to favor Sprint and Joint Venture Co. and to disfavor that United States competitors in international telecommunications services. * * *'' [1] As the Department has elsewhere stated:

The continued existence of telecommunications monopolies in foreign countries results in higher prices, lower output, inefficient quality of service and slower innovation for U.S. consumers of international telecommunications services. *Facilities-based competition in foreign countries is the best solution to these problems, and neither resale nor regulation is an equally effective substitute.*[2]

AT&T believes that the threat to United States competition and consumers would justify Department action to block the proposed acquisition. In the exercise of prosecutorial discretion, however, the Department has entered into a proposed Final Judgment with Sprint and the Joint Venture containing nondiscrimination and other protections designed to mitigate the competitive harms associated with the Sprint, FT and DT transaction.

Under the Tunney Act, however, the Court must find that the proposed Final Judgment ''is in the public interest'' in order to enter it. Thus, the Court must determine whether the proposed decree

[1] Competitive Impact Statement (''CIS''), Fed. Register, Vol. 60, No. 164, 44049, 44063 (Aug. 24, 1995).

[2] *Market Entry and Regulation of Foreign-Affiliated Entities*, 10 FCC Rcd. 4844 (1995) (''*Market Entry NPRM*''), Reply Comments of the Department of Justice (filed May 12, 1995) at ii (emphasis added).

''would serve the public interest in free and unfettered competition.'' [3] This inquiry appropriately involves an analysis of the clarity and adequacy of the decree's essential nondiscrimination provisions and compliance mechanisms, as well as an analysis of the injury that third parties might suffer as a result of the decree.[4]

In determining whether the decree meets the public interest standard, the Court will consider the explanations for the consent decree contained in the Department's Competitive Impact Statement [5] and whether the decree will protect third parties.[6] In this proceeding, the Department has accurately described in its Complaint and the Competitive Impact Statement the monopolistic leveraging in which FT and DT could engage absent the nondiscrimination provisions set forth in Section III of the decree. This leveraging would severely harm the third parties the decree is designed to protect. The clarity and efficacy of the Section III nondiscrimination provisions thus are central to the Court's public interest determination.[7]

AT&T's objections to the proposed Final Judgment all fall within the areas appropriate for review by a court in its determination of whether a proposed consent decree is in the public interest. Accordingly, AT&T believes that the Department should condition its continued support of the proposed Final Judgment on acceptance of the proposed clarifications and change in implementation procedures for the essential nondiscrimination provisions as set forth below.

First, the Department should clarify that the provisions of Section 111.G.1 of the decree do not abrogate the nondiscrimination requirements of Section III.D of the proposed Final Judgment. Section III.D prohibits Sprint and Joint Venture from accepting any FT or DT Products and Services on a discriminatory basis. Section III.G.1 seeks to protect competition further by restricting Sprint from providing a correspondent service with FT or DT unless at least ''one'' other carrier has reached an agreement with FT or DT to provide such a service as well. The proposed Final Judgment should be clarified to ensure that Section III.G.1 is not interpreted as absolving the parties of their nondiscrimination obligations once one other carrier offers a correspondent service with FT or DT.

The second area requiring clarification involves the Joint Venture Agreement's attempt to require that FT and DT steer business to the Joint Venture. Such a marketing strategy by the parties violates the clear intent of Section III.D because, as noted in the Competitive Impact Statement, the discrimination prohibited by that provision ''includ[es] activities involving the sale [sic] marketing, and distribution of Sprint and Joint Venture Co. services by FT and DT.'' [8] The consent decree should be clarified to prohibit expressly the steering of customers by FT and DT to the Joint Venture because such activity constitutes banned favoritism.

AT&T's final concern rests with the mechanism chosen to trigger the expiration of the nondiscrimination protections in Section III of the decree (the ''Phase I Conditions''). The Phase I Conditions for each country expire once France or Germany authorizes domestic and international facilities-based competition in basic telecommunications services and issues one license to a competitor to FT or DT. The Department's rationale for the lifting of the Phase I Conditions upon the authorization of competition and licensing of a competitor in France and Germany is that U.S. carriers will have means other than FT's and DT's bottleneck facilities to terminate their traffic to France or Germany.[9] Yet, the Department's own explanation for why the Phase I Conditions are necessary, coupled with the Department's acknowledgment that mere legal authorization to compete and issuance of one license to do so may not result in a competitive alternative to FT or DT, mandate that the Department ensure continuance of the Phase I protections until FT and DT face actual competition.[10]

The Department Must Clarify the Scope of Certain Conditions and Change Implementation Procedures of the Proposed Final Judgment

As the Department recognizes in its Competitive Impact Statement, FT and DT—the world's largest government-owned monopoly telecommunications carriers—have absolute control over telecommunications services in France and Germany, respectively. FT is the fourth largest provider of telecommunications services in the world, while DT is the second or third largest.[11] FT and DT are each the state authorized monopoly provider of public switched voice service, as well as all transmission facilities for domestic and international telecommunications in their respective home countries.[12] As a result, ''[a]ccess to FT's and DT's public switched network and transmission infrastructure is necessary for international telecommunications and enhanced telecommunications services that originate or terminate in France and Germany,'' and ''virtually all international telecommunications traffic between the U.S. and France and between the U.S. and Germany originates or terminates over FT's or DT's public switched networks, their transmission infrastructure, or both.'' [13]

Under the proposed joint venture, FT and DT are required to refrain from competing with Sprint in the United States in the Joint Venture's services and in other services.[14] FT and DT thus ''generally will only be able to participate directly in United States telecommunications markets through their ownership interests in Spring.'' [15] Moreover, the United States is ''by far'' the most important location of those customers who desire global seamless telecommunications services, *i.e.*, multinational corporations who seek one stop shopping for their communications needs irrespective of national borders.[16] Because FT and DT can participate in the U.S. market only through the Joint Venture, they will have increased incentives and the ability, using their monopolies and dominant positions in France and Germany, respectively, to favor Sprint and the proposed Joint Venture and to disfavor their United States international telecommunications services competitors and their customers.[17]

The Competitive Impact Statement sets forth in detail the myriad ways that FT and DT could use their control over essential facilities in France and Germany to favor Sprint and to harm Sprint's U.S. competitors and their

[3] CIS at 44077 (citing *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C., 1985).

[4] United States v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

[5] *United States* v. *Mid-America Dairymen*, Inc., 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977) (Court carefully considers explanations of the government in the Competitive Impact Statement when determining if decree is in the public interest).

[6] *Microsoft Corp., supra*, at 1462.

[7] *Id.*

[8] CIS at 44071.

[9] See pp. 16–17, *infra*.

[10] CIS at 44074.

[11] CIS at 44060.

[12] *Id.*

[13] *Id.* at 44061.

[14] *Id.* at 44059. Similarly, Sprint must refrain from competing with the Joint Venture anywhere in the world and must refrain from competing with FT and DT in France and Germany. *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at 44063

customers.[18] Although this threat to U.S. competition and consumers would justify the Department's blocking of the proposed acquisition, the Department has exercised its prosecutorial discretion and entered into the proposed Final Judgment, which seeks to prevent such anticompetitive conduct through conditions. However, unless the clarifications and change to implementation procedures set forth herein are made, FT and DT will be able to leverage their monopoly power contrary to the Department's intent, and to the public interest test in the Tunney Act.

A. The Department Should Make Clear That Sprint and the Joint Venture Cannot Offer a New Correspondent Service Unless Other U.S. Carriers Can Provide Such Service With FT and/or DT on a Non-Discriminatory Basis

Because FT and DT each has the ability to leverage its monopoly power over telecommunications in France and Germany, respectively, in favor of Sprint or the Joint Venture and against other U.S. carriers, the proposed Final Judgment prohibits any discrimination in favor of Sprint. Section III.D thus explicitly prohibits Sprint and the Joint Venture from accepting any FT or DT Products and Services on a discriminatory basis for the provision of any telecommunications or enhanced telecommunications service in the United States or between the United States and France or the United States and Germany.

As a result of FT's and DT's monopolies over the provision of basic telecommunications services in their countries, U.S. carriers can provide U.S.-to-France service and U.S.-to-Germany service only through agreement with FT and DT for the termination of such calls. Such services are referred to as correspondent services. The provision of correspondent services is included within the nondiscrimination protections of Section III.D. Sprint and the Joint Venture cannot accept ''FT or DT Products and Services'' that are provided on a discriminatory basis, and ''FT or DT Products and Services'' are defined to include correspondent services.[19] Further, Sprint and the Joint Venture are specifically prohibited from receiving discriminatory ''terms and conditions of operating agreements for correspondent services and international half-circuits.''[20] The Final Judgment thus would prohibit Sprint or the Joint Venture from offering correspondent services between the U.S. and France or the U.S. and Germany where FT or DT has not made such correspondent services available to other U.S. carriers on a nondiscriminatory basis.

In order further to protect U.S. competition and consumers from monopoly leveraging, Section III.G.1 of the proposed decree provides that Sprint may not provide a correspondent service with FT or DT unless at least one other carrier has reached agreement with FT or DT, as the case may be, to provide such a correspondent service:

> Sprint may not offer, supply, distribute or otherwise provide any correspondent telecommunications or correspondent enhanced telecommunications service between the United States and France or Germany pursuant to any operating agreement with FT or DT, unless with respect to such service, at least one other United States international telecommunications provider has also obtained an operating agreement with FT and DT for the provision of such service between the United States and France and Germany. This provision will operate separately for France and Germany.

This provision is designed to ensure that Sprint does not have an exclusive or preferential arrangement with FT or DT, which would limit competition in the provision of U.S.-to-France or U.S.-to-Germany services in the U.S. In addition, it balances that interest with the public interest of permitting new services to be offered to U.S. customers on an expedited basis by allowing Sprint to introduce a correspondent service as soon as another U.S. carrier also has reached agreement with FT and DT to do so. Sprint need not wait to offer the service until FT and DT have reached nondiscriminatory operating agreements covering such service with all U.S. carriers.

Section III.G.1 must be interpreted, however, consistent with the antidiscrimination protections of Section III.D. Otherwise, Section III.G.1 could permit FT and DT to introduce a new correspondent service with Sprint once that service is offered by *any* other U.S. carrier selected by FT or DT—without regard to the practical ability of that other carrier to compete effectively with Sprint. Moreover, such an interpretation could be used to limit FT's and DT's obligation to provide the same correspondent service to other U.S. Carriers that today serve the route or that seek to do so in the future. Limiting FT's and DT's nondiscriminatory treatment merely to one other carrier would be inconsistent with Section III.D and clearly was not intended.

The Department thus should clarify that Section III.G.1 does not abrogate any of the nondiscrimination requirements of Section III.D. Specifically, the Department should make clear that the Final Judgment requires FT and DT to offer correspondent services to all U.S. carriers on a nondiscriminatory basis, and prohibits Sprint from offering a correspondent service where FT or DT has discriminated in offering to provide such correspondent services with other U.S. carriers.[21] Further, this obligation should be viewed as a continuing obligation. Were FT or DT has a service arrangement with other U.S. carriers that is later offered with Sprint, FT or DT should be required by Section III.D.1 to extend any different terms and conditions it has offered to Sprint to the other U.S. carriers.

B. The Department Should Make Clear That Sprint and Joint Venture Co. Cannot Provide Services to Customers Who Have Been ''Steered'' to Sprint or the Joint Venture by FT and/or DT

Section 10.6(b) of the Joint Venture Agreement between Sprint, FT and DT specifically requires FT and DT to steer customers toward Joint Venture services even where the customer has affirmatively requested that another U.S. carrier provide the U.S. half of the service:

> If a Party or any of its Affiliates receives an unsolicited request from a customer of a Party or any of its Affiliates or of the Joint Venture to enter into a Contract to provide to such customer in conjunction with other persons a service that is currently offered by the Joint Venture, such Party or its Affiliates will use commercially reasonable efforts to persuade such customer to purchase such service from the Joint Venture. If despite such Party's efforts, the Customer prefers not to purchase such service from the Joint Venture, such party will refer such matter to the Global Venture Office which, within ten (10) Business Days, will present its observations regarding such matter. * * *

For example, if a customer comes to DT (which the customer must do in Germany) and requests that DT arrange for private line service between Germany and the U.S. and requests that

[18] *Id.* at 44063–64.

[19] Final Judgment, § V.L.(i).

[20] *Id.* § III.D.1(v).

[21] Section II.C of the proposed Final Judgment confirms this reading. That section prohibits Sprint and the Joint Venture from participating in the provision of a service that requires a license in France or Germany unless other carriers can obtain the necessary authorization on the same terms and conditions, including the same time frame as FT or DT. It would be inconsistent to permit Sprint or the Joint Venture to benefit from FT or DT discrimination in providing authorization (via an operating agreement) that is solely under their control, when Sprint and the Joint Venture are not permitted to benefit from discrimination by France or Germany in granting governmental authorization.

MCI provide the U.S. half-circuit, DT must use ''commercially reasonable efforts'' to persuade MCI's customer instead to use the Joint Venture for such service.[22] Further, DT must refer the customer's request to the Joint Venture (including Sprint's representatives) if it fails to convince the customer to purchase Joint Venture services.[23]

Such discriminatory marketing activity by a company controlling essential facilities in favor of its affiliate is precisely the type of monopoly leveraging that the Final Judgment seeks to prohibit.[24] The Department should clarify that the receipt of such favored treatment by Sprint or the Joint Venture would violate the prohibition against discrimination contained in Section III.D.1 of the proposed Final Judgment.

C. The Department Should Make Clear That the Phase I Conditions Will Not Expire Until Practical Alternatives Exist in France and Germany for the Termination of International Telecommunications Traffic, Including Basic Switched Voice Services

The Final Judgment would impose two sets of conditions on Sprint and the Joint Venture, one set that continues for the term of the decree and one set that expires upon the happening of certain events. The Phase I protections against discrimination will terminate (separately for each country) once France or Germany authorizes domestic and international competition and issues a license to one competitor of FT or DT. The restrictions contained in Section II will continue through the entire term of the consent decree.

As the Department explains, stricter prohibitions during Phase I are necessary ''because there is considerably greater potential for competitive abuses to occur in the period while competitors have no legal alternative to using FT's and DT's facilities and services and before the French and German governments finish implementing their program of regulatory reform.''[25] Further, in order for Phase II to begin, ''the licensed competitors must have authority to construct or own a sufficiently large amount of international capacity that other providers would have a realistic alternative to the use of the international facilities of FT or DT. * * *''[26] In short, the Department's rationale for the lifting of the Phase I Conditions is that, once Phase II begins, U.S. carriers will have means other than FT's or DT's bottleneck facilities to terminate their traffic to France or Germany. Moreover, if ''the entry of licensed competitors in France or Germany has been significantly delayed after the granting of licenses, or has otherwise not proven sufficient to provide a competitive alternative [to FT or DT],'' the Department would request reinstatement of the Phase I Conditions.[27]

Despite the stated rationale for the Phase I conditions, the Final Judgment appears to provide for their termination upon the mere removal of legal restrictions and the issuance of a license to a potential competitor in France and Germany. There is no demonstration required by the parties that effective competition exists in France and Germany for the termination of international traffic. Thus, the Phase I Conditions, which include the prohibitions against discrimination, would terminate once France and Germany each legally authorizes competition in international and domestic services and issues *one* license to do so, regardless of whether the recipient of that license is capable of providing U.S. carriers any practical alternative to FT or DT for terminating calls to France or Germany. This result would conflict with the Department's own underlying rationale for the proposed two-phased decree. To remedy this problem, the Department should modify the implementation provisions of the decree to require Sprint to demonstrate to the Department that an actual competitive alternative to FT and DT exists in France and Germany, respectively, for the termination of telecommunications traffic, including basic switched voice services, in order for the Phase I Conditions to be lifted.

Conclusion

As set forth above, the application of key provisions of the proposed Final Judgment must be clarified in order for the decree to be applied in the manner intended by the Department and in order to prevent anticompetitive abuse. Unless the Department adopts the clarifications and implementation modification set forth herein, the Final Judgment will not satisfy the Tunney Act's requirement that the decree be in the public interest. The Department therefore should clarify that (1) Sprint cannot offer a new correspondent service unless other U.S. carriers can provide such service with FT and/or DT on a non-discriminatory basis, and (2) Sprint and the Joint Venture cannot provide services to customers who have been ''steered'' to Sprint or the Joint Venture by FT and/or DT. The Department also should modify the implementation provisions of the decree so that the Phase I Conditions will remain in effect until Sprint demonstrates to the Department that practical alternatives exist in France and Germany for the termination of international telecommunications traffic, including basic switched voice services.

Dated: October 23, 1995.

Respectfully submitted,

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Comments of MCI Communications Corporation on Proposed Consent Judgment

United States of America, Plaintiff, v. *Sprint Corporation and Joint Venture Co.,* Defendants.

[No. 95–CV–1304 (TPJ)]

Dated: October 23, 1995.

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To: The Department of Justice

Comments of MCI Communications Corporation on Proposed Consent Judgment

United States of America, Plaintiff, v. *Sprint Corporation and Joint Venture Co.,* Defendants.

[No. 95–CV–1304 (TPJ)]

Pursuant to § 2 (b), (d), and (f)(4) of the Antitrust Procedures and Penalties Act (the ''Tunney Act''), 15 U.S.C. § 16 (b), (d), and (f)(4), MCI Communications Corporation (''MCI'') submits these comments regarding the consent

[22] It is unclear what would constitute ''commercially reasonable efforts'' if one is a monopolist to whom all customers must come for service.

[23] Sprint's representative to the Joint Venture thus would be informed of every unsuccessful attempt in Europe to steer global customers to the Joint Venture (*i.e.,* every time a customer wanted to use a U.S. carrier other than Sprint or the Joint Venture). Such market leads obtained solely because of FT's and DT's monopoly status would permit Sprint to target the U.S. offices of these customers for follow-up persuasion.

[24] Sprint does not dispute AT&T's interpretation of FT's and DT's obligation under the Joint Venture Agreement, and does not deny its intent to engage in such steering of customers. Indeed, Sprint argues that the steering of customers by a monopolist to its U.S. affiliate merely reflects ''economic self-interest'' and is not improper. *Market Entry NPRM,* Sprint Supplemental Reply (filed Sept. 15, 1995) at iv.

[25] CIS at 44066.

[26] *Id.* at 44065.

[27] *Id.* at 44074.

judgment proposed by the United States Department of Justice (''DOJ'') in this proceeding.

I. Introduction and Summary

If the proposed transactions among Sprint Corporation (''Sprint''), France Telecom (''FT''), and Deutsche Telekom A.G. (''DT'') are consummated, FT's and DT's monopoly power in France and Germany would pose a serious and long-term threat to U.S. consumers and competition. The heart of DOJ's complaint is that the transactions threaten substantially lessened competition because of the danger that FT and DT will ''use their market power over the public switched networks, transmission infrastructure and public data networks in France and Germany to discriminate in favor of Sprint and [Phoenix] vis-a-vis other United States international carriers'' and to engage in other anticompetitive conduct.[1] In addition to financial incentives, the proposed transactions would create contractual and corporate duties on the part of FT and DT to discriminate in favor of Sprint and Phoenix.[2]

However, the proposed consent decree falls conspicuously short of alleviating these dangers. Most significantly, it allows the shift from a *de jure* to a *de facto* monopoly in France and Germany to trigger the lifting of its crucial substantive protections against anticompetitive behavior. The critical question is whether FT's and DT's monopoly power persists, not whether their monopolies are *de jure* or *de facto*. Under DOJ's proposed consent decree, however, the substantive protections against abuse of FT's and DT's monopoly power immediately and automatically expire as soon as competition is legally authorized and just one competitor has been licensed in France or Germany. By removing Phase I protections before the development of genuine, effective facilities-based competition in France and Germany, the decree substantially undermines its own force.

The competitive problems posed by these transactions stem mainly from three facts. First, FT and DT have market power in France and Germany, and international telecommunications carriers are completely dependent on them in connection with services to France and Germany. Second, even after effective facilities-based competition is legally permitted in France and Germany, it will take, at a minimum, several years to develop, and effective regulation of FT and DT will be essential during the transition period. And third, as government-owned and government-controlled monopolies, FT and DT lack any independent regulator in their home countries.

The proper benchmark for when such anticompetitive behavior ceases to be a threat is not the *legal possibility* of competition, but rather the *actual development of facilities-based competition.* As DOJ itself recently stated in a related proceeding, ''facilities-based competition is by far the best solution to the problems * * * that arise today from [foreign] monopoly provision of key network facilities and services.''[3] DOJ recommends the imposition of these restrictions because of FT's and DT's monopoly power, so they should remain in effect as long as that monopoly power persists.

FT's and DT's monopoly power—and hence the anticompetitive threat—will persist for years after the triggering events for termination of the Phase I competitive safeguards (formal authorization of competition and licensure of one competitor). First, new entrants will need time to construct networks and develop a customer base. Second, numerous regulatory implementation issues will have to be resolved by French and German authorities after the formal licensing of competitors. And third, regulation is especially unlikely to be effective when, as in the case of FT and DT, ''foreign authorities are regulating government-owned monopoly carriers.''[4] There is no basis for equating the elimination of legal entry barriers and the licensing of one competitor with the immediate reduction, much less elimination, of FT's and DT's market power.

DOJ attempts to justify the premature expiration of Phase I's competitive safeguards by relying on the ''assumption''[5] that the French and German governments eventually will provide equivalent protection, even though the governments will continue to own FT and DT. As DOJ itself has observed, however, ''[f]oreign regulation normally should not be considered a sufficient alternative to protect U.S. consumers in the absence of any meaningful facilities-based competition, however effective that regulation may be represented to be.''[6] Such foreign regulation may not be adopted for years in France and Germany and is unlikely effectively to rein in FT's and DT's monopoly power—particularly given that the regulators would also be the owners of the regulated entities. In any event, DOJ's independent responsibility to enforce the U.S. antitrust laws and to protect U.S. consumers is not shared by French and German regulators.

By permitting anticompetitive conduct to occur under the *de facto* monopolies of FT and DT after *de jure* protections have been eliminated, the proposed consent decree fails to prevent serious harms to competition and consumers during a crucial period of years. Therefore, the proposed decree is not in the public interest unless it is modified to provide that the restrictions remain in effect until actual, effective facilities-based competition is found to exist in France and in Germany.

II. Background

A. Legal Standards Under the Tunney Act

The Tunney Act provides that proposed consent judgments in antitrust cases brought by the United States are subject to a 60-day period during which written comments may be filed.[7] The United States is required to ''receive and consider'' any such comments.[8]

In requiring consideration of public comments, the Act contemplates a critical reexamination of the decree by DOJ in light of the points made in any submitted comments. DOJ has the authority to withdraw its consent to the decree at any time before it is entered.[9] Therefore, if the public comments persuade DOJ that the decree should be modified, it is free to condition its continued consent on these modifications.

If DOJ decides that no modifications are appropriate in light of the public comments, the Court must determine whether entry of the proposed consent judgment ''is in the public interest.''[10] In making that determination, the Court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations

[1] Competitive Impact Statement, 60 Fed. Reg. 44,058, 44,063 (filed Aug. 14, 1995) (''CIS'').

[2] *See infra* at 11–12 and n. 29.

[3] Reply Comments of DOJ, at 17, *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95–22, RM–8355, RM–8392 (FCC) filed May 12, 1995).

[4] *Id.* at 27.

[5] CIS, 60 Fed. Reg. at 44,066.

[6] Reply Comments of DOJ, at 27.

[7] 15 U.S.C. § 16 (b) and (d).

[8] *Id.* § 16(d).

[9] *See* Stipulation ¶ 2, 60 Fed. Reg. 44,049 (''Plaintiff may withdraw its consent to entry of the Final Judgment at any time before it is entered, by serving notice on the defendants and by filing that notice with the Court.'').

[10] 15 U.S.C. § 16(e).

set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.[11]

The Court is specifically authorized in making its public interest determination to review any comments of interested parties and DOJ's response to such comments.[12]

Although an antitrust consent decree proposed by DOJ is entitled to deference, the Tunney Act was ''intended to prevent 'judicial rubber stamping' '' of such decrees,[13] and to require ''an independent determination as to whether or not entry of a proposed consent decree [was] in the public interest.'' [14] Thus, while the D.C. Circuit made clear in its recent *Microsoft* decision that ''Congress did not mean for a district judge to construct his own hypothetical case and then evaluate the decree against that case,'' [15] it also reaffirmed the district court's duty to inquire into ''the purpose, meaning, and efficacy of the decree,'' [16] and to determine whether the remedies proposed are ''inconsonant with the allegations.'' [17]

DOJ accurately describes the character of the ''public interest'' determination in the context of this case:

The courts have recognized that the term ''public interest'' ''take[s] meaning from the purposes of the regulatory legislation.'' *NAACP* v. *Federal Power Comm'n,* 425 U.S. 662, 669 (1976); *United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied,* 465 U.S. 1101 (1984). Since the purpose of the antitrust laws is to ''preserv[e] free and unfettered competition as the rule of trade,'' *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the Tunney Act is whether the proposed final judgment would serve the public interest in free and unfettered competition. *United States* v. *Waste Management, Inc.,* 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985).[18]

A proposed consent decree that fails to cure the antitrust violation is not in the public interest.[19]

B. The Proposed Transactions

Two related transactions are the subject of DOJ's antitrust complaint and consent decree. First, Sprint, FT, and DT have entered into an agreement providing for the formation of an international joint venture, now known as ''Phoenix,'' to provide a variety of voice, video, and data services. Under the agreement, each party would contribute most of its existing operations outside its home country to the Phoenix joint venture. FT and DT would hold and manage their interests in Phoenix together through their own proposed two-party joint venture, known as ''Atlas.'' Phoenix would have a board on which FT, DT, and Sprint would be equally represented. Sprint would have the exclusive right to provide Phoenix services in the United States, and FT and DT would not compete with Sprint in the United States with respect to such services. Sprint similarly would not compete with FT and DT in their home countries. None of the three owners would compete against Phoenix.[20]

Second, Sprint, FT, and DT have entered into an agreement entitling FT and DT each to acquire a 10-percent equity interest in Sprint, and thus to become Sprint's largest shareholders. FT and DT would acquire special shareholder rights, including the right to appoint three members of Sprint's 15-member Board of Directors.[21]

C. The Proposed Consent Decree

On July 13, 1995, DOJ filed a civil antitrust complaint alleging that the proposed Sprint-FT-DT transactions would violate § 7 of the Clayton Act [22] by lessening competition in the markets for telecommunications services between the United States and France and between the United States and Germany. On the same date, Sprint and DOJ stipulated to the entry of a proposed consent decree, which purports to remedy the fundamental problem created by an alliance between Sprint and two foreign, government-owned monopoly carriers that are among the largest telecommunications providers in the world. The danger addressed by DOJ's complaint and consent decree is that FT and DT will ''use their market power over the public switched networks, transmission infrastructure and public data networks in France and Germany to discriminate in favor of Sprint and [Phoenix] vis-a-vis other United States international carriers'' and to engage in other anticompetitive conduct.[23]

The proposed consent decree imposes restrictions and obligations in two separate phases. Phase I terminates, for France and Germany independently, when legal prohibitions on competition against FT and DT have been removed and one or more competitors have been licensed to provide facilities and services in each country.[24] Phase II continues for five years after the end of Phase I.[25]

The provisions of the decree that apply during both Phase I and Phase II include:

- requirements of disclosure of the terms and conditions of dealings among Sprint, FT, DT, and Phoenix (II.A)
- restrictions on the sharing of information (II.B)
- limitations on the ability of Sprint and Phoenix to offer international services involving France or Germany, or to provide facilities to FT or DT for such services, if other United States international telecommunications providers are not permitted to provide the same services (II.C)[26]

The provisions that are applicable only during Phase I include:

- restriction against the acquisition by Sprint or Phoenix of ownership interests in or control over facilities legally reserved to FT or DT, and limitations on their ability to acquire international half-circuits terminating in France or Germany (III.A)
- prohibition of the acquisition by Sprint or Phoenix of ownership interests in or control over FT or DT public data networks (III.B)
- prohibition against Sprint or Phoenix providing FT or DT products and services on an exclusive basis (III.C)
- prohibition against Sprint or Phoenix obtaining FT or DT products and services on a discriminatory basis (III.D)
- prohibition of Sprint's acceptance of correspondent telecommunications traffic on a disproportionate basis (III.E)
- restrictions designed to guard against cross-subsidization of Sprint or Phoenix by FT or DT (III.F)

[11] *Id.*

[12] *Id.* § 16(f)(4).

[13] *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458 (D.C. Cir. 1995) (quoting H.R. Rep. No. 1463, 93d Cong., 2d Sess. 8 (1974)).

[14] *Id.* (quoting S. Rep. No. 298, 93d Cong., 1st Sess. 5 (1973)).

[15] *Id.* at 1459.

[16] *Id.* at 1462.

[17] *Id.* at 1461.

[18] CIS, 60 Fed. Reg. at 44,076–44,077; *see also United States* v. *Western Elec. Co.,* 900 F.2d 283, 308 (D.C. Cir.) (''To remain consistent with antitrust policy, the court should revise the decree that is shown to lessen competition substantially in present circumstances.'') (quoting 2 P. Areeda & D. Turner, *Antitrust Law* ¶ 330, at 141–42 (1978)), *cert. denied,* 498 U.S. 911 (1990).

[19] *See United States* v. *AT&T,* 552 F. Supp. 131, 150 (D.D.C.1982), *aff'd mem. sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983).

[20] *See* CIS, 60 Fed. Reg. at 44,058–44,059.

[21] *Id.*

[22] 15 U.S.C. § 18.

[23] CIS, 60 Fed. Reg. at 44,063.

[24] *Id.* at 44,065; Final Judgment V.Q, 60 Fed. Reg. 44,051, 44,056.

[25] CIS, 60 Fed. Reg. at 44,074; Final Judgment X.B, 60 Fed. Reg. at 44,058.

[26] CIS, 60 Fed. Reg. at 44,067–44,070; Final Judgment, 60 Fed. Reg. at 44,051–44,053.

• prohibition of any exclusive operating agreements between Sprint and FT or DT (III.G)

• requirements that Sprint and Phoenix not provide telecommunications or enhanced telecommunications services using FT or DT products and services or public data networks, if FT or DT has established proprietary or nonstandardized protocols or interfaces and has failed to continue to provide other competitors with access to those services and networks on a standardized basis (III.H–I)[27]

III. The Proposed Decree Should be Modified so That its Safeguards Against Abuse of FT's and DT's Monopoly Power Continue as Long as Their Monopoly Power Continues

The proposed transactions pose a well-established threat to U.S. consumers and competition. DOJ recognizes that the transactions threaten substantially lessened competition because they give FT and DT ''increased incentives and the ability, using their monopolies and dominant positions in France and Germany respectively, to favor Sprint and [Phoenix] and to disfavor their United States competitors in international telecommunications services in various ways,'' including discrimination, cross-subsidization, and sharing of confidential information.[28] The proposed transactions also would create contractual and corporate duties on the part of FT and DT to discriminate in favor of Phoenix and Sprint. For example, the Joint Venture Agreement would require FT and DT to ''use commercially reasonable efforts to persuade'' customers to use Phoenix services when they have requested the services of another U.S. carrier.[29] DOJ does not point to any procompetitive benefits created by the transactions that would mitigate their anticompetitive effects.

The proposed consent decree fails in a basic respect to prevent the injury that DOJ alleges arising from FT's and DT's monopoly power. In particular, it allows the shift from a *de jure* to a *de facto* monopoly in France and Germany to trigger the lifting of its substantive protections against anticompetitive behavior. By providing for the removal of Phase I restrictions before the development of genuine, effective facilities-based competition in France and Germany, the decree fundamentally fails to solve the anticompetitive problems that would result from the transactions.

A. The Proposed Consent Decree Would Permit Anticompetitive Activity to Occur Under De Facto Monopolies in France and Germany

The Phase I restrictions are necessary because of FT's and DT's monopoly power. Under the consent decree as currently proposed, Phase II would begin as soon as France or Germany (1) has legally authorized competition, and (2) has issued *one* license for the construction or ownership of facilities and the provision of services. At that time, Phase I's substantive restrictions intended to prevent misuse of FT's and DT's monopoly power would immediately and automatically end—even if FT's and DT's monopoly power was unabated as a practical matter.[30]

DOJ cannot justify this premature trigger for the lifting of the crucial Phase I restrictions before the advent of effective competition in France and Germany. DOJ states:

> These [Phase I] restrictions * * * are expected to become less necessary once competition has been introduced in France and Germany, which should occur concurrently with the regulatory reform program being undertaken by the EU authorities. At that point, competitors will be less vulnerable to abuses of market power by FT and DT because of the alternatives available for transmission infrastructure, and should be better protected by European regulatory requirements to the extent that they continue to depend on the services and facilities of FT and DT.[31]

But competition is ''introduced,'' and there are ''alternatives available for transmission infrastructure,'' only when competition actually has *developed* in France or Germany—not when it is simply made legally permissible. When France (or Germany) eliminates its *de jure* monopoly and licenses one initial competitor, FT (or DT) will still continue to operate as a *de facto* monopoly for a significant period of time—*i.e.*, until a competitor actually develops its own network sufficient to constitute a realistic alternative to the facilities of FT (or DT). And during this period of time—which is likely to last a number of years—Sprint and Phoenix will be able to benefit from the same discriminatory and other anticompetitive monopolistic conduct that DOJ agrees the judgment should prohibit. Whether FT and DT use *de jure* or *de facto* monopoly power to harm U.S. competition and consumers is irrelevant. The same need for the Phase I restrictions exists regardless of the source of the monopoly power.

DOJ itself has emphasized the essential need for actual (versus potential) facilities-based competition in foreign telecommunications markets. In comments filed with the FCC, the Department states that ''facilities-based competition is by far the best solution to the problems'' for U.S. consumers created by foreign *de jure* and *de facto* monopolies.[32] DOJ cites the existence of real competition in the U.K. as permitting the particular relief provided in the MCI–BT decree, and as resulting in significantly lower prices.[33] Even parts of its Competitive Impact Statement reveal DOJ's fundamental agreement with the proposition that actual competition—rather than the mere legality of competition—is the *sine qua non* of preventing the harms of monopoly and market power.[34]

In another proceeding in this Court, DOJ also recognized the substantial danger that an incumbent telecommunications monopolist will abuse its monopoly power in favor of an affiliated entity unless and until actual facilities-based competition develops. DOJ has moved to permit one of the Regional Bell Operating Companies (''RBOCs'' or ''Baby Bells'') to provide on a trial basis through a separate affiliate domestic and international long

[27] CIS, 60 Fed. Reg. at 44,070–44,073; Final Judgment, 60 Fed. Reg. at 44,053–44,055.

[28] CIS, 60 Fed. Reg. at 44,064–44,064.

[29] Section 10.6(b) of the Joint Venture Agreement (p. 81) provides:

> If a Party or any of its Affiliates receives an unsolicited request from a customer of a Party or any of its Affiliates or of the Joint Venture to enter into a Contract to provide to such customer in conjunction with other Persons a service that is currently offered by the Joint Venture, such Party or its Affiliates will use commercially reasonable efforts to persuade such customer to purchase such service from the Joint Venture. If despite such Party's efforts, the customer prefers not to purchase such service from the Joint Venture, such Party will refer such matter to the Global Venture Office which, within ten (10) Business Days, will present its observations regarding such matter. * * *

[30] DOJ contemplates that the end of Phase I would be contemporaneous with the EU liberalization reforms currently scheduled for 1998. CIS, 60 Fed. Reg. at 44,066, 44,074.

[31] *Id.* at 44,070.

[32] Reply Comments of DOJ, at 17, *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95–22, RM–8355, RM–8392 (FCC) (filed May 12, 1995); *see also id.* at ii (''Facilities-based competition in foreign countries is the best solution to these problems, and neither resale nor regulation is an equally effective substitute.''); *id.* at 27 (''the existence of facilities-based competition is the best means of ensuring that U.S. consumers of international services are adequately protected'').

[33] *Id.* at 14, 19–21.

[34] *See, e.g.*, 60 Fed. Reg. at 44,071 (''The limitation on ownership or control of international half-circuits can be lifted, if the United States and defendants agree that *meaningful competition exists* to the half-circuits provided by FT or DT.'') (emphasis added); *id.* at 44,072 (''Once FT and DT *face competition* in the areas of their business now protected by monopoly rights, and the EU authorities have improved safeguards against cross-subsidy as part of their liberalization program, there is reason to believe that the risks of such conduct should diminish. * * *'') (emphasis added).

distance service, but only *after* ''actual competition (including facilities-based competition)'' has developed.[35] FT's and DT's monopoly power in France and Germany over local (and domestic long distance) services is as great as the RBOCs' monopoly power in the U.S. over local services, and FT and DT control the ability of international carriers to reach French and German customers to at least as great an extent as the RBOCs control their ability to reach U.S. customers. Accordingly, decree restrictions involving FT and DT should continue as long as decree restrictions on the RBOCs—until actual facilities-based competition has developed.

For three reasons, it will take time for actual competition to develop after formal legal barriers to entry are eliminated and a competitor is licensed. *First*, after they obtain a license, new entrants will need time to construct alternative networks and develop a customer base. DOJ acknowledges this fact:

> Although some competition to the FT and DT public switched voice services and network would likely emerge were all legal restrictions on competition lifted, replication of the entire public switched network would be prohibitively expensive for any new entrant.[36]

The slow development of competing data services in France and Germany is illustrative: although legal entry barriers were removed a few years ago and competitors have been licensed, FT and DT continue to have considerable market power.[37] DOJ also recognized this problem in discussing economic barriers to competition in local telecommunications markets in the United States—barriers that are comparable to the barriers in France and Germany. In the proceeding in this Court concerning the RBOC waiver, DOJ stated that ''even as legal and regulatory barriers come down, a substantial barrier remains if entrants must replicate the entire network of the [local exchange carrier] in order to provide local exchange service.'' [38]

This Court well understands that the elimination of legal barriers to competition should not be confused with actual competition in telecommunications markets. As the Court explained in rejecting DOJ's attempt to equate elimination of legal entry barriers with effective competition in U.S. telecommunications markets:

> To be sure, as long as states and localities prohibit outsiders from competing with the local Operating Companies, the monopolies will continue to exist. But the reverse is not true. Even if all state and local regulation prohibiting competitive entry into the local exchange market were to be repealed tomorrow, and anyone were free, as a matter of law, to sell local telephone service, the exchange monopolies would still exist substantially in the same form and to the same extent as they do now.[39]

This observation is as true for French and German telecommunications markets as it is for U.S. markets.

Second, a number of regulatory issues critical to the development of effective competition will have to be resolved after French and German regulators formally license potential competitors of FT and DT. The threat of cross-subsidy provides one example. DOJ acknowledges that existing French and German regulations ''are very limited and have not prevented instances of massive cross-subsidy.'' [40] Unless effective regulations to prevent cross-subsidy are both adopted and implemented, would-be competitors of FT and DT will be at an insuperable competitive disadvantage, with FT and DT continuing to have a unique ability to fund competitive services with inflated revenues coerced from captive monopoly customers. If such cross-subsidization is allowed to continue after the removal of legal entry barriers and the licensing of one competitor, it will be impossible for competition to develop. Similarly, French and German regulators will have to resolve issues about the price that FT and DT charge for essential inputs. DOJ acknowledges that even licensed competitors will continue to be dependent on FT and DT for certain inputs for a significant period of time,[41] and if those inputs are overpriced, other firms will not be able to compete effectively.

Regulatory implementation issues following formal liberalization will be a major obstacle to the development of effective competition. DOJ itself recognized the critical importance of these implementation issues in the pending proceeding in this Court concerning the RBOC waiver:

> [T]he transition to competition in local exchange services will be complex. No set of conditions for promoting such competition could hope to address in advance the dozens of complicated implementation issues that will have to be resolved before meaningful competition is a practical reality, rather than merely a theoretical possibility.[42]

DOJ's observations apply with equal force to the introduction of competition in foreign countries. Yet DOJ would allow the Phase I restrictions to be lifted while meaningful competition is only a ''theoretical possibility,'' not a ''practical reality.''

Third, resolution of these regulatory implementation issues on terms that permit effective competition to emerge will be especially difficult because the French and German governments are both the owners and regulators of FT and DT.[43] So long as those entities are controlled by the French and German government, there will be strong incentives for the governments to favor them, as well as Sprint and Phoenix, in adopting and implementing regulatory reforms. The inherent conflict of interest when the same entity owns and regulates a carrier is certain to retard the development of meaningful competition. Indeed, full privatization

[35] Memorandum of the United States in Support of Motion for a Modification of the Decree to Permit a Limited Trial of Interexchange Service by Ameritech, at 28–29, *United States* v. *Western Elec. Co.*, No. 82–0192 (D.D.C.) (filed May 1, 1995) (''DOJ Mem. re Competition'').

[36] CIS, 60 Fed. Reg. at 44,061–44,062.

[37] *Id.* at 44,060, 44,062.

[38] DOJ Mem. re Competition, at 3.

[39] *United States* v. *Western Elec. Co.*, 673 F. Supp. 525, 544 (D.D.C. 1987) (footnote omitted), *aff'd in relevant part*, 900 F.2d 283 (D.C. Cir.), *cert. denied*, 498 U.S. 911 (1990).

[40] CIS, 60 Fed. Reg. at 44,072. Although section III.F of the decree prohibits FT and DT from cross-subsidizing the international services of Sprint and Phoenix, the proposed decree does not address cross-subsidization of domestic services provided by FT and DT over their domestic networks. The latter is the kind of cross-subsidization that would prevent competition to FT and DT from developing in France and Germany.

[41] *Id.* at 44,061–44,062 (because of the prohibitive cost of constructing a complete competitive network, ''any provider of telecommunications or enhanced telecommunications services, or seamless international telecommunications services, whether in the U.S., France, Germany or elsewhere, is and will continue to be dependent to some extent for the foreseeable future on FT for origination and termination of telecommunications between France and anywhere else, and on DT for origination and termination of telecommunications between Germany and anywhere else'').

[42] DOJ Mem. re Competition, at 3. The development of domestic long distance competition provides an instructive example. By the early 1970s, the FCC had determined that long distance competition was in the public interest and authorized MCI to compete against the Bell System, which at that time controlled local and long distance telephone service in the United States in much the same way that FT and DT control local and long distance telephone service in France and Germany. It still took MCI years to become a significant competitor because MCI was forced repeatedly to seek relief from the FCC and the courts from the determined efforts of the incumbent monopolist to obstruct MCI's ability to compete. *MCI Communications Corp.* v. *AT&T*, 708 F.2d 1081 (7th Cir.), *cert. denied*, 464 U.S. 891 (1983); *see also United States* v. *AT&T*, 524 F. Supp. 1336, 1353–57 (D.D.C. 1981); *United States* v. *AT&T*, 552 F. Supp. at 160–63. The implementation issues in France and Germany will be at least as difficult as those in the United States.

[43] FT is a 100-percent Government-owned and -operated entity and is expected to remain Government-controlled. Although DT became a private corporation this year, the German Government is its sole shareholder and is expected to retain majority control at least through 1999. *See* CIS, 60 Fed. Reg. at 44,060.

of FT and DT—when private investors, and not the French and German governments, own FT and DT—is likely to be practical prerequisite to effective competition.

For these three reasons, and despite DOJ's apparent recognition that the serious threats to U.S. consumers and competition alleged in the complaint will continue until effective competition in France and Germany develops, the proposed consent decree fails to guard against those threats by terminating the Phase I safeguards when competition is theoretically possible but long before it becomes actually effective. It is plain, therefore, that there is a major gap in the protections afforded by the consent decree. This gap is particularly significant because it will occur during years of crucial development and innovation in telecommunications.[44] As a result, the harms to competition—and ultimately to consumers—will have long-term and extensive consequences.

Accordingly, the transition from Phase I to Phase II under the decree should take place *not* with the elimination of the legal monopolies and licensing of a competitor in France and Germany, but rather upon a *finding that there is actual, effective facilities-based competition* in France and Germany. Such a finding by DOJ—as it has proposed in other contexts[45]—should be included in the consent decree as a prerequisite to the lifting of the Phase I restrictions. Any DOJ decision concerning the state of competition in France and Germany should be preceded by a mandatory public-comment period during which intervenors are given an opportunity to present evidence to DOJ. Following consideration of public comments, the Court should adopt or reject DOJ's finding of actual, effective competition. Only if the Phase I restrictions continue until FT's and DT's monopoly power has ended can the proposed decree be effective.[46]

Extending the Phase I protections as proposed here would neither unduly burden Sprint and Phoenix nor eliminate any possible benefits of the alliance. The defendants have no legitimate interest in being the beneficiaries of discrimination or other anticompetitive behavior, and the Phase I restrictions (such as those prohibiting cross-subsidization and nonstandard interfaces) will not impair Sprint's or Phoenix's ability to compete. If French and Germany regulatory authorities eventually adopt measures parallel to the Phase I restrictions, Sprint and Phoenix would not be prejudiced merely because the same conduct would be prohibited by the consent decree, particularly because DOJ contemplates that the victim of any violation would pursue regulatory remedies in France and Germany before complaining to the Department.[47] In sum, the demonstrable harms resulting from premature expiration of the Phase I safeguards are into outweighed by any offsetting benefits.

B. Conditions Protecting U.S. Competition and Consumers Should Not Be Ended Prematurely on the Assumption That Foreign Regulators Will Provide Equivalent Protection

DOJ states that its acquiescence in the termination of the Phase I restrictions under the terms of the proposed judgment rests in part on the assumption that European regulatory authorities will protect competition from U.S. carriers trying to compete with FT's and DT's affiliates Sprint and Phoenix:

> Generally speaking, during Phase II the proposed Final Judgment relies to a greater extent on enforcement by national regulatory authorities in Europe, the EU itself, and the FCC in the United States to protect competition, while during Phase I the proposed Final Judgment provides for additional types of injunctive relief to ensure that Sprint and [Phoenix] do not benefit from anticompetitive conduct by FT and DT. * * * Although the proposed Final Judgment does not specifically reference all of the directives and measures envisioned by the European authorities, an underlying assumption is that these authorities will carry out their publicly announced intention of having all the key regulatory measures needed for development of effective competition in place by the time full liberalization is to take effect in 1998.[48]

Reliance on such assumptions is misplaced. As DOJ itself has stated, ''Foreign regulation normally should not be considered a sufficient alternative to protect U.S. consumers in the absence of any meaningful facilities-based competition, however effective that regulation may be represented to be.'' [49]

First, for the reasons explained above, even assuming implausibly for purposes of argument that the French and German governments will act affirmatively and aggressively to foster competition against the incumbent monopolists that they own, it will take time for competition to develop, and the threat to U.S. competition and consumers arising out of these monopolies, and the corresponding need for the Phase I protections, will continue until effective competition has taken root.

Second, as also explained above, because they own FT and DT, the French and German governments that also regulate FT and DT and their would-be competitors have an incentive to protect and preserve FT's and DT's monopolies and to maximize their value if their shares are ever sold to private investors. Moreover, the French and German governments have considerable flexibility not to implement procompetitive reforms. DOJ explains why:

> The EU authorities have exercised a very significant role in bringing about telecommunications liberalization in Europe, but there are important limits on the scope of their authority. The decision whether to privatize the government-owned telecommunications carriers, and the pace at which this occurs, [are] wholly at the discretion of the member states. Moreover, the EU's powers to compel liberalization and protect competition relate to activities affecting commerce within or between the member states. The decision of whether and how to regulate the dealings of FT and DT with foreign telecommunications carriers outside the EU, including the terms on which operating agreements and leased lines are made available, has been left to the French and German authorities. It is not yet clear whether the EU's liberalization measures will confer any rights on providers from the United States and other countries outside the EU, or only on firms operating within the EU. The national governments at present are free to limit entry by such non-EU competitors, subject to the results of ongoing multilateral telecommunications trade negotiations.[50]

Even if EU measures are effective in theory in preventing the risks associated with the Sprint–FT–DT transactions, France and Germany can delay adoption of those measures well beyond an EU implementation deadline. Potential regulatory changes in France and Germany are simply too uncertain to serve as the basis for expiration of the fundamental substantive protections of the decree.

Third, DOJ has an independent responsibility to enforce the U.S. antitrust laws to protect U.S. trade and U.S. consumers, and French and German regulators do not share this

[44] *see, e.g.,* Reploy Comments of DOJ, at 10.

[45] *See* DOJ Mem. re Competition, at 28. Such a finding would require ''more than a single competitor serving niche markets.'' *ID.* at 33. Indeed, DOJ recognizes in its consent decree that such minimal competition is insufficient to prevent anticompetitive behavior. *See* Final Judgment III.B, III.I, 60 Fed. Reg. at 44,053, 44,054–44,055; CIS, 60 Fed. Reg. at 44,071, 44,073 (applying Phase I restrictions to public data networks despite existence of limited competition).

[46] It is reasonable to expect that such a finding would be possible when, at a minimum, three years have elapsed since full liberalization and privatization in France and Germany.

[47] CIS, 60 FR at 44,074.

[48] *Id.* at 44,066.

[49] Reply Comments of DOJ, at 27.

[50] CIS, 60 Fed. Reg. at 44,063.

duty or this commitment. Deferring to the French and German governments while FT's and DT's monopolies persist is inconsistent with the very premise of the proposed judgment: if such deference were appropriate, no decree at all would be necessary or appropriate. DOJ has stated: ''Regulation generally is an imperfect substitute for competition, and that is particularly true when foreign authorities are regulating government-owned monopoly carriers.'' [51] If reliance on French and German regulators to protect U.S. trade and consumers is inappropriate today, it will continue to be inappropriate until effective facilities-based competition has emerged in France and Germany.

Contrary to DOJ's suggestion, its authority to seek modification of the judgment does not solve the problem. DOJ notes that it could seek modification pursuant to section VIII.A ''if, after the termination of Phase I, discrimination * * * or other types of conduct occur that would have been prohibited under the Phase I restrictions, resulting in a substantial harm to competition.'' [52] Before seeking modification, DOJ ''would ordinarily inquire at the outset whether injured competitors had availed themselves of existing regulatory remedies, if any, in France or Germany as well as the United States, and what relief had been provided or action taken, if any. * * *'' [53] In other words, DOJ recognizes a substantial possibility that the French and German governments will not take the actions necessary to permit effective competition to develop against FT and DT, and if its current hopes thereby turn out to be unfounded, DOJ in effect commits itself to seeking modification of the judgment.

This approach does not protect the public interest. The purpose of the Phase I protections is to prevent competitive harm from occurring, not merely to provide an after-the-fact remedy. Reimposing Phase I protections after protracted modification proceedings would be too little too late, and the judgment would provide no substantive protection for competition by U.S. carriers from the end of Phase I until DOJ prevailed on its modification motion. Moreover, the kind of modification proceeding that DOJ contemplates would put it and the Court in the position of evaluating the efficacy and reasonableness of specific French and German regulations. Such a review would not promote the interests in international comity espoused by DOJ.[54] For these reasons, reliance on possible future modification of the judgment to solve the problem of future anticompetitive conduct would undermine the purposes of the judgment.

The simpler, more direct, and more effective approach is to continue the Phase I protections until effective competition develops. Reliance on a hope that the French and German governments will provide equivalent protection of U.S. trade and consumers once they license one competitor would embroil DOJ and the Court in difficult enforcement and modification issues in the likely (if not inevitable) event that this hope turns out to be unrealistic.

C. Making Termination of Phase I Restrictions Dependent on the Development of Effective Competition Is Consistent With the Decree Entered in Connection With the MCI–BT Alliance

As DOJ acknowledges, there are ''crucial differences between this transaction and the BT–MCI alliance.'' [55] These differences make it clear that modifying the proposed decree to retain the Phase I restrictions until effective competition develops in fact and not merely in theory is entirely consistent with, if not compelled by, the decree entered in connection with the MCI–BT transaction.

At the time of the MCI–BT transaction, BT's position in the United Kingdom's telecommunications market was dramatically different from the current positions of FT and DT in their home markets:

> Although BT continued to have some market power in basic telecommunications services and facilities and control over local bottlenecks in the United Kingdom at the time it formed its alliance with MCI, *all of its lines of business were already open to competition and BT actually faced facilities-based competition to some extent at all levels,* from independent carriers and cable television companies. Moreover, since 1993 BT has ceased to be government-owned, so that it is independent from its government regulator in the United Kingdom.[56]

In stark contrast, FT and DT have legal monopolies over all basic voice services—and over three-quarters of *all* telecommunications business—in their markets; they do not face facilities-based competition in the small segments in which it is legally permitted; and they are government-owned entities with no independent regulators.[57]

The size of the proposed Sprint-FT-DT alliance magnifies its anticompetitive risks. The combined revenues of Sprint, FT, and DT were approximately $85 billion in 1994, more than twice the total revenues of MCI and BT.[58] France and Germany represent two of the three largest telecommunications markets in the European Union; together they are more than twice the size of the U.K. market. The proposed alliance would have a significant portion of the overall European market as a protected base from which to operate.

DOJ purports to provide for these differences between the Sprint-FT-DT alliance and the MCI–BT alliance by imposing the Phase I safeguards until competition is legally permitted in France and Germany and then by imposing Phase II requirements that generally parallel the injunctive provisions in the MCI-Concert decree.[59] However, as explained above, the most significant problem with the proposed decree is that the Phase I restrictions are lifted before the actual development of facilities-based competition in France and Germany. To be consistent with the MCI-Concert decree, the Phase I restrictions on Sprint and Phoenix should continue until there is as much competition in France or Germany as there was in the United Kingdom at the time the MCI-Concert decree was entered. At that time, it would be appropriate to implement the Phase II restrictions comparable to the restrictions in the MCI-Concert judgment.

IV. Conclusion

For the foregoing reasons, the consent decree as currently proposed fails to remedy the antitrust violation alleged in the complaint and therefore is not in the public interest. The decree should be modified to provide that the restrictions imposed in Phase I remain in effect until actual, effective facilities-based competition is found to exist in France and in Germany.

Respectfully submitted,

MCI Communications Corporation.

[51] Reply Comments of DOJ, at 27.

[52] CIS, 60 Fed. Reg. at 44,074.

[53] *Id.*

[54] *Id.* at 44,076.

[55] *Id.* at 44,065.

[56] *Id.* (emphasis added).

[57] *Id.*

[58] *Id.* at 44,059.

[59] *Id.* at 44,065.

Dated: October 23, 1995.

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Comments of BT North America Inc. to the U.S. Department of Justice Regarding the Proposed Final Judgment

United States of America, Plaintiff, v. *Sprint Corporation and Joint Venture Co.*, Defendants.

[Civil Action No. 95–1304 (TPJ)]

Dated: October 23, 1995.

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Exhibit C

Comments of BT North America Inc. to the U.S. Department of Justice Regarding the Proposed Final Judgment

[Civil Action No. 95–1304 (TPJ)]

United States of America, Plaintiff, v. *Sprint Corporation and Joint Venture Co.*, Defendants.

I. Introduction

A. Background

In response to the public notice [1] issued under the Antitrust Procedures and Penalties Act (or Tunney Act),[2] BT North America Inc. (''BTNA'') submits these comments on the proposed Final Judgment or Decree. The Complaint and Decree relate to the proposed twenty percent investment by France Télécom (''FT'') and Deutsche Telekom AG (''DT'') in Sprint Corporation (''Sprint'') and the three companies' proposed formation of a Global Partnership. The Complaint defines their Joint Venture Company (''JVCo'') as ''all entities to be formed as a joint venture between Sprint, DT, and FT under the terms of the Joint Venture Agreement when that agreement is consummated, including the governing bodies of such venture.''[3] The overall set of transactions is sometimes referred to as the Phoenix Alliance, to distinguish it from another proposed alliance between FT and DT called Atlas.

BTNA, a wholly owned subsidiary of British Telecommunications plc (''BT''), is authorized by the Federal Communications Commission to operate as a United States international resale carrier. BT is a domestic and international telecommunications provider in the United Kingdom (''UK'') and, through subsidiaries and affiliates, elsewhere in the world. BT has a twenty percent investment in US carrier MCI Communications Corporation (''MCI'') and has formed an international joint venture with MCI known as Concert Communications Company (''Concert'').[4] MCI and Sprint are facilities-based competitors in the provision of US international telecommunications service, including to France and Germany. As distributors of Concert services, BT (including BTNA as a US reseller) and MCI will be direct competitors of Sprint, FT, and DT as distributors of JVCo services, if the Phoenix Alliance is consummated. Where permitted by law, BT has been endeavoring, directly or through joint ventures, to compete against FT and DT on the European Continent. BTNA qualifies under Section V.F. of the proposed Final Judgment as a US international telecommunications service provider that ''directly or through a subsidiary or affiliate'' holds or has applied for a US, French, or General license, or actually provides service that does not require a license, involving the US-France or US-Germany route.[5]

B. Overview of the Problems With the Proposed Decree

As explained in considerable detail in Part II of these Comments, the proposed Final Judgment requires clarifications and modifications in many important respects. With respect to the needed modifications, four inter-related themes are paramount.

First, the Final Judgment should be rewritten so that the transactions may not be consummated unless and until certain minimum French and German laws and rules are in place. For example, if France and Germany are actually preparing legislation and regulations allowing alternative infrastructure (such as utility owned private networks owned by railroads and electric utilities) to be used for public telecommunications services other than switched voice, [6] and if (as the parties maintain [7]) those governments are not far behind in preparing laws and regulations allowing facilities-based competition in public switched voice, why not condition consummation of the transactions on the prior completion of those efforts?

Second, excluding FT and DT as parties to the Final Judgment is very problematic. In many cases, defendants Sprint and JVCo will be able to turn a blind eye to discrimination or other impermissible activity by FT and DT toward others that benefits Sprint and JVCo. This is because it is too easy under the Decree for Sprint and JVCo to claim they lacked sufficient information to actually know that something was amiss in FT's or DT's conduct toward others. After all, there is nothing in the proposed Decree binding *FT and DT* to disclose to Sprint, JVCo, or anyone else critical information that would unmask FT's and DT's wrongdoing. Additionally, because FT and DT are not defendants, the Decree focuses upon forbidding Sprint and JVCo to undertake certain activity until FT and DT conduct themselves in a specified way *vis-à-vis* rivals. This backhanded approach, made necessary because FT and DT are not defendants, will tend to postpone desirable technological progress and innovation until Sprint and JVCo have caught up with, and are prepared to compete against, their more pioneering competitors. A direct approach, binding FT and DT as parties to the Decree, would avoid allowing Sprint and JVCo to control the pace of industry progress.

Third, and very important, in several places the proposed Decree improperly assumes that the mere issuance of ''one'' license (or the execution of ''one'' operating agreement) evidences so profound a change in competitive circumstances as to justify automatic lifting of key Decree safeguards. (The phrase ''one or more'' licenses, as used in the proposed Decree, does not disguise the fact that ''one'' is legally sufficient.) Indeed, there is no Decree requirement that the ''one'' licensee be

[1] 60 Federal Register (FR) 44049 (August 24, 1995).

[2] 15 U.S.C. 16(b)–(h).

[3] Complaint ¶ 24; see also the definition of ''Joint Venture Co.'' as multiple ''entities'' in Section V.O. of the proposed Decree. The Stipulation (¶ 6 thereof) filed on July 13, 1995, contemplates that JVCo will be created as ''a legal entity'' and will execute the Stipulation. 60 FR at 44050.

[4] BT's investment in MCI and their formation of Concert were investigated by the Antitrust Division of the Department of Justice (''DOJ'') and were allowed to go forward subject to a consent decree. *See United States* v. *MCI Communications Corp. & BT Forty-Eight Co.*, 1994–2 Trade Cas. (CCH) ¶ 70,730 (D.D.C., final judgment entered September 28, 1994) (''*BT–MCI* Final Judgement'').

[5] BTNA is licensed by the FCC, inter alia, to resell switched services and non-interconnected private lines between the US and France and Germany. *See BT North America, Inc.*, FCC File No. I–T–C–93–126, DA 94–1257 (Chief, Int'l Bur., released November 14, 1994).

[6] *See* ''Germany, France Agree to Liberalize Phone Markets as Part of Sprint Venture,'' *Wall Street Journal*, October 13, 1995, at A10.

[7] *See Sprint Corp.*, FCC File No. ISP–95–002, Reply Comments of France Télécom (September 15, 1995) at 17–19; Reply Comments of Deutsche Telekom (September 15, 1995) at 2–3, 25–26.

a major competitor and not a weak neophyte or even a shill. Thus, under Section II.C., the issuance of an individual license to ''one or more'' other US provider(s) could unleash Sprint and JVCo to offer their US-French/German services even though all other significant US competitors are still knocking on the French and German authorities' doors for essential licenses.[8] And, Section III's crucial provisions restricting unequal access to facilities ownership, prohibiting discrimination and cross-subsidization, mandating proportionate returns, and ensuring equal technical access to public network interconnection, all expire when Phase I of the Decree terminates—which is when, among other things, ''one or more'' entities is/are licensed to provide facilities-based public switched voice services (Section V.Q.(2)).

Fourth, as noted, Section III's protections automatically expire at the end of Phase I when FT's and DT's public infrastructure and switched voice monopolies formally terminate and ''one'' competing license issues. Yet, nothing in the definition of Phase II assures that the French and German governments will have in place from that point forward adequate regulations, properly enforced, to prevent discrimination, cross-subsidization, disproportionate returns, etc. DOJ admits the ''proposed Final Judgment'' rests on the ''underlying assumption * * * [that] all the key regulatory measures needed for development of effective competition [will be] in place by the time full liberalization is to take effect in 1998.''[9] There is absolutely no warrant for DOJ's giant leap of faith that market-opening measures inevitably will be accompanied by EC and national regulation fully adequate to prevent FT and DT from abusing their enormous market power. Nor, given the persisting government equity interests in FT and DT (and indirectly in Sprint and JVCo), is there any basis to presume that the national regulators will have the full independence or proper inclination to provide sufficiently vigorous and impartial regulation as to adequately replace Section III of the Decree.

C. DOJ's Discretion to Withdraw and Renegotiate the Decree

The proposed Decreed was developed without benefit of the insights of any affected industry members other than Sprint (and presumably FT and DT). Now that it has received this and other Tunney Act comments, DOJ should take a fresh look at the document. Whatever limits the case law may place on a court's ability to reject a proffered antitrust consent decree,[10] those limits do not apply to the Department of Justice. Paragraph 2 of the July 13, 1995 Stipulation says unmistakably: ''Plaintiff may withdraw its consent to entry of the Final Judgment at any time before it is entered, by serving notice on the defendants and by filing notice with the Court.''

While a reviewing court may have discretion to reject a proposed decree on public interest grounds only if the decree is not ''within the reaches of [the] public interest,''[11] DOJ has the discretion and the duty, particularly after receiving extensive public comment from expert (albeit interested) industry participants, to determine anew whether the proposed Decree is satisfactory or whether the antitrust laws require additional or changed language. There is ample precedent for DOJ modifying a proposed decree and seeking the defendants' consent to essential changes.[12] If defendants are absolutely unwilling to accept needed changes, that alone may reveal something about defendants' hidden motivations or agenda and reinforce DOJ's conviction that the changes are absolutely vital to protect competition and the public interest. In any case, no harm will come from DOJ proposing further discussions among the Decree parties regarding such possible modifications.

Moreover, the parties to the proposed Decree must recognize that the district court's authority is not zero. ''A decree, even entered as a pretrial settlement, is a judicial act, and therefore the district judge is not obliged to accept one that, on its face and even after government explanation, appears to make a mockery of judicial power.''[13] This Decree will be reviewed by the court to see whether the remedies proposed are ''inconsonant with the allegations.''[14] Moreover, in determining whether to approve a proposal, the court is supposed ''to pay close attention to the compliance mechanisms in [the] consent decree.''[15] The court also ''should pay special attention to the decree's clarity'' or lack thereof.[16] The judge ''is certainly entitled to insist on that degree of precision concerning the resolution of known issues as to make his task, in resolving subsequent disputes, reasonably manageable.''[17]

As Part II of these Comments brings out, there are a number of instances in which the remedies proposed fall so far short of correcting or preventing the anticompetitive problems described in the Complaint, that the decree, unless significantly modified, will not be within the broad ''reaches'' of the public interest. Further, there are major loopholes, gaps in logic, and facial inconsistencies and ambiguities that must be addressed and resolved before the court would be right to approve the proposal.

II. The Proposed Final Judgment Must be Withdrawn and Substantially Modified and Clarified to Come ''Within the Reaches of the Public Interest''

A. The Phase I and II Equal Licensing Opportunity Provision (Section II.C.) Requires Modification and Clarification

Section II.C. of the proposed Final Judgment is intended to ensure, throughout Phases I and II, that US international telecommunications service providers receive equal opportunity with Sprint, JVCo, and their affiliates, in access to essential French and German licenses and other forms of governmental authorization. Before discussing several fundamental deficiencies in Section II.C.—which must be corrected, it should be useful to review how central this matter of licensing is to remedying the competitive problems described in the Complaint.

The Complaint asserts that the transactions at issue will substantially lessen competition by giving FT and DT increased incentives and ability to use their government-granted monopolies and market power to discriminate against competitors of Sprint and JVCo.[18] This discrimination, which can take many forms, will raise competitors' costs and diminish the quality and quantity of their services—all to the detriment of consumers.[19] FT and DT have government-granted monopolies encompassing essentially all

[8] *See* pages 18–19, *infra*.

[9] *Id.* at 4406.

[10] *See US* v. *Sprint*, Competitive Impact Statement (''CIS''), 60 F.R. at 44076–78.

[11] *See id.* at 44077, *quoting, United States* v. *AT&T*, 552 F. Supp. 131, 151 (D. D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

[12] *See, e.g., United States* v. *United Technologies Corp.*, No. 78 CV 580 (S.D. N.Y.), DOJ Responses to Comments, 46 F.R. 8787, 8789, 8798 n.3 (January 27, 1981) (modifying proposed antitrust consent decree in response to public comments); *United States* v. *National Broadcasting Co.*, Civil Action No. 74–3601–RJK (C.D. Cal.), Stipulation of May 4, 1977 (modifying proposed antitrust consent decree after public comment), 42 F.R. 24996, 24997–98 (May 16, 1977).

[13] *United States* v. *Microsoft Corp.*, 56 F. 3d 1448, 1462 (D.C. Cir. 1995).

[14] *Id.* at 1461.

[15] *Id.* at 1462.

[16] *Id.* at 1461.

[17] *Id.* at 1462.

[18] *Id.* ¶ 40.

[19] *Id.*

international and domestic public telecommunications infrastructure (excluding certain mobile telephone and satellite radio facilities) and the provision of public switched voice services.[20] Although their legal monopolies over international and domestic public data transmission have recently expired, FT's and DT's well-established and ubiquitous public data networks retain nearly 100 percent monopoly market shares.[21]

For the immediate future, then, any competitor wishing to provide public telecommunications voice, data, or other value-added services between the US and France or Germany is dependent upon FT and DT for their cooperation and much more.[22] In the case of bilateral correspondent services where each corresponding carrier is responsible only for its end, US providers need FT and DT to provide the requisite French or German connecting international half-circuits and also domestic circuits terminating communications in those countries or transiting them to third country.[23] For services that do not qualify as traditional bilateral correspondent services, such as seamless end-to-end services, US providers need to obtain from FT and DT leased international half-circuits and domestic French and German private lines, as well as interconnection to each country's public switched telephone network (PSTN) for voice services and public switched data networks for many data services.[24]

The Complaint recognizes that the European Union (EU) may eventually require France and Germany to allow entry by additional providers of public telecommunications infrastructure and switched voice services.[25] The Complaint also notes, however, that the same French and German governments that own FT and DT will have to develop licensing and interconnection regulatory regimes and actually issue licenses and other authorizations before ''real competition'' truly exists.[26]

Section II.C. purports to address the risk that French and German licensing requirements and processes will be used in ways that discriminate against US competitors of Sprint and JVCo.[27] This is a very substantial risk for two reasons. First, the French and German governments are the sole owners, and are pledged to remain the controlling owners, of FT and DT respectively.[28] These ownership interests give the two governments strong financial incentives to favor FT and DT and the entities those governments will indirectly own in part, i.e., Atlas, JVCo, and Sprint. Second, even if those governments were to drastically revise their laws so as to fully insulate the licensing bodies from such conflicts of interest, FT and DT will have strong incentives to use (or misuse) the licensing requirements and processes to discourage, delay, and defeat the licensing of rivals. Section II.C. falls so far short of the mark in preventing anticompetitive licensing discrimination that it must be modified in several crucial respects and clarified in certain other respects.

Specifically, the situation Section II.C. must more adequately address is when a competitor of Spring or JVCo needs to secure a French or German individual license in order lawfully to offer a particular telecommunications service between the US and France or Germany. For example, suppose MCI seeks to offer an end-to-end Concert-branded service between the US and France that would require MCI or Concert (or BT on behalf of MCI or Concert) to obtain an individual license covering all or part of the French end.[29] It is essential that Section II.C. be modified so that: (1) an individual license will be issued promptly even if Sprint and JVCo are not sufficiently technologically advanced to offer a directly competing service; (2) the individual license is not burdened with discriminatory terms and conditions; (3) unfair delay in issuing the individual license cannot be justified on the ground that French and German authorities have already licensed ''one'' other unaffiliated US provider, however weak and insignificant that provider may be; and (4) the license-issuing process cannot be skewed to give Sprint and JVCo an unfair headstart.

1. Failure to Precondition Consummation of the Transactions Upon Actual Accomplishment of Regulatory Reforms in France and Germany

A key flaw in Section II.C. is its failure affirmatively to require that, as *a prior condition* of the parties' consummating the FT/DT investments in Sprint and the formation of JVCo, nondiscriminatory requirements and procedures for prompt French and German licensing of US international providers must be established and in place for all services (except, regrettably, still-monopolized public switched voice services). Instead, Section II.C. comes at the problem indirectly and, unfortunately, much less effectively.

Section II.C. bars Sprint and JVCo from offering (or providing facilities enabling FT or DT to offer) ''any particular * * * service'' between the US and France or Germany unless (1) US competitors seeking to offer ''such a service'' do not need a license (or other authorization) for any French or German aspect of the service, or (2) the requisite French or German class license is in effect for US providers, or (3) French or German individual licensing procedures are established ''as of the time'' Sprint and JVCo begin offering ''such a service.'' Given Section II.C.'s oblique approach to the problem, France and Germany (motivated perhaps by their direct ownership interests in FT and DT and indirect interests in Sprint and JVCo) can delay determining whether a license is required, can delay placing a class license in effect, and can delay adopting individual licensing procedures, until FT, DT, Sprint, JVCo, and their affiliates, are ready to offer the ''particular * * * service'' themselves. Thus, US consumers of US-French/German telecommunications services can be denied the benefits of early innovation and competition from pioneering entities outside the Sprint alliance while French and German authorities postpone essential decisionmaking needed by those entities. In effect, Section II.C. lets FT, DT, and Sprint control the pace of innovation and progress on the US-French/German routes to suit their own parochial economic interests and schedule.[30]

[20] *Id.* ¶¶ 25–26, 31–32, 34–35.

[21] *Id.* ¶¶ 33,36.

[22] *Id.* ¶¶ 31–36

[23] *Id.* ¶¶ 31, 34.

[24] *Id.* ¶¶ 31–36.

[25] *Id.* ¶ 37.

[26] *Id.*

[27] *United States* v. *Sprint Corp.*, Competitive Impact Statement (CIS), 60 F.R. at 44049, 44058, 44069–70.

[28] Complaint ¶¶ 2, 25, 26; CIS, 60 F.R. at 44065; Statement by French Minister Fillon, August 30, 1994 (''a majority of [FT's] capital will remain held by the public sector''), attached to Sprint Corp. *ex parte* letter, *Sprint Corp.*, FCC File No. ISP–95–002 (filed September 28, 1995); Speech and Responses to Questions by German Minister Bötsch, National Press Club, Washington, D.C., April 3, 1995 (German government intends to retain majority control of DT), recorded on Dow Jones Investor Network videotape.

[29] Under the current monopoly regime, the French license might be for the right to offer ''bearer services,'' e.g., packet switched data services over international half-circuits and domestic private lines leased from FT. *See* Complaint ¶ 33. After FT's legal monopoly over public voice and infrastructure is abolished, the French license might be to offer public switched voice services over international and domestic circuits owned by the licensee or leased by the licensee from FT or its new infrastructure competitors.

[30] The problem is exacerbated by Section II.C.'s reliance on the term ''particular * * * service.'' The Section seems to presume that the only competitive alternative to a ''particular * * * service'' is ''*such* a service'' (emphasis added), i.e., *an identical type* of service provided by a rival. This creates a serious

To be sure, US authorities probably lack the authority to impose requirements directly upon foreign states' licensing authorities. But where foreign states own controlling interests in commercial entities that seek to invest in and form a joint venture with a US international carrier (here Sprint), US authorities have the jurisdiction and the statutory obligation to *prevent that investment and joint venture from occurring* unless and until the foreign sovereign authorities have taken adequate legal actions in their own jurisdictions to ensure fair competition.[31] The proposed decree should be modified to accomplish that objective.

2. Failure to Specify That Individual Licensing Must be Nondiscriminatory

A second serious flaw is the failure of subparagraph 3 of Section II.C. to require explicitly that individual licensing procedures be nondiscriminatory, substantively and temporally. The provision says that the Sprint/JVCo ''particular * * * service'' offering may not proceed unless:

> 3. If an individual license is required in France or in Germany to offer such a service, *established licensing procedures* are in effect as of the time of the offering of the service by which other United States international telecommunications providers are also able to secure such a license * * *. [Emphasis added.]

The provision may intend that the ''Licensing procedures'' be evenhanded and nondiscriminatory, but it does not unequivocally say so—which it should. The provision needs to be modified to read ''established licensing procedures (either the same as, or no more demanding of the prospective licensee than, those procedures applicable to the particular service offering of Sprint, Joint Venture Co., FT, or DT) * * *''.

To ensure no temporal discrimination, the phrase ''as of the time of the offering of the service'' should be modified so that the Sprint group does not receive an unfair headstart. The phrase should read: ''as of the time that Sprint, Joint Venture Co., FT, DT, or their affiliate applied for the requisite license * * *.'' Otherwise the Sprint group could complete the licensing process and be poised to offer the service before rival U.S. providers would even be able to submit their license applications.[32]

Finally, to ensure that rival U.S. providers are not subject to unfair discriminatory conditions, the phrase ''such a license'' should be rewritten to say: ''such a license (with requirements and conditions no more onerous than those imposed on Sprint, Joint Venture Co., FT, DT, or their affiliate).'' Without this amendment, the whole provision could be severely undercut, for example, by France or Germany imposing unfairly discriminatory license or interconnection fees, geographic requirements or limitations, service eligibility restrictions (such as satellite-only when terrestrial is needed), universal service obligations or contributions, and the like, upon the other U.S. providers.

3. Failure to Require That More Than One U.S. Provider Besides Sprint and JVCo be Licensed

One of the most troubling loopholes in Section II.C. relates to the second part of subsection 3 which, as now written, can be satisfied in either of two ways: (i) simultaneous or earlier licensing of other U.S. providers(s), or (ii) later licensing. The pertinent language is:

> * * * and (i) *one or more* United States international telecommunications providers other than FT, DT, Sprint or Joint Venture Co. and unaffiliated with FT, DT, Sprint or Joint Venture Co. have secured such a license in France and in Germany, *or* (ii) if Sprint or Joint Venture Co. or FT or DT is the first provider to seek a license to offer such a service, other United States international telecommunications providers are also able to secure such a license *within a reasonable time and in no event longer than the time it took Sprint, Joint Venture Co., FT, or DT* to obtain such a license, after having applied for such a license, *unless* the additional time required is attributable to *delay caused by the applicant*. [Emphasis added.]

Alternative (i) is met if ''one or more'' US providers other than Sprint, JVCo, *et al.*, actually ''have secured a license.'' Clearly the word ''or'' in the phrase ''one or more'' is used here in the disjunctive sense; consequently, the words ''or more'' add nothing mandatory to Section II.C.3.(i)'s requirement. Doubtless Sprint and JVCo will claim that Section II.C.3(i) is fully satisfied if a license is issued to only ''one'' unaffiliated US provider, no matter how weak or inconsequential that provider is.[33] Thus, AT&T, BTNA, Concert, MCI, IDB, Worldcom, MFS, ACC, and other significant competitors could find their license applications held up indefinitely, so long as a single heretofore unknown, unaggressive, resource-limited US provider has the one other license besides the Sprint group.

Subsection (i) absolutely must be rewritten to increase significantly the minimal number of required licenses. As the Complaint itself says: ''Mere lifting of the legal prohibitions on competition would not alone bring about real competition, since actual *competitors* [sic] must also be licensed to operate.'' [34] To ensure that the minimal number of licensees includes significant competitors, certainly the major US carriers AT&T and MCI (or their affiliates, such as Concert or BT for MCI) should have to have been proffered licenses before Sprint and JVCo could proceed with their offering.[35] The minimal number should

problem illustrated by the following example. Assume Sprint and its allies are content to offer a certain level of enhanced voice service on a correspondent basis with FT and DT subject to a certain accounting rate that keeps settlement rates and retail prices up. If another US carrier wanted to undercut the Sprint correspondent service by offering an end-to-end enhanced voice service on a non-correspondence or self-correspondence basis, Section II.C. (absent modification or clarification) would seem of no help. This is because the new service probably would not be considered ''such a service'' as the ''particular * * * service'' offered by Sprint.

[31] The situation here is totally distinguishable from that in *United States* v. *MCI Communications Corp. and BT Forty-Eight Company,* Civil Action No. 94–1317 (D. D.C., filed June 15, 1994). At the time of the consent decree settling that matter, the United Kingdom no longer owned a significant interest, much less a controlling interest, in BT. See *U.S.* v. *Sprint Corp.,* CIS, 60 F.R. at 44065. Consequently, the British government and its licensing and regulatory authorities (DTI and OFTEL) had no economic or financial interest in BT, MCI, or their joint venture.

[32] The modification proposed in the text presumes that Sprint, JVCo, FT, or DT, as the case may be, must secure ''an individual license'' before any Phoenix Alliance entity (including Atlas) may offer the particular U.S.-France/Germany service. DOJ should confirm that, if ''an individual license'' must be obtained by other U.S. providers (or their affiliates), then the Decree also requires one of the Phoenix entities to apply for and obtain a comparable ''individual license.'' DOJ needs to clarify that the Phoenix entities may not simply operate their service over FT's and DT's pre-existing telecommunications operators' licenses thereby evading the equal opportunity intent of Section II.C.

On the other hand, if the Decree contained a loophole allowing the Phoenix entities to bypass applying for any new French and German licenses and permitting them to rely solely upon FT's and DT's pre-existing operators' licenses, then some modification or clarification of Section II.C. would be essential. First, DOJ would need to clarify that Section III.C.3. applies even when the relevant ''individual license[s]'' for the Phoenix group are FT's and DT's pre-existing operators' licenses. Second, Section III.C. would need to be revised to impose on the Phoenix group a reasonable moratorium preventing Sprint and JVCo from offering the U.S.-France/Germany service (or providing facilities enabling FT or DT to offer that service) until the requisite ''individual licens[ing]'' procedures that other U.S. providers must go through had been ''established'' long enough that any providers applying promptly after those procedures took effect would also be licensed.

[33] Alternative (ii) in Section II.C.3. cannot be relied upon to close any loophole left available under alternative (i). Separated by the disjunctive ''or,'' subsections 3(i) and 3(ii) clearly are alternatives; both need not be satisfied, only one.

[34] Complaint ¶ 37 (emphasis added).

[35] Section II.E. of the Final Judgment in the BT–MCI matter required that the UK grant UK–US

Continued

be *three*.[36] Moreover, Section II.C.3. should be rewritten so that the revised first part of subsection 3 becomes the first requirement, the revised subsection (i) becomes the second requirement, and a revised subsection (ii) (discussed *infra*) becomes the third requirement.[37]

If subsection 3(ii)'s timely future licensing concept were retained as a complete alternative to the concept of simultaneous (or previous) licensing of competitors, it would open a potentially very significant loophole. Subsection 3(ii) requires licensing of Sprint's and JVCo's rivals ''within a reasonable time.'' If it turns out later (after Sprint and JVCo begin offering service) that US rivals remain unlicensed even though a reasonable time has expired,[38] the horse will be long gone from the barn and hardly susceptible to quick capture and return. The prospect that the court would actually order Sprint and JVCo to stop service to customers (and indeed terminate their contracts) seems quite remote—although that would be the correct result under the proposed decree. Thus, there is a substantial practical risk that subsection 3(ii) violations would not be remedied soon enough, if ever. To avoid that problem, it is important that *both* subsections 3(i) *and* 3(ii) be made separate mandatory obligations that stand on their own. In that way, there will be licensed competitors (three under our alternative approach, perhaps only one under the proposed Final Judgment) even if subsequent licensing of others is delayed.

4. Need To Require That All Subsequent License Applications be Processed at Least as Promptly as Sprint's and JVCo's

As explained *supra*, both subsections 3(i) and 3(ii) should be mandatory provisions, not optional alternatives to compliance with each other. Subsection 3(i), after being rewritten in the mandatory language we suggest, would require that at least three US international providers (or their affiliates) be licensed *before* Sprint and JVCo may offer their service. Subsection 3(ii), in turn, would require prompt processing of any *later-filed* applications by additional US providers beyond those licensed in accordance with subsection 3(i).

When rewritten, subsection 3(ii) should also be clarified in one important respect. As now written, the provision requires the license to issue ''within a reasonable time * * * unless the additional time is attributable to delay caused by the applicant.'' The provision should say ''*solely* attributable'' to take care of the situation where the French or German government imposes unfairly discriminatory conditions or information requirements and the applicant refuses to acquiesce in the discrimination, thus resulting in delay.[39]

* * * * *

To summarize the foregoing points, here is how Section II.C.3. should read in full:

3. If an individual license is required in France or in Germany to offer such a service (or one competitive with it),

(i) established licensing procedures (either the same as, or no more demanding of the prospective licensee than, those procedures applicable to the particular service offering of Sprint, Joint Venture Co., FT, or DT) are in effect as of the time that Sprint, Joint Venture Co., FT, DT, or their affiliate applied for the requisite license for the offering of the service, by which procedures other United States international telecommunications providers are also able to secure such a license (with requirements and conditions no more onerous than those imposed on Sprint, Joint Venture Co., FT, DT, or their affiliate); and

(ii) at least three major United States international telecommunications providers (including minimally AT&T and MCI or their affiliates) other than FT, DT, Sprint or Joint Venture Co. and unaffiliated with FT, DT, Sprint or Joint Venture Co. have secured such a license (with requirements and conditions no more onerous than those imposed on Sprint, Joint Venture Co., FT, DT, or their affiliate) in France and in Germany; and

(iii) other United States international telecommunications providers are also able to secure such a license within a reasonable time and in no event longer than it took Sprint, Joint Venture Co., FT or DT to obtain such a license, after having applied for such a license, unless the additional time is solely attributable to delay caused by the applicant.

B. Phase I's Facilities Ownership Prohibitions (Sections III.A.–B.) Must Be Modified and Clarified in Key Respects

Sections III.A.–B. are intended to ensure that, throughout Phase I of the Final Judgment, Sprint and JVCo gain no unfair advantage from FT's and DT's continuing government-protected infrastructure monopolies. Thus, Section III.A.(i) prevents Sprint and JVCo from ''acquiring an ownership interest in, or control over,'' facilities ''in'' France or Germany that are ''legally reserved to FT or DT.'' Section III.A.(ii) forbids Sprint and JVCo from ''acquiring an ownership interest in, or control over,'' international half-circuits ''terminating in France or Germany'' that are used for US traffic unless: (1) those half-circuits are ''no greater than the aggregate quantity'' that ''other providers unaffiliated with FT, DT, Sprint, or [JVCo] actually own and control,'' or (2) DOJ agrees that ''meaningful competition exists to such international half-circuits provided by FT or DT.'' Section III.B. prohibits Sprint and JVCo from investing in or controlling FT's and DT's Public Data Networks.

Phase I (as well as each of the foregoing Section III.A.–B. restrictions) expires on a country-specific basis when the relevant French or German government (1) removes all of the legal prohibitions on public infrastructure and switched voice competition and (2) licenses ''one or more'' entities unaffiliated with FT, DT, Sprint, and JVCo to (i) construct, own, and control domestic and international infrastructure, and (ii) provide switched domestic long distance voice services ''without any limitation on geographic scope or types of services offered'' and ''international voice service[s]'' between the US and that country. *See* Sections V.P.–Q. for definitions of Phases I and II.

To avoid the very sorts of anticompetitive problems described in the Complaint (discussed *supra*), these provisions must be modified and clarified in certain key respects.

1. ''Ownership Interest'' and ''Control'' Need Clarification

Section III.A. uses the terms ''own,'' ''ownership interest,'' and ''control.'' ''Control'' is defined to exclude ''publicly available leases or other publicly available uses of such facilities.'' ''[O]wn'' and ''ownership interest'' are not defined.

DOJ should clarify what constitutes an ''ownership interest'' or ''control,'' as

international simple resale (ISR) licenses to ''all qualified United States international telecommunications providers'' before MCI or Concert could provide BT facilities or services for a UK–US ISR offering. At the time, *seven* such US providers were identified. See *US* v. *MCI*, CIS, 59 F.R. 33009, 33021 n.12.

[36] If at least three US competitors or their affiliates do not seek licenses or are ''gaming'' the process to slow their own applications, presumably DOJ, the other parties, and the Court can agree to waive the requirement-of-three. See Section VIII.A.

[37] To be consistent with the anti-discrimination change that should be made in the first part of subsection 3, the revised second requirement (currently subsection 3(i)) should say: ''secured such a license (with requirement and conditions no more onerous than those imposed on Sprint, Joint Venture Co., FT, DT, or their affiliate).''

[38] The delay may be unexplained or may be attributable to various anticompetitive explanations, including the attempted imposition of discriminatory conditions on the rivals of Sprint and JVCo.

[39] DOJ should make clear that, in some situations, a ''reasonable time'' may actually be shorter than the time taken for processing the application of Sprint, JVCo, FT, or DT. Presumably action on that application will have resolve most or all general regulatory issues, permitting much faster processing of subsequent applications filed by others.

distinguished from ''publicly available leases [and] * * * uses.'' In the case of undersea cables, certainly an entity that holds title to the cable, or owns an equity interest in the corporation, partnership, or venture that holds title to the cable, has an ''ownership interest'' for purposes of Section III.A. Cable investments in the form of indefeasible rights of use (IRU) are long-term non-management rights generally obtained through private negotiation with the cable owner(s). IRUs provide ''control'' over half-circuits and should not be excluded from Section III.A. as ''publicly available leases or * * * uses.'' With respect to satellites used for international telecommunications, generally the owner is an international organization of sovereign states. Each member state commonly designates a single signatory carrier to obtain long-term transponder allotments. Surely the entity that either owns the satellite (or transponder) or signs a commitment for the transponder allotment ''owns'' or ''controls'' the uplink and downlink half-circuits in its country within the meaning of Section III.A.

Clarification along the foregoing lines is needed so that Sprint and JVCo are not able to find a loophole in Section III.A. that permits them to gain an anticompetitive cost advantage over competitors that lack their close affiliation with FT and DT. FT and DT are the only undersea cable owners (or IRU holders) ad international satellite signatories in France and Germany as of now.[40] Competition would be severely distorted if FT or DT could favor Sprint or JVCo with special cable IRUs and/or satellite circuit allotments priced at book value or some other level far under the long-term lease rates ''publicly available'' to their competitors.

2. The ''Aggregate Quantity'' Exception Requires Clarification

The first exception to Section III.A.(ii) says: ''except to the extent that, and in no greater than the aggregate quantity that, other providers unaffiliated with FT, DT, Sprint or Joint Venture Co. actually own and control such international half-circuits.'' The most reasonable reading of this exception is that Sprint and JVCo may own or control only the ''aggregate[d] quantity'' of half-circuits that any *single* ''other provider[]'' owns or controls. If, however, the provision enables Sprint and JVCo to own or control as many half-circuits as *all* ''other providers'' in the ''aggregate'' own or control, then the provision must be modified for the following reason. If half-circuit ownership is split among many ''other providers,'' Sprint and JVCo with far greater capacity than any other competitive provider will easily be able to divide and conquer. Facilities ownership/control gives a carrier lower costs and greater certainty about its costs than a carrier compelled to rely, in whole or in part, on leasing half-circuits. To be sufficiently attractive from price, technical, or other perspectives to elicit customer orders, a particular service offering may require a substantial number of half-circuits. If that number exceeds the maximum available half-circuits that any individual competitor other than Sprint/JVCo can readily acquire from FT and DT, obviously Sprint/JVCo's advantage deriving from the affiliation with FT and DT would unfairly distort competition. Section III.A.(ii) should be clarified to ensure that this cannot happen.

The first exception in Section III.A(ii) requires further modification or clarification to make clear that the term ''such international half-circuits'' means that the competitor's half-circuits are comparable and not inferior to Sprint/JVCo's half-circuits. The competitor's half-circuits should have the same technical features (bandwidth transponder power, etc.), belong to the same distribution mode (e.g., submarine cable compared to submarine cable), connect to the same or a commercially equivalent terminus (in the case of cable), and serve the same geographic area (in the case of satellite) as the Sprint/JVCo owned or controlled half-circuits. Otherwise, for example, Sprint/JVCo might be allowed to own/control undersea fiber optic cable half-circuits up to the aggregate number of the competitor's satellite half-circuits even though the former transmission mode is far preferable for trans-Atlantic voice communications. Similarly, Sprint/JVCo might benefit unfairly be being allowed to own/control undersea cable half-circuits that terminate in the most desirable locations whereas the competitor would be relegated to less desirable locations further removed from higher quality gateway switches and larger population centers.

3. The ''Meaningful Competition'' Exception Requires Clarification

Section III.A. provides a second exception *viz.*: if ''plaintiff and defendants agree that meaningful competition exists.'' DOJ needs to clarify that it will not ''agree'' unless such a conclusion is fully supported by a factual record developed after reasonable notice and opportunity for public comment.

4. The ''One or More Licenses'' Concept That Would Terminate the Facilities Ownership Prohibitions of Sections III.A. and B. Needs Revision

Sections III.A. and B. (like Sections III.C.–I.) automatically expire when Phase I, as defined, ends.[41] Under Sections V.P. and V.Q. of the proposed Final Judgment, Phase I terminates on a country-specific basis when (1) all legal prohibitions against entities other than FT and DT providing domestic and international infrastructure and public switched voice are removed, and (2) ''one or more licenses or other necessary authorizations'' are issued to entities unaffiliated with FT, DT, Sprint, and JVCo. The phrase ''one or more'' raises the same problem here as it does in Section II.C.3(i) *supra*. In the Section III.A.B. context, the interests of promoting competition would be seriously disserved if Sprint and JVCo could start owning and controlling French and German domestic and international infrastructure even when only a *single* competitor (and quite possibly a weak one or one antagonistic to AT&T, MCI, and US carriers) had been licensed. Section V.Q.(2) should be modified to say, in pertinent part, ''issued licenses or other necessary authorizations to at least three entities other than FT, DT, Sprint or Joint Venture Co. and unaffiliated with FT, DT, Sprint or Joint Venture Co. * * *.'' The provision should go on to say that the three should ''minimally include AT&T and MCI or their direct or indirect affiliates,'' (e.g., a BT joint venture with a German company, an AT&T/Unisource entity, etc.). This modification will provide assurance that the licensees providing alternatives to FT and DT will be vigorous and financially strong competitors and also that Sprint and JVCo will not obtain an anticompetitive advantage over their principal US competitors when Phase I expires.

C. The Principal Provision Prohibiting Discrimination During Phase I (Section III.D.) Requires Modification and Clarification

Although several other provisions are also intended to prevent FT and DT from unfairly favoring Sprint and JVCo,[42] the principal anti-discrimination provision is Section III.D., which has two parts. Section III.D.1. says Sprint and JVCo ''shall not purchase, acquire or accept from FT or DT any FT or DT Products and Services on any discriminatory basis for use in

[40] *See* Complaint ¶¶ 32, 35; CIS, 60 F.R. at 44071.

[41] *See* Section X.B. second sentence.

[42] *See e.g.*, Section III.C., III.E., III.I.; *cf.* Sections II.A.–7.

the offer, supply, distribution or other provision by Sprint or [JVCo]'' of any US-France/Germany telecommunications service. ''[D]iscriminatory basis'' means ''terms more favorable to Sprint or [JVCo] than are made available to other similarly situated'' US providers, i.e., providers ''that are generally comparable to Sprint and [JVCo] with respect to volume or type of FT or DT Products and Services purchased, acquired or accepted from FT and DT * * *.'' Section III.D.2. supplements Section III.D.1. by coming at the anti-favoritism issue from a different angle. Section III.D.2. says ''Sprint and [JVCo] may not benefit from any discount or more favorable term offered by FT or DT to any customer for FT or DT Products or Services, that is conditioned on Sprint or [JVCo] being selected'' as the US provider. These provisions require modification and clarification to eliminate possible loopholes in interpretation and enforcement.

1. The Failure To Bind FT and DT Directly as Parties to the Decree Is a Significant Flaw That Should Be Corrected

The stated purpose of Section III.D.1 is ''to prevent *FT or DT* from using their monopolies and market power in France and Germany to favor Sprint and [JVCo] in the provision of products and services that other providers must also have to compete effectively.''[43] A crucial deficiency of Section III.D.1. is that it is framed only in terms of what *Sprint and JVCo* may not ''purchase, acquire or accept'' from FT and DT but not also in terms of what *FT and DT* may not provide to them. FT and DT are not made defendants and, therefore, are not bound to comply with the prohibition against discrimination.[44] Although on its face Section III.D.1. is not limited to knowing or intentional receipt of discriminatory preferences, there is a substantial risk (absent clarification) that Sprint and JVCo will view their obligations as extending only to situations where they *know* they are beneficiaries of preferential treatment by FT and DT. Moreover, there is no provision expressly requiring Sprint and JVCo affirmatively to inquire of FT and DT in advance to make certain there will be no discrimination if they purchase, acquire or accept a particular FT or DT Product or Service. Instead, Sections II.A.1.–5. only require Sprint or JVCo, as the case may be, to determine and disclose what *it* is receiving from FT and DT in terms of interconnection, other services, accounting and settlement rates, and circuit and service provisioning and restoration (and also, under subsections A.2. and A.4., to disclose what FT and DT are providing to customers ''in conjunction with'' FT's and DT's distribution of JVCo services). Sprint and JVCo, therefore, will not necessarily know whether they have acquired FT or DT Products and Services on a discriminatory basis because they may not know what prices, terms, and conditions FT and DT have agreed to provide others.

A similar problem exists with respect to Section III.D.2. This provision fails to prohibit FT and DT (because they are not defendants bound by the decree) from offering discounts or other favorable terms to customers conditioned upon the customers using Sprint or JVCo as US provider. Section III.D.2. certainly does not say Sprint or JVCo must *know* of the ''discount or more favorable term'' and of the ''condition[ing]'' for the prohibition to come into play. Nonetheless, there is a substantial risk Sprint and JVCo will consider the Section III.D.2. obligation to apply only if they have such knowledge. Nothing in the Section or elsewhere imposes upon Sprint and JVCo an express affirmative obligation to obtain from FT and DT all the information necessary to determine that such conditional discounting (or other favoritism) has not occurred and will not occur. Section II.A.7. requires Sprint and JVCo to make disclosures only when they are in ''receipt of any information from FT or DT, or otherwise learn[ ] of any discount or more favorable term'' offered to customers by FT or DT on condition that Sprint or JVCo is selected as US provider. Under Section II.A.7., clearly there is no obligation imposed on FT and DT to provide the requisite information to Sprint and JVCo and apparently there is no obligation on Sprint or JVCo to insist that FT and DT provide such information to them.

To be effective, the decree should be revised to include FT and DT as parties and to make the anti-discrimination language apply directly to FT's and DT's actions in creating any discrimination as well as to Sprint's and JVCo's actions in accepting the benefits of discrimination.[45] In the event that cannot be accomplished, at a minimum the decree must be clarified to make certain that Sprint and JVCo understand their obligations apply *strictly* regardless of what facts Sprint and JVCo may or may not actually know or even have reason to know after due inquiry.

2. The Anti-Discrimination Requirements Should Stay in Effect for the Life of the Decree

According to Section X.B. (second sentence), Section III.D. automatically expires when Phase I of the Decree terminates. Under Sections V.P.–Q., Phase I ends when FT's and DT's monopolies lose their formal legal protection and ''one or more'' competing licenses are issued. Nothing in the Decree requires that France and Germany have in place at that time adequate laws and regulations preventing and remedying discrimination—as Section III.D. is supposed to do during Phase I. The Competitive Impact Statement recognizes that ''the [nondiscrimination] provisions of the Final Judgment are considerably more specific and comprehensive than any existing regulatory obligations applicable to Sprint, FT, or DT.''[46] Moreover, DOJ is rightly concerned that ''regulatory regimes in France and Germany are not fully developed'' and that, in any case, ''Joint Venture Co. may not be subject to direct or complete oversight by any United States, French or German telecommunications regulator.''[47] DOJ effectively acknowledges that the fact

[43] CIS, 60 F.R. at 44071 (emphasis added).

[44] Sprint and JVCo are defined so as not to include FT, DT, Atlas, or each other. *See* Sections V.O. and V.T.

[45] This situation is entirely distinguishable from *US* v. *MCI, supra,* where there was no need to make BT a party to the consent decree. The decree there had no substantive anti-discrimination obligation because BT already faced facilities-based and reseller competition, the UK government did not own any significant interest in BT (nor would it have an indirect ownership interest in MCI or the NewCo (Concert) joint venture) and thus had no conflict between its interest as owner and its interest as regulator; and there was an established UK regulatory regime that prevented undue discrimination. *See US* v. *MCI,* CIS, 59 F.R. at 33015, 33016, 33022–23.

DOJ said there: ''Persons affected by an undue preference or undue discrimination on the part of BT in violation of Condition 17 of BT's license, or other violation of BT's license, in favor of MCI or NewCo, may complain to the United Kingdom Office of Telecommunications for such relief as OFTEL is authorized to provide under the United Kingdom Telecommunications Act and BT's license. * * * Because * * * the telecommunications regulatory regime in the United Kingdom now embodies or is developing important competitive policies and safeguards, the United States concluded that it is possible to protect competition in these circumstances without placing specific antidiscrimination prohibitions in the proposed Final Judgment * * *.'' *i.d.* at 33022–23. By contrast, ''[h]ere, the competitive concern [particularly about discrimination and cross-subsidization] is * * * that [French and German] regulation is at present insufficiently developed to safeguard competition adequately by itself, in the absence of alternative telecommunications infrastructure that can be used by all competitors in France and Germany.'' *US* v. *Sprint,* CIS, 60 F.R. at 44076.

[46] CIS, 60 F.R. at 44071.

[47] *Id.*

''FT and DT continue both to be government-owned'' is a reason not to rely totally on the French and German governments to prevent discrimination by FT and DT.[48]

DOJ also has no basis at present to presume that European Union (''EU'') directives addressed to Member States [49] will somehow ensure by the end of Phase I that France and Germany have adequate anti-discrimination regimes and will deploy sufficient resources to enforce them. First, the proposed market-opening measures that the European Commission (''EC'') is considering are draft proposals [50] that may not be adopted in a form which ensures adequate anti-discrimination measures. Second, Member States, including France and Germany, have been tardy in implementing EC directives and have sometimes refused to implement them in full.[51] Third, as the CIS itself cautions, ''[i]t is not yet clear whether the EU's liberalization measures will confer any rights on providers from the United States.'' [52]

In short, there is no basis for trusting to a leap of faith that, when Phase I ends, there will be fully functioning and adequate anti-discrimination regimes in force in France and Germany protecting US and other competitors of FT, DT, Sprint, and JVCo. Section III.D. must be revised so that it runs for the life of the Decree. If France and Germany ultimately put into place sufficient substitutes for Section III.D., the parties could propose, subject to public notice and comment, a waiver or modification under Section VIII.

3. Section III.D.1.'s Definitions of ''Discriminatory Basis'' and ''Similarly Situated'' Require Clarification

Section III.D.1. says '' 'discriminatory basis' shall mean terms more favorable to Sprint or [JVCo] than are made available to other similarly situated United States international telecommunications providers * * *.'' DOJ should clarify that the word ''all'' implicitly modifies the phrase ''other similarly situated [US] * * * providers'' so that *all* such providers are protected against discrimination. In other words, if the favorable terms received by Sprint or JVCo are received by only one ''similarly situated'' US provider (or fewer than all ''similarly situated'' US providers), the receipt of such terms by Sprint or JVCo would still be on a ''discriminatory basis'' because other ''similarly situated'' US providers were unable to obtain comparable terms. If that were not a correct reading, FT and DT could circumvent the purpose of this provision by granting one (or a few) weak and ineffective US provider(s) the same favorable terms as received by Sprint and JVCo and denying such terms to the US providers that are Sprint and JVCo's principal competitors .

Section III.D.1. defines ''similarly situated'' to mean providers that are ''generally comparable to Sprint and [JVCo] with respect to the volume or type of FT or DT Products and Services purchased * * *, provided that volume and type are relevant distinctions in establishing service conditions.'' [53] The provision adds: ''Defendants shall make available to plaintiff all information that was available to them, whether possessed by them or obtained from FT or DT, in considering the relevance of such distinctions.'' It is critical that ''plaintiff'' (DOJ) be able to disclose that information to affected US providers so that they may comment upon whether an impermissible ''discriminatory basis'' exists. To remove any ambiguity, the beginning of the sentence should be revised to read: ''Defendants shall disclose to the United States all information. * * *'' By using the defined term ''[d]isclose'' (see Section V.F.), the sentence would make clear that the information will be disclosed through DOJ to interested US providers. If the sentence is not rewritten in this way, DOJ at least should clarify that the provision as written impliedly permits it to disclose the information to US providers.[54]

4. Section III.D.2. Needs Clarification

Section III.D.2. ''is designed to prevent Sprint and [JVCo] from receiving benefits of discrimination indirectly, through special deals or arrangements that FT and DT offer to customers in order to induce them to obtain services from Sprint or [JVCo], rather than through more favorable terms offered directly to Sprint [or JVCo] addressed by [Section] III.D.1.'' [55] Because FT and DT (or Atlas), rather than JVCo, will interface directly with the customer in the sale of JVCo services, this provision is of paramount importance in guaranteeing that FT and DT do not misuse their dominant home country positions to impair competition in the provision of US-France/Germany telecommunications services. Consequently, it would be helpful for DOJ to clarify that Section III.D.2. governs, inter alia, situations ''where FT or DT is acting as the distributor for Joint Venture Co.'' and FT or DT Products or Services are ''provided [to the customer] by FT in France or DT in Germany in conjunction with'' the distributed ''Joint Venture Co. services.'' [56] To guard against enforcement loopholes, DOJ should clarify that Section III.D.2's phase ''conditioned on'' covers not only express conditioning but also situations where the circumstances reasonably imply that the discount in FT or DT Products or Services is available only if the customer selects Sprint or JVCo products or services. DOJ should also make clear that, if the overall circumstances reasonably indicate the availability of the discount or more favorable term increased the customer's willingness to take the Sprint or JVCo product or service, that is enough to establish the proscribed ''condition[ing].'' DOJ should add that just because the FT or DT item offered to the customer at discount (or with some other preferential term) is formally covered by a different invoice or contract than the Sprint or JVCo product or service, hardly proves there has been no illicit ''condition[ing].''

D. The Restrictions Against Cross-Subsidy (Section III.F.) Should Be Extended to the End of Phase II and Strengthened

The stated purpose of Section III.F. is ''to ensure that the activities of Joint Venture Co. and Sprint are not subsidized by FT and DT.'' Yet, these vitally important restrictions

[48] *Id.*

[49] *Id.* at 44062–63.

[50] *See* Proposal for a European Parliament and Council Directive on Interconnection in Telecommunications Ensuring Universal Service and Interoperability through Application of the Principles of Open Network Provision (ONP), COM (95) 379 (July 19, 1995) (''*Draft Interconnection Directive*''); Draft Commission Directive of _____, 1996, amending Commission Directive 90/388/EEC, regarding the implementation of full competition in telecommunications markets (96/_____/EC) (July 19, 1995) (unofficial draft) (''*Draft Voice and Infrastructure Directive*'').

[51] *See* EC, DG, IV, *Communication by the Commission to the European Parliament and the Council on the Status and Implementation of Directive 90/388/EEC on Competition in the Markets for Telecommunications Services,* COM (95) 113 final (April 4, 1995) (''*1990 Services Directive Implementation Report*'') at 11, 20, 22, 34.

[52] CIS, 60 F.R. at 44063.

[53] DOJ should clarify that if ''volume and type of FT or DT Products and Services'' are *not* ''relevant distinctions in establishing service conditions,'' then a US provider is ''similarly situated'' to Sprint or JVCo if the provider and Sprint or JVCo are acquiring the same or ''generally comparable'' FT or DT Products or Services.

[54] The revision or clarification will also make clear that US providers will have access, through DOJ, to any ''justification of costs'' which Sprint or JVCo offer ''to rebut a claim of discrimination.'' *See* penultimate sentence of Section III.D.1.

[55] CIS, 60 F.R. at 44071.

[56] The quoted language, containing the ''in conjunction with'' concept, appears in Sections II.A.2. and II.A.4.

automatically expire at the end of Phase I. The Competitive Impact Statement (CIS) acknowledges that ''[e]xisting regulatory safeguards against cross-subsidization in France and German are very limited and have not prevented instances of massive cross-subsidy.'' [57] Under the decree, Phase I ends when French and German authorities eliminate FT's and DT's legal monopolies over domestic and international infrastructure and public switched voice and issue licenses to ''one or more'' competitors.[58] There is no requirement that French and German authorities also have in place regulations and enforcement resources adequate to prevent more ''instances of massive cross-subsidy.''

The formal termination of the legal monopolies and the issuance of one (or more) competitor licenses will not eradicate FT's and DT's incentive and ability to cross-subsidize. FT and DT have retained high market shares and considerable market power in data transmission even though competition has been allowed for a few years.[59] There is no reason to assume that the market power FT and DT have in the currently monopolized segments (such as public switched voice) will dissipate so fast after the arrival of Phase II that a strategy of predatory cross-subsidization will necessarily fail and therefore will not be attempted. The risk of cross-subsidization is not restricted to situations of 100% legal monopoly, but can also materialize where a company has substantial market power in one segment of its operations and the ability to absorb costs properly attributable to a more competitive segment. The type of rate regulatory scheme applicable to the segment where market power is present may actually exacerbate the company's incentive to cross-subsidize,[60] in addition to being ineffective in detecting and preventing cost-shifting by the company.

The CIS assumes that with the arrival of Phase II ''the EU authorities [will] have improved safeguards against cross-subsidy.'' [61] But, as the CIS also recognizes, EU directives are merely an ''overlay'' of requirements that mean very little unless and until Member States transpose them into national laws and then effectively enforce those laws.[62] Furthermore, ''[i]t is not yet clear'' whether EU measures (and, therefore, the requisite follow-on national laws) would ''confer any rights on providers from the United States.'' [63] Consequently, there is a significant risk that US providers may lack standing or adequate procedural rights to challenge suspected cross-subsidization. Moreover, FT and DT will remain at least majority-owned by their respective governments beyond the end of Phase I,[64] privatization being ''wholly at the discretion of the [M]ember [S]tates'' and not something the EU has sought to dictate.[65] As a consequence, there is a substantial risk that the French and German governments' ownership interests in FT and DT will deter those governments (as has happened up to now) from imposing and/or effectively enforcing regulations intended to detect, prevent, and remedy cross-subsidization.

To correct this major flaw, Section III.F. should be modified so that it remains effective for the entire life of the decree. Alternatively, the Section should be revised so that it expires only after the market-opening standards for starting Phase II are satisfied [66] *and* France and Germany have put into effect comprehensive measures for preventing, detection, and remedying cross-subsidization and have granted affected US and other providers adequate rights to complain about and receive prompt and complete injunctive and monetary relief for any cross-subsidization that does occur.

Section III.F.3. says that the required separate ''accounting systems and records of Joint Venture Co. will be made available pursuant to the visitorial provisions of Section VI.'' Section CI bars disclosure to the public, including certainly JVCo's competitors, of any information or documents obtained thereunder by DOJ. By its very nature, cross-subsidization is not something that a competitor can readily infer simply from knowledge of its own costs and what targeted customers may say they are being offered or charged by someone else. Consequently, DOJ cannot assume that JVCo's books will need to be examined only when DOJ receives a credible complaint from a JVCo competitor. Yet, given its limited resources and other priorities, DOJ is hardly in a position regularly to audit JVCo's financial records to discover any cross-subsidization. The decree needs to be revised so that interested parties, pursuant to a confidentiality commitment, many examine the JVCo records and bring any evidence of cross-subsidization to DOJ's attention. A possible (although less effective) alternative would be for the decree to provide that DOJ shall hire an independent auditor for regular audits at JVCo's expense.

E. The Restrictions Regarding Proportionate Returns and Correspondent Operating Agreements (Sections III.E. & G.) Should Be Extended to the End of Phase II and Strengthened

1. Proportionate Returns

Section III.E. is designed to prevent FT and DT from favoring their partially owned affiliate Sprint over other U.S. international carriers in returns of voice correspondent traffic. Because FT and DT are not Decree defendants, the obligation is imposed upon Sprint for the duration of Phase I not to ''accept'' returns from either FT or DT or ''accept or benefit from'' any methodology changes inconsistent with FCC proportionate return policies or which ''substantially favor[ ]'' Sprint over other U.S. providers. The CIS points out that the French and German regulators ''have not imposed any form of proportionate allocation requirement on their national carriers.'' [67] The Complaint correctly states that ''FT and DT, as a result of the proposed [investment and joint venture] agreements, will have an increased incentive and ability to direct their switched telecommunications traffic from France and Germany disproportionately to Sprint rather than other U.S. international carriers, either directly as part of the correspondent system, or outside that system through the Joint Venture Co. backbone network.'' [68]

As the proposed decree is now drafted, Sprint's Section III.E. obligation automatically expires when the French and German public switched voice and infrastructure markets are first opened to competition. DOJ does not (nor could it) presume that France and Germany will impose proportionate returns obligations to take effect when that happens. In fact, as indirect partial owners of Sprint (through their ownership of FT and DT), the French and German governments would have an interest in Sprint receiving preferential returns over AT&T, MCI, *et al.* It is wrong for the Decree to assume that the formal elimination of FT's and

[57] CIS, 60 F.R. at 44072.

[58] *See* Section V.Q.

[59] *See* Complaint ¶¶ 33, 36.

[60] A rate base, rate of return regulatory scheme would encourage the regulated entity to shift cost of its nonregulated businesses to its regulated business.

[61] CIS, 60 F.R. at 44072.

[62] *Id.* at 44062.

[63] *Id.* at 44063.

[64] *See* page 12, note 28, *supra*.

[65] *Id.*.

[66] The ''one or more'' licensee portion of the definition of Phase II also must be revised. *See* pages 27–28, *supra*.

[67] CIS, 60 F.R. at 44072.

[68] Complaint ¶ 40(c).

DT's legal monopolies and the mere licensing of ''one'' competitor (or even ''more'' competitors) will deter FT and DT from favoring Sprint or diverting correspondent traffic through their JVCo. Newly licensed entrants in public switched voice will need substantial time and effort to build up their international capacity to the point where it becomes a realistic alternative to FT and DT. Until that happens, FT and DT will not avoid favoring Sprint or JVCo because they fear retaliation by other U.S. carriers diverting returns to the new French and German international licensees.

In short, there is no basis for Section III.E. to expire at the end of Phase I. The obligation should be modified to run for the entire life of the decree.[69] Alternatively, the Section could be modified to run until *both* Phase I ends *and* the French and German governments promulgate (and demonstrate the intention to enforce) a proportionate returns requirement comparable to that in Section III.E.

2. Correspondent Operating Agreements

The Complaint says that, as a result of these proposed transactions, ''FT and DT will have an incentive to favor Joint Venture Co. and Sprint over their competitors, particularly new entrants and providers of new services, by denying operating agreements * * * or by offering such agreements on discriminatory terms.''[70] To address this concern, Section III.G.1. of the proposed Final Judgment forbids Sprint from offering any particular US correspondent service with FT or DT unless ''at least one other'' US international provider ''has also obtained an operating agreement with FT and DT for the provision of such service * * *.'' Once again, the Decree's failure to require more than ''one'' competitor is a major problem. Section III.G.2. attempts to remedy that problem by requiring Sprint to carry the correspondent traffic of any US provider that ''has requested but has not yet received an operating agreement with FT or DT * * *.'' Rates and terms and conditions for such substitute carriage by Sprint must be ''commercially competitive'' with those for the US providers that have operating agreements. The rate schedules must be annually updated to ''reflect the estimated value of any adjustments in proportionate return traffic that may be received by Sprint from France or Germany'' as a result of carrying the traffic originated by the US provider having no operating agreement. Section III.G.2. is limited to ''IDDD voice service or any other [correspondent] services that make use of the FT/DT PSTNs.''[71]

Like Section III.E. dealing with proportionate returns, Section III.G. automatically expires once Phase I ends. There is no basis for the apparent assumption that the problem to be remedied by Section III.G. will simply disappear on the day the first facilities-based domestic and international public switched voice competitor for FT and DT is licensed. It will take years for a newly licensed competitor to build up its facilities and geographic service areas to become an adequate and cost-competitive alternative to FT and DT for terminating US correspondent traffic. Given their continuing ownership of FT and DT (and derived ownership interests in Sprint and JVCo), the French and German governments may not impose and enforce a regulatory alternative to Section III.G.

Section III.G. should be modified so that it extends for the life of the decree.[72] As a next best alternative, Section III.G. could be modified so that it expires only when *both* Phase I terminates *and* the French and German governments promulgate (and demonstrate the intention to enforce) requirements that FT and DT not refuse to deal or discriminate in any way against Sprint's rivals in terms of correspondent operating agreements.

F. Provisions Requiring Access to Technical Interfaces (Section III.H.) and Public Data Network Protocols (Section III.I.) Should Be Extended to the End of Phase II and Broadened

As the Complaint explains, the investments in Sprint and JVCo will give FT and DT the incentive to use their market power over voice and data services and facilities to favor Sprint and JVCo.[73] Of particular concern is the danger of favoritism and discrimination ''in providing access to [FT's and DT's] local, domestic long distance and international telecommunications services and facilities and to their public data networks * * *.''[74] Sections III.H.–I. of the proposed Final Judgment are intended to address the technical side of the access problem, but they apply only during Phase I. The public interest requires that these provisions be strengthened and extended for the life of the Final Judgment.

1. Essential Modifications of Section III.H

Section III.H. in essence prohibits Sprint and JVCo, when providing services in the US that use FT or DT Products or Services, from accessing those Products or Services through ''any proprietary or nonstandardized interface or protocol'' if competitors cannot access the same Products or Services through ''a non-proprietary or standardized interface or protocol.'' By forbidding ''exclusive access,'' DOJ intends the provision to ''have a significant role in ensuring that competitors can obtain interconnection to the public switched [voice] networks in France and Germany.''[75]

There are two problems with Section III.H.'s approach. First, it provides no assurance that FT or DT will work cooperatively with Sprint's and JVCo's competitors when those competitors develop innovative services that need to interconnect with FT's and DT's networks through interfaces and protocols that are more technically advanced than FT's and DT's ''non-proprietary or standardized interface or protocol.'' By contrast, Section III.H. allows Sprint and JVCo to interconnect with FT's and DT's networks using ''proprietary or nonstandardized interface[s] or protocol[s].'' The anti-discrimination language in Section III.D.1.(iii)–(iv) does not expressly address this substantial risk of FT/DT technological favoritism toward Sprint and JVCo.

Second, making matters worse, Section III.H. automatically expires at the end of Phase I. This will occur even though the formal elimination of legal protections for FT's and DT's switched voice and infrastructure monopolies and the grant of ''one or more'' geographically unlimited voice licenses in each country will not instantaneously (if ever) establish alternative public switched networks as sufficient substitutes for FT's and DT's networks. Moreover, continuing French and German government ownership of FT and DT (and indirectly of Sprint and JVCo) does not augur well for government intervention to assure that

[69] If the French and German governments do in fact promulgate and effectively enforce a proportionate returns requirement, the parties could seek a modification or waiver under Section VIII of the decree, subject to public notice and comment.

[70] Complaint ¶ 40(b).

[71] Given the market power reflected in FT's and DT's public data networks (see Complaint ¶¶ 33, 36), this provision should be modified so as to afford protection for any non-voice correspondent services that are intended to interconnect with the FT and DT public data networks.

[72] The parties can always seek a Section VIII waiver or modification if the respective French and German governments establish and enforce a regulatory regime that accomplishes the same protection of fair competition intended by Section III.G.

[73] Complaint ¶ ¶ 2, 3, 31–36, 40(a)–(e).

[74] *Id* ¶ 3.

[75] CIS, 60 F.R. at 44073.

competitors will have access, not to mention the most technologically advanced access, to FT's and DT's public switched networks.

Plainly, the proper solution is to revise the decree the ensure that FT and DT cannot provide Sprint and JVCo more technologically advanced interconnection to their public networks and access to other FT and DT Products and Services. Further, the modified language should be applicable through the life of the decree, subject to Section VIII. waiver or modification proceedings conducted with adequate public notice and opportunity to comment.

2. Required Modifications of Section III.I

The public data ''counterpart'' to Section III.H.,[76] Section III.I. requires that FT's and DT's ''Public Data Networks that are based on the X.25 or any other protocol, continue to be available to all other United States international telecommunications providers on nondiscriminatory terms to complete data telecommunications between the United States and France and between the United States and Germany, and within France and Germany for traffic originating within the United States, France or Germany, using the X.75 standard protocol for interconnection between data networks, or any generally accepted standard network interconnection protocol that may modify or replace the X.75 standard.''

While this provision purports to assure ''nondiscriminatory terms,'' it leaves wide open the possibility that FT and DT will work cooperatively with Sprint and JVCo to develop advanced data services and a superior network interconnection protocol, but refuse to cooperate with their competitors who wish to engage in a similar innovative effort. The provision does not require cooperation nor forbid favoritism toward Sprint and JVCo in the level or degree of cooperation provided. Moreover, Section III.I. permits JVCo and Sprint to use interconnection protocols that may be more advanced than the ''X.25/X.75 protocols'' unless and until those advanced protocols become the new ''generally accepted standard.'' Of course, they may never become ''generally accepted'' if they remain proprietary and unavailable to others interconnecting the FT and DT data networks.

As ''the principal safeguard in th[e] proposed Final Judgment for competitive access to DT's and FT's public data networks,''[77] Section III.I. falls woefully short. Given that those networks have tremendous market power (although not 100% monopoly shares) because of FT's and DT's infrastructure monopolies and the governments' ineffective regulation,[78] and given the governments' continuing direct and indirect ownership interests, there is no basis for the decree to require anything less than across-the-board nondiscrimination by FT and DT in providing technical access to their data networks and in working to improve interconnection of data networks. Further, because the mere formal elimination of infrastructure monopolies and the issuance of ''one or more'' licenses at the end of Phase I will not instantly result in fully operating facilities-based alternatives to FT's and DT's public data networks, this Section III.I should be modified so that it runs through the life of the decree. A waiver or modification, pursuant to public notice and comment procedures, can always be sought under Section VIII., if and when conditions become appropriate.

III. Conclusion

DOJ should withdraw the proposed Final Judgment and undertake to negotiate a new decree along the lines of the modifications and clarifications set out in Part II of these Comments.

Dated: October 23, 1995.

Respectfully submitted,

David J. Saylor,

Hogan & Hartson, L.L.P.

Timothy R. W. Cowen,

British Telecommunications plc.

James E. Graf II,

BT North America Inc.

Attorneys for BT North America Inc.

Cable & Wireless Europe; Comments on Final Judgement of Department of Justice on Sprint Corp. Joint Venture—Phoenix.

Case 95–CV–1304

Exhibit D

Part I

Introduction

The position of Cable & Wireless Europe (C&WE) on the joint venture between Sprint Corporation, Deutsche Telekom AG (DT) and France Telecom (FT) known as ''Phoenix'', as notified is that it:

- is restrictive of competition
- poses a real risk of eliminating competition
- provides considerable potential to abuse a dominant position
- is not indispensable for addressing the target market

The Phoenix JV is restrictive of competition in that it effectively facilitates;

- the direct fixing of prices and other trading conditions
- the limitating or control of production, markets, technical development and investment
- market sharing between the parents
- discriminatory behaviour in the way the parents treat the JV and all other actual or potential competitors to the disadvantage of the latter.

It is inevitable that the effect of the Phoenix arrangements will be the coordination of prices by Sprint, DT and FT if it is to function as a one-stop-shop. Until now the relevant subsidiaries of DT, FT and Sprint have spearately set prices independently and competitively.

That Phoenix will engage in market sharing is clear from the published announcement of the European Commission (OJ C184 of 18.7.95) where it states:

''Phoenix products will be distributed by DT and FT in France and Germany, by Sprint in the United States and by the ''rest of Europe'' operating group in Europe''.

It is clear from the same published details that no attempt has been made to differentiate DT's and FT's monopoly activities from those activities open to competitive forces. This gives rise to a real threat that the assets of the monopoly will be leveraged into those areas where the notifying parties face competition. Such behaviour would be an abuse of a dominant position.

Section 10.6(b) of the Joint Venture Agreement submitted to the Department of Justice means that if a customer approaches FT and requests a private line service between France and, say the US, then FT should ''use commercially reasonable efforts to persuade'' the customer to use the JV for such services and must refer the request of the customer to the JV and its members if FT fails to convince the customer to purchase JV services. This is a clear abuse of a dominant position, and a pooling of information.

For example the published notification (OJ C184 of 18.7.95) states ''Phoenix products will be distributed by DT and FT in France and Germany * * *'' This means that the sales forces of the monopoly will promtoe the products of Phoenix giving the real possibility for illegal bundling and predatory cross-subsidies.

The Final Judgement of the Department of Justice on the JV recognised the substantial threats to competition in international telecommunications posed by the JV. The original structure of the JV provided a set of incentives for the relevant parties to behave in a discriminatory and anti-competitive manner to the advantage of themselves and to the disadvantage of all competitors, actual or potential. The most severe threats to competition posed by the JV are in the two home markets of the participating monopolies—Germany and France.

[76] CIS, 60 F.R. at 44073.

[77] *Id.* Section III.D.'s anti-discrimination language applies to ''FT or DT Products and Services,'' a category that expressly includes products or services needed for interconnection to ''FT/DT PSTNs'' but excludes ''services involv[ing] interconnection to the Public Data Network.'' Section V.L. (i) & (iv).

[78] *See* Complaint ¶ ¶ 32–36; CIS, 60 F.R. at 44061–62.

Any telecoms operator, from whatever home base, intending to address the global telecoms market must have an effective presence in the European Union. Germany and France in combination account for some 40% of the EU's telecoms market.

A large number of potential corporate customers have sizeable operations in the German and French markets and these potential corporate customers require global communications facilities in order to carry on their businesses. All potential or actual providers of the necessary communications capabilities must be able to offer cost effective and efficient telecoms services to these customers in these two markets if they are to provide a viable product. However in order to do so any competitor operator must deal with the relevant domestic monopolist.

Consequently, the monopolists in these markets could, if the incentives were in place, behave in a manner that would significantly distort competition in a vital part of the global market to the extent that competitors would not only be disadvantaged inside these markets but also be disadvantaged outside these marekts. Quite simply, if a competitor is unable to provide a cost effective solution in one vital segment of the global market it may be handicapped from gaining customers because these customers are seeking global (total) solutions to their communications needs.

Key Issues

In recognition of these conditions the Final Judgement of the Department of Justice proposed various restrictions on the JV, pertaining in particular to the conditions obtaining in Germany and France. Two questions arise:

- Are the restrictions adequate to ensure fair and undistorted competition so that all actual and potential competitiors have an equal opportunity of addressing the needs of the target customers in the relevant countries?
- Are the restrictions fully enforceable in the relevant countries?

Given the structure of the telecommunications services supply sector in the United States, the issue of adequacy does not present itself in the US. Furthermore, the question of enforceability does not arise in the United States because first, the parties do not hold monopoly positions in the US market and second, the Department of Justice has sufficient powers to ensure compliance with its decisions. The issues of adequacy and enforceability arise in the EU and in particular Germany and France. The restrictions of the Final Judgement appear to fall on both criteria.

Part III of these comments addresses the issues of adequacy and Part IV addresses the issue of enforceability.

Part II

Conditions in Germany and France

The principal markets of concern with respect to competition and access for competitor operators to the JV are France and Germany. This is clear both from the Final Judgement and from the brief details in the published (OJ C184 of 18.7.95) by the European Commission where it states ''Phoenix products will be distributed by DT and FT in France and Germany * * *''. This simple statement has ramifications for all actual or potential competitors in the provision of global telecoms services. Given the significance of these markets in the EU and the overall global telecoms market and the fact that the vast majority of the assets of DT and FT are located in Germany and France respectively, it is the conditions in these two markets that are the most relevant to the restrictions in the Final Judgement

(a) The situation in Germany. Self-evidently, DT holds a dominant position in all the most important product and service markets in the German telecommunications sector. The ''corporatisation'' of Deutsche Telekom AG (DT) into a joint stock company has made no material difference to its position on the German market or its effective relation with the Bundesministerium through the Bundesanstalt fur Post und Telekommunikation.

DT retains the exclusive legal right to supply public voice telephony as defined in the Services Directive (Directive 90/388/EEC), the major piece of specific legislation covering competition in telecoms services in the EU. All other services are legally open to competitive supply.

DT retains the exclusive right over the infrastructure necessary to deliver telecommunications services and, as the European Commission recognised in the *MSG Media Service* (Case IV/M.469) prohibition decision, owns and operates most of Germany's cable TV networks, which could provide an alternative source of infrastructure to competitors to DT.

DT is also the market leader in liberalised telecommunications services in the German market. According to the Services Directive, the monopoly in services only remains over the provision of telephony to the public, all the rest being ''liberalised''.

This fact is relevant to the restrictions enumerated in the Final Judgement of the Department of Justice. The press release of July 13, 1995 states on page 3 at bullet point 1 that the JV ''Cannot own, control or provide certain services until competitors have the opportunity to provide similar services in France and Germany.'' Under EU law the only service which remains the exclusive right of DT is public voice telephony. This implies that the Department's restrictions only apply to public voice telephony (the market fully controlled by DT). However, this service is not the target of the JV which seeks to attract corporate customers.

Therefore, there is some doubt as to the adequacy of the restrictions of the Department of Justice in its Final Judgement if these restrictions fall only on public voice rather than on liberalised services.

All competitors to DT in the liberalised sector have to lease infrastructure from DT if they wish to offer liberalised services. Equally, all competitors need to use DT for any switched traffic and call termination at interconnection (access) charge rates determined by DT. This state of affairs will continue in the future even when there are alternative providers of infrastructure given the ubiquity of DT. Therefore the costs of all competitors to DT in Germany are, and will continue to be, largely determined by DT.

This state of affairs has a substantial impact on the economics of any competitor to DT. Whereas it may be legally permitted to compete against DT it may not be economically feasible to do so. Again this reflects upon the restrictions of the Final Judgement. The ability of a competitor to gain a licence and to take advantage of the licence in a meaningful way are very different concepts in practice. Unlike the US and British telecommunications markets, there is no history in Germany of rate setting for leased lines and interconnection (access) charges by market mechanisms or developed regulatory intervention.

Also of relevance is the European Commission's ''Communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services'' (COM(95) 113). This is a status report on the degree of implementation of the Services Directive, which contains a report on conditions in Germany. As noted above this is the key piece of European legislation on liberalisation of telecoms.

In this document the Commission reported that the German Law of 14 September 1994 (*Postneuordnungsgesetz*—PTNeuOG) did not comply in full with the Services Directive. The new law did not reflect the definition of ''voice telephony'' of the Services Directive.

Consequently, since the new law did not reflect the definition of ''voice telephony'' of the Services Directive, DT has benefited from a monopoly definition that is wider than that sanctioned by the Services Directive. This has impeded competition in Germany by restricting the range of services competitors could offer to customers. Additionally, competition has been restricted by the failure to implement correctly Article 6 of the Directive causing delays in the use of some terminal equipment. These matters were only resolved following the intervention of the European Commission

Furthermore, the Commission's document found that the German Law did not implement in an appropriate manner Articles 6 and 7 of the Directive, of which the latter is the most important.

Article 7 of the Services Directive (Directive 90/388/EEC) instructs Member States to separate telecommunications regulatory and operational functions so that the regulatory body is independent of the telecommunications organisation.

The issue of Article 7 of the Services Directive does not appear to be fully resolved with the possibility that a regulator that is not independent may not act so as to prevent the restriction or distortion competition. This state of affairs concerning the non-implementation of the Services Directive has implications for the enforceability of the restrictions of the Final Judgement of the Department of Judgement in the Phoenix JV.

The absence of an effective regulator of DT was demonstrated in the case of the cross-subsidy from the monopoly sector into Datex-P. This case and the non-implementation of Article 7 of the Services Directive are

discussed in Part IV. DT has also been accused by its competitors (the Association of Private Telecommunications Operators) of cross subsidizing its leased line business. The draft new German Law for telecommunications is also discussed in Part IV as it has a bearing on the enforceability of the restrictions in the Final Judgement.

(b) The situation in France. The conditions in France are slightly less restrictive than those in Germany in that there has been some limited ''experimentation'' with alternative infrastructure. Nevertheless FT retains the exclusive legal right to supply public voice telephony as defined in the Services Directive and the exclusive right over the infrastructure necessary to deliver telecommunications services. FT is overwhelmingly dominant on the French market.

FT is the market leader in liberalised telecommunications services in the French market (e.g., paging), a position reinforced by the necessity for competitors to FT in the liberalised sector to have to lease infrastructure from FT and its subsidiaries if they wish to offer liberalised services. Equally, all competitors need to use FT for any switched traffic and call termination at interconnection charge rates determined by FT. The costs of all competitors to FT are largely determined by FT, both now and in the future. As with Germany, there is no history of cost based rate setting for leased lines and interconnection (access) derived from market forces or well developed regulatory intervention.

There is a strong doubt whether Article 7 of the Services Directive (Directive 90/388/EEC) has been implemented. For example, the French Regulator sits on the Board of FT and the regulatory function sits within the same Ministry that acts as the owner of FT. In these circumstances it is doubtful whether the French regulator is independent and there is a clear potential for a conflict of interest between promoting competition (and the interest of competitors) and defending FT from competition.

There are concerns that Colisee International behaves in an anti-competitive manner. The company is a subsidiary of FT which is engaged in reselling of the capacity of FT. Complaints about Colisee have been confirmed by the French regulator. The latter has found that:

- FT sells leased lines and the PSTN to Colisee at tariffs below the official list price whilst competitors to FT are forced to buy these inputs at the official published tariff.
- FT is offering Colisee direct access to its International Transit Centre but does not permit competitors similar access.

This behaviour is clearly abusive but the French regulator has not resolved the issues to the satisfaction of competitors to FT.

Part III

Adequacy of the Restrictions of Final Judgement of the Department of Justice

The restrictions detailed in the Final Judgement represent a sound and justifiable set that are appropriate to the circumstances, particularly on the trans-Atlantic route between the US and the two monopoly markets of Germany ad France.

However, these restrictions apply in part to services that competitors cannot legally supply in Germany and France. In the EU, the only service which remains the exclusive right of the monopolist is public voice telephony. Public voice telephony is supplied by DT and FT. This service is not the target of the Phoenix JV. All of the services of the target corporate customers are open to competition. Consequently, to the extent that the restrictions of the Final Judgement apply to services which are not the target of the JV, the restrictions are not adequate.

In other respects the restrictions contained in the Final Judgement are equivalent to a commitment on the parties to the JV to comply with the competition rules of the US and the EU—something to which the parties must comply in any event.

Whilst the monopoly of infrastructure remains in place in Germany and France, this monopoly can effectively limit access to networks in a way that excludes or severely restricts the possibilities of parties other than Sprint, DT and FT in the Germany and France even when the competition rules are adhered to. For example, DT and FT could charge non-discriminatory interconnection (access) but high charges to themselves and all competitors. As far as DT and FT are concerned, this would merely represent a transfer of funds from one part of the business to another. However, for competitors such charges are real costs that could limit the viability of their offerings.

This implies that the restrictions of the Final Judgement may not be adequate to achieve its objectives.

An adequate environment which would promote effective competition and thereby provide for the conditions in which the JV would not distort competition are listed below.

Legislative Framework

(a) Infrastructure. As has been made clear, the JV through the monopolies of infrastructure in Germany and France determine the costs (leased lines and interconnection) of all competitors on the relevant market. Equally, the monopolies of infrastructure allow the parties to the JV to control the functionality of competitors thereby determining the nature of offerings they can make to the market.

Competitors to the monopolists are at the same time major customers. Furthermore, this competitor/customer relationship means that competitors pass information on their customer to their monopoly competitors. Only the freedom of choice of infrastructure for all competitors would allow for competition to develop by allowing competitors more control over their costs and functionality.

Consequently, any remedy to the real risks to competition posed by the JV must include the acceleration of the liberalisation of infrastructure in Germany and France. Alternative infrastructure is available form cable TV operators and many utilities. The liberalisation of these facilities would enhance the prospects for competition. In this respect cable TV has a particular importance because it would provide an alternative to the local loop bottleneck.

To date both DT and FT (and the respective Governments) have exhibited a reluctance to support any such acceleration of the liberalisation of infrastructure.

(b) Interconnection. Even where alternative infrastructure is found, unavoidably competitors will use the assets of the monopolies for call termination and origination given the ubiquity of the monopolists. In these circumstances the terms for interconnection are of central importance if the access barrier is to

These terms of interconnection cover a wide range of matters, most of which are addressed in the European Commission's ''Proposal for a European Parliament and Council Directive on interconnection in telecommunications''.

Two issues of particular importance to the promotion of effective competition. There are:

- the points where interconnection is permitted.
- the charges for interconnection at these ponts.

Ideally these matters should be resolved through commercial negotiations. However the UK experience demonstrates that it is extremely difficult, if not impossible, to resolve these matters satisfactorily. Consequently, regulatory intervention is required.

In these circumstances the optimal solutions to these issues are the following:

- interconnection should be permitted at any technically feasible point within the hierarchy in the network rather than at a very limited number of points determined by the monopolist. This allows competitors to make choices and trade offs between functionality and costs
- interconnection must be charged in an unbundled manner, for only those assets or elements used in the network.

Whith respect to these interconnection charges it is appropriate that the competitor pays for the costs if causes. There are two dimensions to cost causality:

- the correct cost basis (level of the charge)
- the appropriate cost drivers (structure of the charge).

The correct cost basis for interconnection charges is Long Rung Average Incremental Costs (LRAIC), which is the methodology accepted by the UK regulator, Oftel.

The appropriate cost driver in telecoms is buy hour capacity. Competitors should therefore pay for the addition to busy hour capacity that they cause—termed Capacity Based charged (CBC).

Consequently, in order to promote effective competition and access the appropriate interconnection regime must be based on the principles of:

- interconnection at any technically feasible point
- LRAIC
- CBC.

Freedom of choice between competing infrastructure for service providers coupled with interconnection based on the principles outlined here would be necessary, though not sufficient, to permit the JV to go ahead. However, a second set of structural conditions also needs to be addressed.

Structural Change

Currently, no distinction has been made by the parties between the activities of the parent monopolies, DT and FT, and those of the JV. This absence of a separation gives rise to the real possibility for cross-subsidies from monopoly to competitive activities. The Datex-P case in Germany demonstrated the reality of this possibility. The absence of any separation also facilitates the pooling or transfer of information concerning customers and competitors.

The Phoenix notification is identical to the Atlas notification with respect to the absence of separation between the activities of the parent monopolies in Europe and Sprint. Consequently, the potential of Phoenix to prevent, restrict or distort competition and to behave abusively in the relevant market is substantial. This issue arises as a result of the absence of separation between monopoly and competitive activities.

The only feasible remedy is to impose the structural separation of Atlas and Phoenix from the parents. Such a structural separation should take the following form.

(a) Separation of monopoly and competitive products and services. Atlas and Phoenix should not be permitted to offer any product or service where there is any impediment (in terms of exclusive or special rights, licensing, authorisation, choice of infrastructure, conditions of interconnection) preventing an efficient competitor from supplying the same products and services. Effectively this condition would separate monopoly provided products and services from those in the competitive sector.

(b) Financial separation. There should be a complete financial structural separation between Atlas, Phoenix and the parents. The purpose is to provide for full transparency of the financial flows between Atlas, Phoenix and its parents and to safeguard against cross-subsidies. All services and products (including interconnection based on the principles outlined above) provided by the parents to the JVs (and vice versa) to be supplied at published tariffs and available to all competitors at identical terms and conditions.

(c) Other separation. The parents should not be permitted to transfer to the JVs any proprietary, customer, competitor or market sensitive information, or any other asset including all types of telephone numbers, which would give the JVs a competitive advantage. Only when the parents give 30 days notice to all competitors of such a transfer, and offer to supply competitors on exactly the same terms and conditions, should such transfers be permitted.

The feature of each of these types of separation is that they facilitate transparency and equality of treatment between the parents, Atlas, Phoenix and all competitors.

Whilst most of these conditions fall outside the jurisdiction of the Department of Justice, the Department should look towards substantial progress on these matters if the JV is not to distort competition and impede competitive entry to the key German and French markets for all potential entrants.

PART IV

Enforceability of the Restrictions of Final Judgement of the Department of Justice

Given that the Department will need to co-operate with the National Regulatory Authorities in Germany and France in order to effectuate an enforcement of its restrictions, it is important that these authorities are appropriately constituted.

It is questionable whether Article 7 of the Services Directive (concerning the independence of the Regulator) has been implemented in either Germany or France with important ramifications for the enforceability of the restrictions contained in the Final Judgement as they impact on the German and French markets.

The judgements of the European Court of Justice (ECJ) of 27 October 1993, the *Taillandier* (C–46/90) and *Decoster* (C–69/91) cases are pertinent to this particular matter. These judgements mean that two different services within the same Ministry performing the regulatory and operational functions does not comply with the requirements of Article 7 of the Services Directive. The judgements of the ECJ mean that there should be a real and not just a formal separation of functions. The ECJ has therefore decided that the operational and regulatory bodies should not both be answerable to the same Minister.

Currently, in both France and Germany the relevant Ministry effectively acts as both owner and regulator (the ''corporatisation'' of DBPT having no effective meaning in this matter). This condition does not comply with the European Services Directive and can act as a major impediment to the development of competition. There is the potential for a conflict of interest between the Ministry as regulator pursuing polices that promote effective competition and the Ministry as owner pursuing policies that protect the perceived value of the monopoly. Equally, there is a potential for a conflict of interest where the regulatory sits on the board of the monopolist.

Further, the Department of Justice should take particular note of the Datex-P case in Germany.

According to press reports 1994 (see for example *Financial Times* 26-May-94), the Bundeskartellamt (BKA) carried out an investigation into the affairs of Datex-P (which operates in the liberalised telecommunications sector) in Germany. These reports stated that the BKA found a cross-subsidy from the monopoly activities of DT (then called DBP–T) to Datex-P amounting to some DM 2 billion (allegedly a sum that exceeded the turnover of all competitors combined).

Normally, abuse of a dominant position of this magnitude would lead to the imposition of several penalties on the perpetrator and the payment of damages to injured parties. However, this has not occurred in the case of Datex-P. This is because the then DBP–T did not fall under the jurisdiction of the BKA and was therefore not fully subject to Germany's strict competition laws. This situation could only be acceptable if DBP–T was subject to similar controls to those of the BKA being exercised by the National telecommunications regulatory authority (NRA). However, this was not the case.

The NRA in Germany is the Bundesministerium Fur Post und Telekommunikation. The German telecommunications law of 1989, the Postverfassungsgesetz, (PVG) defines the tasks and organisation of this Ministry. Under the PVG, the Minister appoints one third of the members of the Supervisory Board of DBP–T/DT. The approval of the Minister is required for all the important decisions of DBP–T/DT (including presumably the Phoenix and Atlas JVs.). The same Minister defines the long term objectives of DBP–T/DT and earmarks the funds necessary for the development of telecommunications.

The Minister is responsible for the appointment of the official acting as the regulator of the sector, and as events have demonstrated, for the dismissal of the official.

In these circumstances the independent character of the NRA is not fulfilled as required by Article 7 of the Services Directive and the ECJ cases cited. DT is not regulated by an independent NRA neither is it regulated by the competition laws of Germany. In these circumstances it is possible for Datex-P to avoid the normal punishments for such anti-competitive behaviour.

The draft German law on the future regulation of telecommunications (*Diskussionsentwurf für ein Telekommunikationsgesetz* of 31.5.95) is silent or vague on the following key issues:

- equal access
- numbering portability and numbering in general
- licensing processes, appeal procedures, arbitration etc.
- duct/trench-sharing, mandatory or otherwise
- Ministry policy on international voice telephony
- principles applying to tariff policy and proposals for rebalancing.

Decisions on each of these subjects will have a substantial impact on the development of effective competition and access. For example there will be a major difference with respect to effective market access if the Ministry's policy on international voice favours a duopoly or full competition.

A policy on the critical commercial issue of interconnection has yet to be developed and this represents a serious impediment for the prospects for effective competition.

According to § 22 of the German Law against Restraints of Competition licensees which are dominant operators, or have a market share of at least 25%, may be required to provide certain universal services. Again this prospect gives rise to serious doubts concerning the development of effective competition and market access. § 22 could be used as a tax on success and certainly provides an incentive for competitors to stay below the 25% threshold. § 22 is incompatible with the development of effective competition and should be withdrawn.

Interestingly, if an operator cream-skims (*Mehrerlösabschöpfung*) deliberately or out of negligence contrary to a decree under § 32 issued by the NRA, it could be required to pay an equivalent sum to the NRA (§ 33). § 32

works in a manner that distorts the development of effective competition and should be withdrawn.

As yet therefore, there are very serious doubts as to whether the emerging regulatory environment in Germany is appropriate for effective competition and effective market access to all potential entrants. In these conditions it is inappropriate to allow Phoenix to proceed.

The new regulatory environment in France has not yet been defined and we are therefore unable to provide any information on it. A consultation document on the future regulatory environment is anticipated in November 1995. Would be inappropriate to permit Phoenix to proceed before this regulatory environment is known.

It would be instructive for the DoJ to examine the regulatory history and environment in the UK. Here we have a government committed to competition in telecoms, an independent regulator and a liberal regime.

Despite these apparently favourable conditions, over the last decade, Mercury Communications Ltd (the major challenger to BT) has found it extremely difficult to compete on a fair basis with BT. Mercury has never reached an interconnection agreement with BT, even though to do so would benefit Mercury. It has always been forced to seek a determination from the Office of Telecommunications (OFTEL). Interconnection charges have not been based on the correct cost basis. Mercury has had to pay Access Deficit Charges which OFTEL recognise as a severe distortion of the market. This concept is now popular with the monopolists in the rest of Europe. Furthermore, Mercury's functionality has been severely restricted by the limits on the technical point of interconnection with BT.

Consequently, the lesson from the UK is that even under a regime which favours competition the monopolist can substantially impede the process of competition.

Part V

Conclusions

The Final Judgement of the Department of Justice on the JV recognised the substantial threats to competition in international telecommunications posed by the JV.

In recognition of these conditions the Final Judgement of the Department of Justice proposed various restrictions on the JV, pertaining in particular to the conditions obtaining in Germany and France. Two questions arise:

- Are the restrictions adequate to ensure fair and undistorted competition so that all actual and potential competitors have an equal opportunity of addressing the needs of the target customers in the relevant countries?
- Are the restrictions fully enforceable in the relevant countries?

However, it appears that the restrictions are directed at an area of activity which the JV will not address (public voice telephony). In these circumstances the restrictions of the Final Judgement fail the adequacy test. Consequently, the restrictions will not bring about effective competition and effective market access.

There are also doubts with respect to the enforceability of the restrictions because there is a question mark over the independence of the regulators in Germany and France. Furthermore the absence of a regulatory regime, for interconnection and other vital matters, which would foster effective competition and effective market access in either country does not support the need for enforceability.

In Part III of these comments a set of conditions which would promote effective market access were presented. The most important of these concern infrastructure and interconnection. The Department of Justice should look for substantial progress on these matters before permitting the arrangements between Sprint, DT and FT to progress.

The Department of Justice should set the following minimum conditions before allowing Phoenix to proceed:

- the liberalization of alternative infrastructure including cable televisions
- interconnection at any technically feasible point
- interconnection charges based on LRIC and CBC

Additionally the structural issue needs to be addressed. The minimum conditions required in this respect are:

- Phoenix should not be permitted to offer any product or service where there is any impediment (in terms of exclusive or special rights, licensing, authorisation, choice of infrastructure, conditions of interconnection) preventing an efficient competitor from supplying the same products and services.
- there should be a complete financial structural separation between Atlas, Phoenix and the parents.
- the parents should not be permitted to transfer to the JVs any proprietary, customer, competitor or market sensitive information, or any other asset which would give the JVs a competitive advantage which are denied to competitors

Any remedies less demanding than those listed here would not be sufficient to address the ability of the JVs to prevent, restrict or distort competition and to behave abusively in the relevant market.

* * * * *

October 24, 1995.

Donald J. Russell, Esq.,
Chief, Telecommunications Task Force, Antitrust Division, Room 89104, 555 Fourth Street, NW., Washington, DC 20001

Re: United States v. Sprint Corporation and Joint Venture Co., Civil Action No. 95–1304 (D.D.C. filed July 13, 1995)

Dear Mr. Russell: On behalf of ACC Corp., we transmit an original and five (5) copies of its comments in the above-referenced proceeding. We regret that necessary coordination with overseas counsel delayed this filing until today, but we hope that you will be able to consider the comments on their merits. To avoid any prejudice to the defendants, copies of these comments are being sent by facsimile to the counsel identified below.

Should there be any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

Helen E. Disenhaus,

Counsel for ACC Corp.

Of Counsel:

Francis D.R. Coleman, Esq.,

Secretary and Corporate Counsel, ACC Corp.

October 24, 1995.

Donald J. Russell, Esq.,
Chief, Telecommunications Task Force, Antitrust Division, Room 89104, 555 Fourth Street, NW., Washington, DC 20001

Re: United States v. Sprint Corporation and Joint Venture Co., Civil Action No. 95–1304 (D.D.C. filed July 13, 1995)

Dear Mr. Russell: On behalf of ACC Corp. (''ACC''), a United States international telecommunications common carrier based in Rochester, New York, we submit these comments on the above-referenced proposed Consent Decree. ACC's comments chiefly describe certain initiatives undertaken by its subsidiaries in Germany and France in furtherance of its proposed domestic and international resale service offerings in these countries.

Currently pending before the Federal Communications Commission (''FCC'') are applications of ACC's wholly-owned subsidiary, ACC Global Corp., for authority pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, to provide international switched telecommunications services over international private lines on the U.S.-Germany and U.S.-France routes. See FCC File Nos. I–T–C–95–056; I–T–C–95–059. In an effort to keep the FCC apprised of relevant developments in Germany and France, ACC has regularly provided the Commission with updated chronologies reflecting significant contacts with the national regulators in those countries and with Deutsche Telekom (''DT'') and France Telecom (''FT''). The most recent chronologies, which are also being filed this day with the FCC by copies of this letter submitted for inclusion in the application dockets and the Sprint/DT/FT docket, are attached. Also attached is a copy of a letter sent to M. Bruno Lassere, of the DGPT in France, that summarizes ACC's analysis of the permissibility under existing French law of resale competition in France.

As a general matter, ACC has been actively pursuing opportunities for resale competition in both Germany and France. With respect to Germany, ACC has confirmed with senior officials of the Ministry of Posts and Telecommunications that resale competition is currently permissible in Germany under certain terms and conditions. ACC has also met with officials of DT to discuss implementation of such resale service in the near-term. While ACC has been encouraged by the recent interest shown by Ministry officials in its proposal, ACC is concerned that DT has been dilatory in scheduling follow-up meetings to address the issue and may be attempting to avoid giving substantive consideration to the proposal.

ACC therefore urges the Department to condition entry and the effective date of the proposed Consent Decree on DT's opening its services to resale competition to the extent permissible under current law in Germany, with DT agreeing to cooperate in the resale service implementation program to the extent necessary.

With respect to France, ACC is still exploring with DGPT officials the feasibility of resale competition under current French law. While ACC has had several productive meetings with regulatory officials, ACC is concerned about the lack of progress in France. As shown by the enclosed summary of the relevant legal issues, however, there should be no legal impediments to implementation of limited resale in the manner proposed by ACC in the near term. ACC also, therefore, urges the Department to condition entry and the effective date of the proposed Consent Decree on FT's opening its services to resale competition to the extent permissible under current law in France, with FT agreeing to cooperate in the resale service implementation program to the extent necessary.

ACC firmly believes that resale competition in domestic and international services abroad as well as in the U.S. is critical to ensuring that competition in the U.S. market is not adversely affected by the formation of global alliances by the world's largest facilities-based carriers. The FCC has long recognized the benefits of resale competition in ensuring that consumers in all market segments receive the economic benefits of a competitive telecommunications market. ACC is not asking for exclusivity with respect to resale competition but merely for a general lowering of unnecessary entry barriers that adversely affect competitive entrants.

ACC therefore urges the Department to condition entry and the effective date of a Consent Decree on the availability of market participation by U.S. carriers in all market segments in which such competitive entry is lawful, even if such entry is dependent upon DT and FT's taking affirmative steps to facilitate such entry before full services and infrastructure competition is lawful in Germany and France.

Very truly yours,

Helen E. Disenhaus,

Counsel for ACC Corp.

Of Counsel:

Francis D. R. Coleman, Esq.,

Secretary and Corporate Counsel, ACC Corp.

October 24, 1995.

Mr. Bruno Lasserre,
Director General of Posts and Telecommunications, Ministry of Industry, Posts and Telecommunications and Foreign Commerce

Dear Mr. Lasserre: As agreed at our September 22 meeting in your Paris office, ACC is pleased to provide you with the following summary of its legal research on the extent to which France Telecom (''FT'') may voluntarily delegate part of its telephone service monopoly to ACC under current French law:

- French law gives FT the benefit of a monopoly over the provision of real-time switched voice telephone services over the French PSN. (Articles L32, L33.1, L34.1 of Code of Post & Telecommunications, Article 3 of Law 90–568 of 2 July 1990 and Decree n°90–1213 of 29 December 1990.) Such services constitute, according to a legal tradition in the field of telecommunications in France, a public service mission entrusted to FT.
- To perform its public service mission, FT may form a subsidiary (Article 7 of Law 90–568 of 2 July 1990; Article 32 of Decree 90–1213 of 29 December 1990) which is part of FT's ''group of companies'' to provide services (as opposed to infrastructure) including switched voice telephone services.
- The concept of a ''group of companies'' is not defined in French corporate law. Accordingly there is no legal requirement that FT be the sole shareholder of such a subsidiary.
- However, it is reasonable to conclude that under French law the subsidiary would be considered a member of FT's ''group of companies'' if three criteria were met; (a) if FT owned a majority of the capital and voting rights of the subsidiary; (b) if FT held the power to appoint a majority of the members of the Board of Directors of the subsidiary; and (c) if FT had preponderant control over the management of the subsidiary. It should be possible for these conditions to be met even though ACC had minority ownership, operational involvement, and certain acceptable protective legal mechanisms with regard to the subsidiary.
- Such protective legal mechanisms for ACC could include those which apply now, and those which applied with FT's service monopoly decreased or ceased.
- The provision of public services (on FT's public infrastructure) by such a subsidiary would require the favorable opinion of the Public Service Commission for Posts & Telecommunications and the approvals of the Minister of Post & Telecommunications and the Minister of Economy & Finance (Article 32 of Decree 90–1213 of 29 December 1990).
- Such public support, or the absence of it, by the French government could be highly significant and persuasive in France, Europe, and the United States.

ACC Corp. would welcome an active dialogue with your office and with FT to explore the creation of an FT/ACC subsidiary in accordance with the above research at your earliest convenience.

If you have any questions, please do not hesitate to contact me.

Best personal regards.

Sincerely,

ACC Corp.

Francis D.R. Coleman,

Secretary and Corporate Counsel.

FDRC/csg

cc: Helen Disenhaus, Esq.
Scott Blake Harris, Chief-International Bureau, FCC
Diane J. Cornell, Chief-Telecommunications Division, FCC
Mr. Mickey Kantor-U.S. Trade Representative
Anne K. Bingaman, Esq., Assistant Attorney General, DOJ
Donald J. Russell, Chief-Telecommunications Task Force, DOJ

French Chronology

September 11, 1995

Informal discussion with Monsieur Lasserre at luncheon in Washington, D.C. prior to his remarks on anticipated changes in France's telecommunications regulatory framework. A meeting with ACC in Paris was agreed to for the near future.

September 12, 1995

Letter from ACC Corp. to Monsieur Lasserre requesting a meeting in Paris on September 22 to continue a dialogue on domestic and international resale for France.

September 22, 1995

Meeting at the DGPT with Monsieur Lasserre and Madam Niclot attended for ACC by Mr. Francis Coleman and Mr. Michael Taylor and Mr. Lucien Rapp of the law firm of Serra, Michaud & Associes. Monsieur Lasserre agreed to receive ACC's analysis of the extent to which portions of France Telecom's switched voice telephony monopoly might be delegated to independent third parties such as ACC with regulatory approval. At Monsieur Lasserre's request, ACC outlined the manner in which this issue was moving forward in Germany and agreed to provide copies of relevant correspondence to Monsieur Lasserre. Monsieur Lasserre expressed great interest in ACC's progress with Deutsch Telekom and the German Ministry and indicated that information on such progress could be relevant in France.

September 26, 1995

Letter from ACC Corp. to Monsieur Lasserre thanking him for the September 22, 1995 meeting, confirming that German correspondence would be sent to him shortly, and expressing the desire to continue discussions with him and his staff so that suitable progress could be made.

October 4, 1995

Letter from ACC Long Distance UK Ltd. to Monsieur Lasserre enclosing copies of ACC's correspondence with Deutsch Telekom and the German Ministry.

October 18, 1995

ACC's legal counsel in Paris receives request from Monsieur Lasserre for status of ACC's legal analyses of extent to which portions of France Telecom's service monopoly might be delegated to ACC.

October 24, 1995

Letter to Monsieur Lasserre (with copies to DOJ, FCC, and USTR) summarizing ACC's legal analyses (i.e., extent to which portions of France telephone service monopoly might be delegated to ACC with France governmental approvals) and requesting support for further progress.

Chronology—ACC France International Simple Resale Application

3 November 1994

Meeting between ACC Corp. and France Telecom to discuss the provision of domestic

simple voice resale and international simple voice resale in France.

10 November 1994

Submission of application by ACC Corp. on behalf of ACC France (a company in the process of being registered under French Law) to the French Ministry of Industry Ports, Telecommunications and External Affairs (Direction de la Reglementation Generale des Postes et Telecommunications (''DGPT'')) to provide domestic simple resale services in France and international simple resale services on the France-U.S. route, and for commercially reasonable interconnection to the public switched telephone network.

14 November 1994

ACC Corp. letter to France Telecom requesting support for ACC France's domestic simple resale services and international simple resale services application submitted to the DGPT, as well as for ACC France's request for commercially reasonable interconnection to the public switched telephone network.

16 November 1994

Submission of application by ACC Global Corp. to the Federal Communications Commission for authority to resell private lines for the provision of switched services interconnected to the PSN at both ends and at one end only between the United States and France.

18 November 1994

Response from Monsieur Bruno Lasserre, Director General of DGPT, to ACC-France's application for domestic and international simple resale dated 10 November 1994. Response raises public voice telephony regulatory issues and equivalency issues between France and the United States, and invites ACC-France to meet with Ms. Niclot, Head of Network and Fixed Services, DGPT.

2 December 1994

Letter from ACC-France to Monsieur Bruno Lasserre acknowledging letter of the 18th of November and confirming meeting with Ms. Niclot to discuss ACC-France's application of 10 November.

14 December 1994

Meeting with Ms. Claire Niclot, Head of Network and Fixed Services, DGPT, to discuss the parameters of services that ACC Corp. may provide to the general public and interconnection with France Telecom.

23 December 1994

Letter from ACC Corp. to Mr. Guillaume, Directeur Juridique, France Telecom advising him of ACC Corp.'s desire to discuss commercially reasonable interconnection with France Telecom.

23 December 1994

Letter from ACC Corp. to Ms. Claire Niclot seeking interpretation of services that ACC Corp. may provide in France under current French law. ACC Corp. also requests Ms. Niclot's view on when France Telecom's monopoly on voice services to the general public will likely be relaxed.

4 January 1995

Letter from Ms. Claire Niclot in response to ACC's letter of December 23, 1994, discussing regulatory issues and extending an invitation for further discussions.

13 January 1995

Letter from Congressmen Thomas Bliley, Chairman of the House Committee on Commerce; Jack Fields, Chairman of the House Subcommittee on Telecommunications and Finance; and Bill Paxon, House Subcommittee on Telecommunications and Finance member, to FCC Chairman Reed E. Hundt urging Chairman Hundt ''to press forward as strongly as possible to open [the French market] to the United States telecommunications providers.''

30 January 1995

Letter from ACC in response to Ms. Claire Niclot's letter of January 4, 1995. ACC expresses its pleasure for the opportunity to meet with Ms. Niclot to investigate further the regulatory issues raised in ACC's letter of December 23, 1994, and in Ms. Niclot's letter of January 4, 1995.

2 February 1995

Letter from Monsieur Bruno Lasserre, Director General, DGPT, to ACC inviting ACC to meet with him to discuss ACC's application and the services that ACC would be permitted to offer in France under appropriate interpretations of current French law and regulations. The purpose of the meeting would also enable Monsieur Lasserre to discuss with ACC the steps currently being considered to introduce regulations in contemplation of the liberalization of telecommunications in accordance with EU proposals.

5 February 1995

Monsieur Bruno Lasserre, Director General of DGPT, requests ACC's French counsel to continue discussions with the DGPT and, to this end, to schedule a meeting with Ms. Claire Niclot.

8 February 1995

Letter from ACC's French counsel to Monsieur Bruno Lasserre requesting him to meet with Mr. Francis Coleman, General Counsel of ACC, and Mr. Michael Taylor, Secretary of ACC Long Distance (U.K.) Limited, in Paris during the week of March 13, 1995.

2 March 1995

Letter from ACC Corp. to Monsieur Lasserre confirming a meeting with Monsieur Lasserre on March 15, 1995 and stating ACC's interest in obtaining approval to provide domestic and international simple resale in France. ACC's letter also raises the question of the extent to which France Telecom can voluntarily delegate to ACC any portion of its reserved switched voice telephony service monopoly.

2 March 1995

Letter from ACC Corp. to Monsieur Emmanuel Guillaume, Directeur Juridique, France Telecom, seeking a meeting to explore the extent to which France Telecom can voluntarily delegate any portion of its monopoly to third parties.

15 March 1995

Meeting at the DGPT with Monsieur Lasserre and Madam Niclot attended by Mr. Francis Coleman and Mr. Michael Taylor of ACC. Mr. Coleman reviewed the role of resale as an important and additional way to ensure competition and avoid the pitfalls of duopoly network pricing. Monsieur Lasserre reviewed the scope of France Telecom's switched voice telephony monopoly and the extent, if any, to which France Telecom may delegate portions of that monopoly and stated that France Telecom would not be permitted to delegate any portion of this monopoly. Invitation extended to Monsieur Lasserre and Madam Niclot to visit ACC's operations in the U.K. and the U.S.A.

15 March 1995

Meeting at France Telecom with Monsieur F. Guilbeau and Monsieur Jean-Francis Thomas attended for ACC by Mr. Francis Coleman and Mr. Michael Taylor. Purpose of meeting to discuss the timetable of liberalization of services and infrastructure in France and the benefits to France Telecom and the public of resale as a competitive service. Invitation extended to France Telecom to send a delegation to visit ACC's operations in the U.K. and the U.S.A. in April. The invitation was accepted. Purpose of trip will be to learn more of ACC's activities and ACC's competitive position in relation to other carriers. Future and continuing meetings are anticipated.

September 11, 1995

Informal discussion with Monsieur Lasserre at luncheon in Washington, D.C. prior to his remarks on anticipated changes in France's telecommunications regulatory framework. A meeting with ACC in Paris was agreed to for the near future.

September 12, 1995

Letter from ACC Corp. to Monsieur Lasserre requesting a meeting in Paris on September 22 to continue a dialogue on domestic and international resale for France.

September 22, 1995

Meeting at the DGPT with Monsieur Lasserre and Madam Niclot attended for ACC by Mr. Francis Coleman and Mr. Michael Taylor and Mr. Lucien Rapp of the law firm of Serra, Michaud & Associes. Monsieur Lasserre agreed to receive ACC's analysis of the extent to which portions of France Telecom's switched voice telephony monopoly might be delegated to independent third parties such as ACC with regulatory approval. At Monsieur Lasserre's request, ACC outlined the manner in which this issue was moving forward in Germany and agreed to provide copies of relevant correspondence to Monsieur Lasserre. Monsieur Lasserre expressed great interest in ACC's progress with Deutsch Telekom and the German Ministry and indicated that information on such progress could be relevant in France.

September 26, 1995

Letter from ACC Corp. To Monsieur Lasserre thanking him for the September 22, 1995 meeting, confirming that German correspondence would be sent to him shortly, and expressing the desire to continue discussions with him and his staff so that suitable progress could be made.

October 4, 1995

Letter from ACC Long Distance UK Ltd. to Monsieur Lasserre enclosing copies of ACC's correspondence with Deutsch Telekom and the German Ministry.

October 18, 1995

ACC's legal counsel in Paris receives request from Monsieur Lasserre for status of ACC's legal analyses of extent to which portions of France Telecom's service monopoly might be delegated to ACC.

October 24, 1995

Letter to Monsieur Lasserre (with copies to DOJ, FCC, and USTR) summarizing ACC's legal analyses (*i.e.*, extent to which portions of France telephone service monopoly might be delegated to ACC with France governmental approvals) and requesting support for further progress.

Chronology—ACC Germany International Simple Resale Application

2 November 1994

Meeting between ACC Corp. and Deutsche Bundespost (''DBP'') Telekom to discuss the provision of domestic simple voice resale and international simple voice resale in Germany.

2 November 1994

Meeting between ACC Corp. and the Federal Ministry of Posts and Telecommunications (''BMPT'') to discuss the provision of domestic simple voice resale and international simple voice resale in Germany.

14 November 1994

Submission of application by ACC Corp. on behalf of ACC Deutschland gmbh (in the process of formation) requesting authority from the BMPT to provide domestic simple resale services and international simple resale services on the Germany-U.S. route.

14 November 1994

ACC Corp. letter to DBP Telekom requesting support for ACC Deutschland's application for authority to provide domestic simple resale services and international simple resale services, submitted to the BMPT, and stating ACC Deutschland's request for commercially reasonable interconnection to the public switched telephone network.

16 November 1994

Submission of application by ACC Global Corp. to the Federal Communications Commission for authority to resell private lines for the provision of switched services interconnected to the PSN at both ends and at one end only between the United States and Germany.

22 December 1994

ACC Corp. letter to DBP Telekom regarding arrangement meeting to commence negotiations for an interconnection agreement.

5 January 1995

Phone conference between ACC Corp. and the BMPT. BMPT noted that ACC Corp.'s German application requesting authority from the BMPT to provide domestic simple resale services and international simple resale services on the Germany-U.S. route is under review.

13 January 1995

Letter from Congressman Thomas Bliley, Chairman of the House Committee on Commerce; Jack Fields, Chairman of the House Subcommittee on Telecommunications and Finance; and Bill Paxon, House Subcommittee on Telecommunications and Finance member, to FCC Chairman Reed E. Hundt urging Chairman Hundt ''to press forward as strongly as possible to open [the German market] to the United States telecommunications providers.''

5 June 1995

Letter from Francis Coleman to Herr Hefekauser enclosing a paper setting out the key areas that would comprise an arrangement with DBP Telekom providing for commercially reasonable interconnection to the PSN and confirming a meeting with Herr Hefekauser on June 16, 1995.

7 June 1995

Letter from Francis Coleman to Herr Hefekauser setting out a proposed rebiller scenario for discussion at the June 16, 1995 meeting.

7 June 1995

Letter from Francis Coleman to Herr Feier of the BMPT setting out a proposed rebiller scenario for discussion at a meeting scheduled from June 16, 1995.

8 June 1995

Letter from Francis Coleman to Dr. Manfred Witte of the BMPT confirming June 16, 1995 meeting.

16 June 1995

Meeting at the BMPT. Representing the BMPT was Herr Knobloch. Representing ACC were Francis Coleman and Michael Taylor.

The proposed rebiller scenario with DBP Telekom was discussed. Herr Knobloch confirmed that the BMPT did not find the scenario as presented to be contrary to the existing German regulatory framework. Herr Knobloch suggested that ACC, as a next step present the proposed rebiller scenario to DBP Telekom and request a proposed tariff for BMPT review and approval.

16 June 1995

Meeting with Herr Hefekauser, Christophe Dreier and Gerhard Horter of DBP Telekom attended by Francis Coleman and Michael Taylor. ACC and DBP Telekom discussed the proposed rebiller scenario and ACC informed DBP Telekom that the BMPT had found no regulatory prohibitions to prevent DBP Telekom from entering into a rebiller arrangement with ACC subject to BMPT review and approval of terms and tariffs. DBP Telekom and ACC agreed that ACC would provide further details and information requirements to proceed with discussions.

28 June 1995

Meeting with DG IV at the European Commission. Representing DG IV were Dr. Stefan Rating, Madam Suzette Schiff-Cockborne, Mr. Rein Wesseling and Mr. Kevin Coates. Representing ACC were Francis Coleman and Michael Taylor. Francis Coleman spoke about the benefits of resale as a means of introducing switched voice telephony competition prior to January 1, 1998.

Francis Coleman also updated those present on the German Ministry's confirmation of ACC's ability to enter into a rebiller arrangement with DBP Telekom in Germany.

8 August 1995

Letter from Michael Taylor to Herr Hefekauser setting out the benefits to DBP Telekom of appointing ACC as a rebiller and requesting tariff details including payment terms and billing information required for ACC to bill its customers.

9 August 1995

Letter from Michael Taylor to Herr Knobloch confirming ACC's ability to enter into a rebiller arrangement with DBP Telekom in Germany.

22 August 1995

ACC meeting with Bruce Rogers (Telecommunications officer at U.S. Embassy in London reporting directly to the U.S. Ambassador). Michael Taylor of ACC provided an update on ACC's initiatives in Germany.

6 September 1995

Oftel Director General Donald Cruikshank gives speech to Euro-Forum in Dusseldorf entitled ''Liberalisation and the Promotion of Competition in Infrastructure and Services: Lessons from the UK Experience.'' Mr. Cruikshank describes ''* * * how the UK opened up [its] regime to U.S. resale companies, starting with ACC back in 1992 * * *'' (Page 9) and states that ''* * * ACC, our first licensed International Simple Resale company back in 1992, have now applied to engage in resale in Germany. I wish them every success over here and hope that the authorities here will be far-sighted and quick footed enough to recognize the benefits that such foreign investment, experience, and entrepreneurship can bring to the German economy (page 12).

13 October 1995

Francis Coleman of ACC Corp. invited by FCC to October 17 meeting at FCC offices in Washington with Prof. Dr. Stephan Schrader, Telecommunications Advisor to Minister Botsch, following a meeting between the FCC and Minister Botsch in Bonn the week of September 25.

17 October 1995

Francis Coleman of ACC Corp. meets with Prof. Dr. Stephan Schrader to discuss resale in general and ACC's strategy and efforts to become a rebiller under contract to Deutsch Telekom now, as approved in principle by the German Ministry last June. Mr. Coleman requested Dr. Schrader to encourage Minister Botsch's office to strongly support ACC's efforts now.

23 October 1995

As suggested by Dr. Schrader, Mr. Coleman sends letter to Prof. Dr. Eberhard Witte at Ludwig Maximilians Universitat in Munchen, Germany, requesting discussions in furtherance of ACC's efforts to become a

German rebiller. Dr. Witte chairs a seven person Committee reporting to Minister Botsch on German telecommunications deregulation.

October 24, 1995.

Donald J. Russell, Esq.,
Chief, Telecommunications Task Force, Antitrust Division, Room 89104, 555 Fourth Street, N.W., Washington, D.C. 20001

Re: United States v. Sprint Corporation and Joint Venture Co., Civil Action No. 95–1304 (D.D.C. filed July 13, 1995)

Dear Mr. Russell: On behalf of Esprit Telecom United Kingdom Limited, we transmit an original and five (5) copies of its comments in the above-referenced proceeding. We regret that the unexpected absence from his office of the company's European counsel delayed this filing until today, but we hope that you will be able to consider the comments on their merits. To avoid any prejudice to the defendants, copies of these comments are being sent by facsimile to the counsel identified below.

Should there be any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

Helen E. Disenhaus,

Counsel for Esprit Telecom United Kingdom Limited.

Of Counsel:

David E. Reibel,

Corporate Counsel, Esprit Telecom Benelux B.V., World Trade Center.

October 24, 1995.

Donald J. Russell, Esq.,
Chief, Telecommunications Task Force, Antitrust Division, Room 89104, 555 Fourth Street, N.W., Washington, D.C. 20001

Re: United States v. Sprint Corporation and Joint Venture Co., Civil Action No. 95–1304 (D.D.C. filed July 13, 1995)

Dear Mr. Russell: On behalf of Esprit Telecom United Kingdom Limited (''Esprit''), which recently received from the Federal Communications Commission (''FCC'') authority pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, to operate as a United States international facilities-based carrier (see FCC File No. I–T–C–95–435), we submit the following comments on the proposed Consent Decree filed in the above-referenced action.

Esprit and its affiliates have provided value-added and liberalized services in Europe since 1992. As documented in comments filed with the FCC by Esprit and by third parties, Esprit's attempts to enter and compete in the German and French markets have met with serious obstacles imposed by the dominant carriers, Deutsche Telekom (''DT'') and France Telecom (''FT''), and their respective national regulatory authorities. Esprit is therefore concerned that the restrictive provisions and reporting conditions of the proposed Consent Decree will be insufficient to prevent DT and FT from continuing to use their monopoly power in the still-reserved leased line and voice services market segments, as well as their dominant positions in all services in their home markets, to impair the ability of new entrants to compete in those markets.

Moreover, as a new entrant in the U.S. international services market, Esprit is particularly concerned that the proposed alliance with Sprint Corporation (''Sprint''), by allowing DT and FT to leverage their market power in their home markets, will limit competition in the U.S. international services market. DT and FT will be uniquely advantaged because their joint venture will be able to provide end-to-end international services (including but not limited to those on the U.S.–Germany and U.S.–France routes) that are foreclosed to their competitors. This advantage is increased by the fact that DT and FT have already stymied many of the efforts of potential competitors to establish themselves in the German and French markets as providers of enhanced and liberalized services. At the very least, German and French regulators should make a commitment to license competitors on an expedited basis, with the implementation of joint venture services suspended while applications from new entrants filed within 60 days of the entry of any Consent Decree in this action remain pending.

Moreover, as a condition of entry of a Consent Decree, DT and FT should be precluded from predatory pricing of end-user services and should be required to provide leased lines at wholesale, cost-based rates on an expedited and priority basis to competing carriers. DT and FT should not be allowed to provide leased lines for end-to-end joint venture services unless they provide leased lines in a non-discriminatory manner, including ensuring that joint venture services are not provisioned while competitors' service orders remain unfilled. Competitors must receive equal treatment with respect to all terms and conditions affecting service, including price and provisioning intervals.

While the Phase I conditions proposed by the Department go farther than the conditions imposed on the British Telecommunications alliance with MCI, they may not go far enough to avoid the alliance's having an adverse impact on competition. The Department acknowledges the current limitations on the effectiveness of the German and French regulators. Because the Department but not competitors will have access to the only information providing any degree of transparency into DT, FT, Sprint, and joint venture costs and prices, the Department must be prepared to thoroughly review on an expedited basis all data filed with it and to utilize such data in promptly considering competitor complaints. When colorable complaints are presented to the Department, it must be prepared to provide complainants the necessary data to support their claims unless the Department immediately implements remedial action. Because of the dependence of competitors on interconnection with the carriers' networks and access to the carriers' facilities, without vigorous oversight and enforcement by the Department, mere reporting conditions and abstract prohibitions against preferential treatment of alliance affiliates are insufficient protection against discrimination. Unless the Department undertakes an aggressive role in entertaining and investigating complaints of anticompetitive conduct, the Consent Decree will be little more than a piece of paper.

Some of Esprit's specific concerns about the anticompetitive conditions in the German and French telecommunications markets are briefly described in Attachment A, which also includes a copy of comments filed by Esprit before the FCC, as well as some recent trade press addressing these issues. Esprit would be pleased to meet with officials of the Department to discuss these concerns and possible additional competitive safeguards that would promote continuation of the vigorous competition now exhibited by the U.S. telecommunications market and promote expanded competition aboard.

Very truly yours,

Helen E. Disenhaus,

Counsel for Esprit Telecom United Kingdom Limited.

Of Counsel:

David E. Reibel,

Esprit Telecom, World Trade Center.

Concerns of Esprit Telecom About the ''Phoenix'' Alliance Among Sprint Corporation, Deutsche Telekom, and France Telecom

The experiences of the Esprit Telecom (''Esprit'') companies in attempting to compete in the French and German telecommunications markets as providers of enhanced and liberalized telecommunications services demonstrate that without regulators committed to a competitive telecommunications market and effective regulatory oversight, Deutsche Telekom (''DT'') and France Telecom (''FT'') will continue to be able to exercise their market power to forestall effective competition. Moreover, upon consummation of the Phoenix joint venture, their market power will be enhanced by the addition of Sprint Corporation (''Sprint'') to their alliance. Unless the Department undertakes an aggressive continuing oversight program, the Phase I restrictions and reporting requirements included in the proposed Consent Decree will be inadequate to prevent anticompetitive conduct that will affect not only the domestic markets in Germany and France, but also the U.S. and worldwide international telecommunications markets.

As the Department recognizes, unlike the situation in the United Kingdom at the time the British Telecom/MCI venture was approved, neither France nor Germany has a well-established, effective regulator committed to a competitive marketplace, and restrictive entry barriers have limited competitors to a few narrow niche services rather than to competition in all service categories. The Department should therefore give serious consideration to expanding the prophylactic measures included in the proposed Consent Decree to ensure that the Phoenix Alliance results in a net increase in telecommunications competition rather than promoting the development of a marketplace composed exclusively of a few international behemoths that function as an oligopoly.

In particular, Esprit's concerns focus on the following issues:

Regulatory Transparency—It is critical that France and Germany implement regulatory systems that provide transparency by affirmatively disseminating information about licensing procedures, cost accounting/orientation, tariffs, interconnection regimes, and infrastructure use and development. Current *ad hoc* procedures disadvantage new entrants by making it difficult for them to find out about, much less take advantage of, market entry opportunities, as well as by limiting their ability to challenge discriminatory conduct by the dominant providers.

Effective Enforcement—The Department has recognized the serious adverse implications of the fact that, while France is planning to establish an independent regulatory body, one is not yet in place. Similarly, as the Department recognizes, the independence of the German regulator is uncertain, especially in light of questions raised about the continuing involvement of key officials with DT.

It is also of major concern that neither DT nor FT has been privatized, raising a substantial conflict of interest for regulators in both countries, who are employed by governments with a vested interest in the profits of DT and FT. Given this motivation for continued preferential regulatory treatment of the state-owned national carriers, the Department must ensure that there are in place effective measures for ensuring a fair hearing of challenges to regulatory actions even when such challenges raise the issue that the regulator has impermissibly favored the dominant carrier.

Esprit's concerns in this area are particularly great because there is considerable doubt as to whether the national carriers and the national regulators in Germany and France have in the past fully complied with European Union and national laws affecting telecommunications regulation and competition. As detailed in the attached letter submitted last November to the EU's Director-General of DG–IV, the Competition Directorate of the European Commission, Esprit strongly opposes rewarding non-compliant national carriers and governments by allowing them to exploit new opportunities while they benefit from violations of existing law. These concerns are particularly relevant here, because the European Commission has itself cited several deficiencies in the implementation by Germany and France of the current Services Directive. Additionally, it appears that neither DT nor FT has complied fully with the Leased Line Directive (94/44/EEC), which, under Article 10(2), required the regulators of Member States to ensure that their telecommunications operators implemented and effective cost accounting system by December 31, 1993. Nor do the regulators appear to have complied even with the requirements of Article 10(1) of that Directive, which required compliance with basic principles of cost orientation and transparency. As a direct result of these deficiencies in regulatory oversight, consumers and competitors have been—and continue to be—overcharged for leased lines, and there is insufficient information to permit effective review of possible occurrences of cross-subsidization.

The Department should therefore ensure, at the very least, that both countries have established independent regulators prior to U.S. approval of Phoenix by the FCC and the District Court. Approval should also be conditioned on the establishment by the countries' competition agencies of procedures for expedited consideration of complaints of anticompetitive conduct, as well as the availability of remedies before the European Union and its regulatory agencies. Additionally, the Department should exercise continuing oversight of the competitive practices of Phoenix and its members. The Department should entertain complaints of, and be prepared to take appropriate remedial actions with respect to, anticompetitive activities by Phoenix members, regardless of whether the challenged activities actually occur within the U.S.

Cross-Subsidization—As a competitor and potential competitor of DT and FT, Esprit is also particularly concerned about the carriers' opportunities for cross-subsidization that can facilitate both unreasonably high wholesale rates and predatory pricing of end-user customer prices. Absent effective national regulators with broad authority and interest in ensuring that such cross-subsidization is both prohibited and prevented, competition will not flourish.

DT and FT must be required to demonstrate that they have priced their services and those of the joint venture on the basis of well-documented costs, without lowering prices to end-users in a predatory manner or discriminatorily raising prices charged competitors. Issues of cross-subsidization arise at both the ''macro'' and the ''micro'' levels.

With respect to ''macro'' cross-subsidization, the marketplace and the regulators must have full information about any start-up investments, transfers of assets, bank guarantees, loans, and other occasions of cross-subsidization. They must receive guarantees and time commitments for implementation of specific measures designed to prevent such cross-subsidization and its anticompetitive consequences, including the provision of sufficient information to allow competitors to challenge pricing effectively. One major concern of many potential new entrants is that Atlas/Phoenix will attempt to increase its market share quickly by ''dumping'' telecommunications services at prices below their actual costs (*i.e.*, engage in ''predatory pricing''). Evidence of such pricing practices has already been apparent to firms that have initiated competition in the limited market segments now open to them.

Similarly, new entrants are at a substantial disadvantage in that in many cases they must lease lines from the dominant operators. Not only does this provide opportunities for carriers with market power to delay provisioning or provide inferior quality circuits, but also it provides an opportunity for the dominant carriers to substantially increase the operating costs of their competitors. For a carrier such as Esprit, leased line costs may account for 40%–50% of the company's operating costs. but such costs may be dramatically changed at the whim (or the will) of the dominant carrier, which has a substantial opportunity for cross-subsidization.

At the ''micro'' level, both DT and FT have been found to have cross-subsidized their telecommunications services when competition enters a market segment. The record before the Department includes evidence concerning the substantial fine recently imposes on DT for cross-subsidization of its data services, and Worldcomm has been attacking DT cross-subsidization in Germany for some time. Similarly, as indicated in the attached article from La Monde Informatique, French regulators have found FT to be cross-subsidizing with monopoly revenues the activities of FT's competitive subsidiary, Colisée International. In addition to implementation of prophylactic measures to ensure that such activities do not continue, appropriate compensation should be made to adversely affected consumers and competitors as a pre-condition to approval of the Phoenix alliance.

Availability of ''Alternative'' Infrastructure—While we understand that both Germany and France are accelerating the availability of alternative infrastructure, these market segments should be fully liberalized before Phoenix is implemented. Not only should alternative infrastructure be available from public utilities and cable television operators, as is currently planned in the relatively near-term, but also competitors such as Esprit should be allowed to provide their own infrastructure (and the availability of this option should be made public information, without the necessity of *ad hoc* initiatives and narrow rulings limited to a single operator).

The availability of such alternative sources of circuit capacity will do much to prevent anticompetitive leased line provisioning by dominant carriers, and therefore it is critical that there be written commitments to authorize complete infrastructure competition in the near-term. Moreover, in the meantime, prior to its availability, DT and FT should be required to provide high quality leased lines in timely fashion and at cost-based prices to competitive carriers.

Interconnection Arrangements—Perhaps the greatest obstacle to implementation of a competitive marketplace is the absence of an effective regulatory regime that will ensure that the dominant carriers provide in timely fashion interconnection arrangements that are cost-based, feature-rich, and transparent across networks. Before Phoenix is approved, the Department should insist that, pending publication of the European Commission's forthcoming interconnection directive, both DT and FT publish proposed interconnection plans that include standard terms and conditions, cost-based tariffs, quality standards, and provisioning intervals, and that these proposals are made subject to public comment and scheduled for regulatory consideration on an expedited basis.

Conclusion

The Department is correct in insisting on detailed reporting of information to ensure

that the members of the Phoenix alliance act in a non-discriminatory manner vis-a-vis their competitors. At this time, neither Germany nor France has in place the types of detailed accounting rules established by the Federal Communications Commission to ensure transparency into carrier cost accounting and tariffing. Nor is there any transparency as to the carriers' terms and conditions of service provisioning. Mere reporting, however, is insufficient to address Espirit's substantial concerns about regulatory transparency, effective enforcement, cross-subsidization, availability of alternative infrastructure, and availability of proper interconnection arrangements.

The Department should seriously consider adding to the proposed Consent Decree the described above recommendations of Esprit. Additionally, it should make a clear-cut commitment to vigorous oversight and enforcement of the activities of the Phoenix joint venture and its members. To the extent that the reporting requirements of the Decree deny competitors access to critical information necessary to document the basis of their complaints of discrimination, the Department must assume an active role in reviewing all the data presented to it and must address complaints in timely fashion. Only if the Department undertakes this level of continuing oversight can approval of the alliance increase rather than substantially lessen competition in the international telecommunications services market.

21 November 1994.

Mr. Claus-Dieter Ehlermann,

Director General, DG–IV, Commission of the European Union, Rue de la Loi 200, B–1049 Brussels, Belgium

Re: Telecommunications Alliances

Dear Mr. Ehlermann: I am writing to request that you consider the following principles that Esprit Telecom proposes ought to be used for evaluating telecommunications alliances in Europe prior to Commission approval:

- The Commission should not permit the formation of alliances if a monopoly member is not fully compliant with all aspects of Commission directives. In particular, monopoly members should comply with the Open Network Provision (ONP) and the implementation of related liberalisation legislation. (Even the most basic provisions, such as those requiring cost accounting have not been achieved by many monopoly providers.)
- The Commission should not permit the formation of alliances if a National Regulatory Authority under which a monopoly member operates has not fully complied with Commission directives. Moreover, the Commission should not permit operators to join alliances while continuing to violate their own national regulations and laws.

The failure of Member States to fully implement Commission directives has permitted some monopoly operators to benefit from a protected home market—often with the aid of their national regulatory authorities—while aggressively pursuing opportunities in liberalised markets abroad. Esprit Telecom believes that if the objective criteria outlined above are utilised by the Commission, a more rapid and comprehensive liberalisation of the European market can be achieved. Esprit Telecom believes that liberalisation is a precondition for providing consumers with more choices and lower costs.

Sincerely,

Michael Potter,

President.

Federal Communications Commission

Opposition of Esprit Telecom, U.K., to Sprint Corporation Petition for Declaratory Ruling

In the Matter of: Sprint Corporation Petition for Declaratory Ruling Concerning Sections 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended. File No. I–S–P–95–002.

I. Introduction

Esprit Telecom, U.K. (''Esprit''), by its undersigned counsel, submits its Opposition to the Petition for Declaratory Ruling (''Petition'') of Sprint Corporation (''Sprint'')[1] seeking confirmation that its ''Global Partnership'' arrangement with France Telecom (''FT'') and Deutsche Telekom (''DT'') does not violate the Communications Act or the Commission's Rules. Specifically, Sprint seeks confirmation that (1) its formation of a ''Global Partnership'' with DT and FT and the related investment in Sprint by DT and FT does not involve a transfer of control within the meaning of Section 310(d) of the Communications Act; (2) a level of 28% foreign ownership in Sprint is not inconsistent with the public interest under Section 310(b)(4) of the Communications Act; and (3) the transaction is otherwise consistent with the public interest.

As explained below[2] Esprit strongly opposes approval of Sprint's Petition prior to the introduction of switched voice competition in France and Germany and the establishment of independent regulatory bodies in France and Germany that can and will effectively enforce regulations, including those relating to transparency of cost information and imputation of costs, that are designed to prevent anticompetitive behavior.

II. Statement of Interest

Esprit, owned and controlled by United States citizens, is a wholly-owned subsidiary of Esprit Telecom (Jersey) Limited, which is organized under the law of Jersey, Channel Islands, in the United Kingdom. While it has recently applied for authority to enter the U.S. telecommunications market as a common carrier,[3] Esprit operates primarily as a value-added services provider to large and medium-sized business users in the European telecommunications market. Specifically, in the U.K. Esprit provides to large and medium-sized businesses a wide range of value-added, switched and dedicated, voice and data services liberalized by the U.K. government. In continental Europe, Esprit's affiliates[4] provide value-added private network and facsimile services in Spain, Belgium, the Netherlands, and France, again serving primarily large and medium-sized business users. To date, however, Esprit has made no progress in its efforts to provide in Germany the value-added services liberalized by the European Union (''EU''), and it has experienced increasingly high leased line provisioning rates in both Germany and France.

Esprit is concerned that the proposed alliance among DT, FT, and Sprint will have a substantial adverse impact on Esprit's plans to construct a pan-European network absent commitments by regulators in France and Germany to implement immediately and fully all service and infrastructure liberalization directives promulgated by the EU and, further, to open the infrastructure and services monopolies of DT and FT to competition prior to consummation and implementation of the alliance. As a new entrant into the U.S. international services market, Esprit has a substantial concern that FT and DT will be able to leverage their monopoly positions in their home markets to enhance their position in the U.S. market and reduce the current level of competition here. Accordingly, Esprit has a direct interest in any Commission action that would have the effect of relieving the pressure on FT and DT and the French and German regulators to open the French and German telecommunications markets to competition in order for FT and DT to receive the U.S. regulatory approvals necessary to consummate their proposed investment in Sprint.

III. Approval of Sprint's Proposed Joint Venture Will Retard Rather Than Enhance Competition in the Global Telecommunications Market

Instead of promoting the Commission's articulated goal of fostering a competitive global telecommunications market, approving Sprint's proposed Global Partnership now, prior even to the authorization of resale competition in all service categories, much less full liberalization of the French and German telecommunications markets, would eliminate the chief incentive for the French and German governments to open their telecommunications markets to effective competition. The Commission must consider the potential adverse impact on the continuation of robust competition in the U.S. market, as well as the adverse impact on

[1] See Sprint Corporation Petition for Declaratory Ruling, File No. ISP–95–002 (filed Oct. 14, 1994); FCC Public Notice, Report No. I–8084 (released August 4, 1994).

[2] Esprit is currently the recently-filed ''Competitive Impact Statement'' of the Department of Justice and may supplement these comments in a reply pleading following its review of those documents.

[3] Application of Esprit Telecom of the United Kingdom Ltd. for Authority Pursuant to Section 214 to Operate as an International Resale Carrier Between the United States and Various Points, File No. I–I–C–95–435.

[4] Services in Belgium and the Netherlands are provided by Esprit Telecom Benelux B.V. Services in France are provided by Esprit Télécom France S.A. Services in Spain are provided by Esprit Telecom de España S.A.

the ability of U.S.-owned carriers to penetrate foreign markets, that would result from permitting the largest U.S. carriers to enter into alliances with the largest foreign monopoly carriers. In addition, while enhancing the competitive positions of the large U.S. carriers through financial investment, such alliances simultaneously deprive the U.S. market of some of its most vigorous new entrants. They also introduce new and unreasonable market distortions to the extent that alliance members are allowed to offer end-to-end services their competitors are foreclosed from providing. Therefore, it is imperative that the Commission permit such alliances to go forward only after it is convinced that any potential adverse impact on the level of competition in the U.S. market is offset by increased global competition that affords new opportunities for U.S.-owned carriers.

Here, the proposed Global Partnership involves three, rather than two, of the world's largest carriers, two of which retain substantial monopolies in their home markets, and competition in the French and German markets is far less extensive than that prevailing in the U.K. at the time the British Telecom /MCI joint venture was approved. Sprint's proposed alliance with FT and DT raises even more serious competitive concerns than did the BT/MCI ''Concert'' alliance. Moreover, instead of being in the vanguard of liberalization in Europe as is the U.K.'s regulatory regime, both France and Germany are only beginning to develop independent regulatory agencies [5] and regulations designed to ensure that the opportunity for fair competition develops.

Illustrating the magnitude of the problem, despite the EU's mandate, Germany simply has not adopted any laws to implement the EU's Services Directive [6] and authorize the offering of the liberalized services (virtually all services other than switched voice services) in its market. Moreover, neither the French nor the German government has fully implemented the Leased Lines Directive [7] requiring national regulators to obtain and review accounting separations data to ensure that the dominant carriers do not abuse their facilities monopolies or virtual monopolies by cross-subsidization [8] or by imputing lower costs to their competitive operations than they charge their competitors. While France, commendably, has allowed value-added service providers to enter the market without formal application procedures or processing delays,[9] in Germany the regulator's failure to implement European law with respect to liberalized services, leased lines, and open network provisioning [10] has chilled market entry by potential service providers who cannot rely on obtaining the necessary authorizations and leased lines in any predictable time frame. The few competitive authorizations that have been issued to date have, moreover, been issued on an *ad hoc* basis that gives little guidance as to the factors that will be considered in awarding such authorizations. In both countries, the efficient working of the competitive marketplace is already hampered by the regulators' failure to carry out their mandate to implement the EU Directives, and the problem could be worsened if the proposed Sprint/DT/FT alliance is allowed to proceed at this time.

IV. Continued Regulatory Pressure is Critical

In light of the virtually complete monopoly status of FT and DT in their respective markets and the current absence of competition in switched voice services in those markets, approving this alliance would eliminate all incentive for FT and DT to relinquish their respective strangleholds on the French and German telecommunications markets and could sound the death knell for emerging competitive carriers like Esprit. Even if France and Germany were to open their markets to competition, however, the potential and opportunity for anticompetitive behavior and discrimination in favor of Sprint and the joint venture company to be formed with Atlas is great and would likely have a preclusive effect on the entry of any new carriers. Therefore, until the regulator in each country establishes clear and transparent regulations with respect to application procedures, accounting separation procedures and cross-subsidization safeguards, as well as requiring cost-based leased line rates [11] and commercially reasonable interconnection charges, the Commission should not approve the proposed Sprint/DT/FT alliance. Although in recent months the French and German regulatory authorities have appeared to be more favorably disposed to increased telecommunications services competition, neither France nor Germany has yet taken any effective action to open its basic telecommunications services market to competition.

Accordingly, Esprit urges the Commission to deny Sprint's Petition until, at a minimum, concrete steps, such as implementing the European Community's Services, Open Network Provisioning, and Leased Line Directives, are taken in both Germany and France to liberalize their respective telecommunications markets. Given that FT and DT are the two largest telecommunications carriers in Europe, access to the French and German telecommunications markets is critical to successful market penetration by competitive entrants. The Commission should therefore decline to approve the proposed alliance until the French and German regulators adopt (1) transparent application procedures for licensing carriers to provide all services, (2) transparent rules to authorize competitive carriers to construct their own fiber and microwave networks, (3) rules to implement the European Community Leased Lines, Open Network Provisioning, and Services directives,[12] and (4) cost accounting rules to permit cross-subsidization.

V. Conclusion

For the foregoing reasons, Esprit respectfully urges the Commission to deny Sprint's Petition at this time as contrary to the public interest in promoting a competitive global telecommunications market.

Dated: September 1, 1995.

Respectfully Submitted,

Esprit Telecom, U.K.

Margaret M. Charles,

William B. Wilhelm, Jr.,

Swidler & Berlin, Chartered.

Certificate of Service

I hereby certify that, on this 1st day of September 1995, a copy of the Opposition of Esprit Telecom, U.K., to Sprint Corporation Petition for Declaratory Ruling was served by hand delivery to the following:

International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037

International Reference Room, International Bureau, 2000 M Street, Room 102, Washington, DC 20554

Katherine A. Swall.

Harvard University Law School

October 19, 1995.

Mr. Donald Russell,

Chief, Telecommunications Task Force, Antitrust Division, Room 89104, 555 Fourth Street, NW., Washington, DC 20001

Re: Proposed Final Judgment and Competitive Impact Statement; *United States* v. *Sprint Corporation and Joint Venture Co.*

Dear Mr. Russell: The purpose of this letter is to comment on the Proposed Final Judgment and Competitive Impact Statement in *United States* v. *Sprint Corporation and Joint Venture Co.*, Civ. Action No. 95–1304 (D.D.C. July 13, 1995), published at 60 Fed. Reg. 44049 (August 24, 1995). In particular, I want to recommend that the Justice Department require, as a condition for

[5] The Direction Générale des Postes et Télécommunications in France and the Ministry for Post and Telecommunications, assisted by a new Regulierungsrat (Regulation Council), in Germany.

[6] 90/388/EEC: Commission Directive on 28 June 1990 on Competition in the Market for Telecommunications Services, 1990 O.J. (L 192/10).

[7] 92/44/EEC: Council Directive of 5 June 1992 on the Application of Open Network Provision to Leased Lines, 1992 O.J. (L 165).

[8] The substantial governmental investment interest in both European carriers also raises further concerns about the potential for substantial cross-subsidization and the regulatory directives to preclude it.

[9] See Article L. 34 of Law No. 90–1170 of 29 December 1990. (This section modifies the Code des Posts et Télécommunications to provide that the France Telecom monopoly extends only to ''services provided to the public, which, in the case of reserved voice telephony is ''the commercial provision of a system of direct, real-time voice transmissions between users connected to termination points of a telecommunications network,'' and establishes a notification procedure for competitive entry into most unreserved service segments.)

[10] 90/387/EEC: Council Directive of 28 June 1990 on the Establishment of the International Market for Telecommunications Services Through the Implementation of Open Network Provision, O.J. (L 192/1).

[11] Critical to Esprit's business plan of providing reliable competitive telecommunications services across Europe is the ability to lease lines at commercially reasonable rates or construct its own network.

[12] *See, supra,* notes 6, 7, and 10.

settling the case, that France Telecom remove all obstacles that hinder or render impossible the use by its competitors whether in the telecommunication sector (fixed telephone or mobile) or in the data processing sector, of public information contained in the French telephone directory it maintains in its capacity as a public utility.

Since 1989, France Telecom has been adamantly refusing to share with its competitors—specifically in the data processing sector—the contents of what has become known as the ''Orange List''. French regulations promulgated in 1989 have prohibited anyone from soliciting individuals who have informed France Telecom of their request not to be disturbed by commercial solicitations emanating from the telephone directory. France Telecom has created a list of such individuals which it calls the Orange List.

As a result of France Telecom's conduct, the French telephone directory is mixed with Orange List individuals whom no one other than France Telecom can identify. Yet, under French law, it is a crime to solicit such people. France Telecom refuses to share this information with its competitors, subjecting them to the risk of criminal prosecution if they compile their data from the telephone directory, and actually filing criminal complaints with the public prosecutor against its own competitors.

Using regulations intended strictly to protect a small group of individuals who wish not to be disturbed by commercial solicitations, France Telecom has basically made it impossible for any other entity to participate in the data base end of the direct marketing business, a business so crucial to the flow of goods and services from the U.S. to the French consumer market.

Indeed, the Orange List has potential implications beyond the data processing sector. If and when deregulation occurs in France, AT&T and MCI may seek to enter the telecommunication market in France. When they do so, they will, in all likelihood, need to solicit potential customers through direct mail or telemarketing. The only conceivable source of information they can use in such a campaign would be the French telephone directory; no other source would allow them to reach the totality of French households and entities. Unfortunately, because of France Telecom's refusal to share the Orange List with competitors, the U.S. competitors of Sprint would be unable to use the information contained in the directory. Should they do so, France Telecom would surely complain to the authorities which would lead to their criminal prosecution.

On the other hand, France Telecom and Sprint could easily reach the totality of the French population, because unlike its competitors, France Telecom can identify those individuals listed in the telephone directory who have put themselves on the Orange List.

A recent initiative undertaken by France Telecom in the mobile telephone sector will illustrate another aspect of the problem. The mobile telephone sector in France is open to competition and France Telecom has two competitors operating mobile telephone networks. France Telecom has recently informed its mobile telephone subscribers that they may request to be included in the telephone directory, and if they do so they will be automatically put on the Orange List.

The French regulation is clear about the fact that the request to be put on the Orange List must come from the individual and not at the initiative of France Telecom. But in moving to expand the reach of the Orange List, France Telecom has chosen to make it impossible for any of its competitors to solicit its clients, since it is unlawful to solicit individuals who are on the Orange List. Yet if another mobile operator published a directory of its subscribers, nothing could stop France Telecom from soliciting its competitor's clients.

The problem I am focusing on is not at all about protecting privacy, but about how much one is willing to pay France Telecom for the directory information purged of the Orange List. To obtain the entire directory purged of the Orange List would cost between $1.5 million and $3 million, depending on which of France Telecom's departments one buys it from. Paying this price will not get a data processing company or a marketing director of a competing telecommunications company very far because—on the very following day—the directory purchased will not contain the new additions to the Orange List. Since France Telecom does not supply the Orange List, the customer will have to procure the entire directory again and again. Quite frankly, it is just absurd—except for procuring a monopoly position by France Telecom, millions of dollars will have to be spent on nothing more than a telephone directory available on every street corner in Paris and which will be rendered obsolete the next day.

Meanwhile, France Telecom's U.S. operations in the transmission and processing of data are continuing to grow. Its on-line ''Minitel'' network of services is now available all over the United States to anyone with a modem-equipped personal computer. The France Telecom telephone and business directories are available to U.S. residents by simply dialing a local telephone number. France Telecom can use this access it has to American consumers, not only for direct profit (use of each on-line service generates income for France Telecom) but also to attract clients to its global telecommunications services. No one else can offer data processing services emanating from an all-encompassing and exhaustive data base of French residents.

France Telecom is seeking to profit as a market participation in the United States telecommunications economy, through its involvement in the Joint Venture Co., and must therefore live with the regulatory consequences of making this choice, including complying with applicable United States antitrust laws and policies. Since the preparation and distribution of telephone directories and related information is an integral aspect of the telecommunications business—the ''telecommunication service'' and the ''public data network'' that are the subject of the Proposed Final Judgment—that will be pursued by the Joint Venture Co, and since France Telecom's monopoly position has allowed it to limit competition concerning such directories and information to the detriment of United States businesses, the Antitrust Division's authority to require France Telecom to share the Orange List with its competitors for the sole and non-commercial purpose of allowing them to purge their data bases of those individuals who do now wish to be solicited, is not open to serious dispute. France Telecom should also be compelled to make available to its competitors updated versions of the telephone directory at a commercially reasonable price which takes into account the fact that its own data processing divisions obtain it, I presume, at no or little cost. These conditions should be specifically included in the final judgment in *United States* v. *Sprint Corporation and Joint Venture Co.*

My initial interest in this matter stems from consulting work I did for the New York law firm of Fisher and Soffer representing a French data marketing firm and its United States subsidiary in litigation with France Telecom over access to such telephone subscriber lists. My primary motivation for writing to you now, however, is to bring to your attention an important public policy issue within the scope of your mission, and not merely to advocate a position on behalf of a client.

The United States antitrust laws have played an important role in maintaining a level playing field for business competitors, both domestic and foreign, who seek to profit by participating in the United States economy. This role has become more demanding, and crucial, with the growth of our globalized economy. I urge the Antitrust Division to uphold this important role of the antitrust laws, and to require France Telecom to make its telephone directory truly available to competitors.

Respectfully submitted,

Charles M. Haar

Exhibit H

Notice Pursuant to Article 19 (3) of Council Regulation No 17 [1] and Article 3 of Protocol 21 of the European Economic Area Agreement Concerning a Request for Negative Clearance or an Exemption Pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement

Case No IV/35.337—Atlas

(95/C 337/02)

(Text With EEA Relevance)

Introduction

1. Atlas was notified to the Commission on 16 December 1994. This transaction brings about a joint venture owned 50% by France Telecom (FT) and 50% by Deutsche Telekom (DT). Atlas is also the instrument of DT and FT's participation in a second transaction, named Phoenix, with Sprint Corporation [2]. In the course of the procedure before the Commission, FT and DT agreed to modify both the Atlas and the Phoenix agreements.

[1] OJ No 13, 21. 2 1962, p. 204/62.

[2] Notification announced in OJ No C 184, 18. 7. 1995, p. 11.

described in a separate notice pursuant to Article 19 (3) of Regulation No 17, published in this edition of the *Official Journal of the European Communities.*

2. The Atlas venture will be structured at two levels. A holding company established in Brussels, Atlas SA, will be incorporated as a *société anonyme* under the laws of Belgium. Atlas SA will have three operating subsidiaries, namely one in France (Atlas France), one in Germany (Atlas Germany), and one for the rest of Europe. Atlas France and Atlas Germany will initially provide technical and sales support to FT and DT, i.e. the French and German distributors of Atlas and Phoenix products. After full liberalization of the telecommunications infrastructure and services markets in France and Germany, scheduled to occur by 1 January 1998, DT's subsidiary for the provision of standardized low-level packet-switched X.25 data communications, Datex-P, will be merged with Atlas Germany while FT's subsidiary for the provision of standardized low-level packet-switched X.25 data communications, Transpac France, will be merged with Atlas France.

A. The Parties

3. Deutsche Telekom AG (DT) and France Telecom (FT) are the public TO in Germany and France. Both supply telephone exchange lines to homes and businesses; local, trunk and international communications to and from their respective home country. Worldwide turnover in 1994 was ECU 31,8 billion, a 4,3% increase over 1993, for DT and ECU 21,7 billion, a 1,8% increase over 1993, for the FT group.

B. The Relevant Market

1. Product Markets

4. Atlas will address the markets for the provision of value-added telecommunications services to corporate users both Europe-wide and nationally. Atlas will target two separate product markets for value-added services, namely:

5. *The market for advanced telecommunications services to corporate users*

This market comprises mostly customized combinations of a range of existing telecommunications services, mainly data communications and liberalized voice services including voice communication between members of a closed group of users (virtual private network (VPN) services), high-speed data services and outsourced telecommunications solutions specially designed for individual customer requirements. The market for advanced telecommunications services to corporate users, enhanced by features such as tailored capacity allocation, billing, 24h/24h technical service, etc., is currently changing and evolving rapidly. Whether each of these services constitutes a separate product market can be left open for the purpose of this case, as Atlas and its competitors usually offer customized packages of such services in combination with individual enhanced features.

These services are provided over high-speed large-capacity leased lines linking sophisticated equipment on customer premises to the service provider's nodes. Alternatively, other means of transmission, e.g. satellite or mobile radio capacity, can be used to ensure the geographic coverage demanded from time to time. Such services employ advanced state-of-the-art standards, data compression techniques, equipment and software. In this market, Atlas is expected to offer a portfolio of services including the following:

—date services: high speed packet-switched and Frame Relay services; pre-provisioned, managed and circuit-switched bandwidth,
—value-added application services: value-added messaging and video-conferencing services,
—voice VPN services,
—intelligent network services,
—integrated very small aperture satellite (VSAT) network services, and
—outsourcing: customers are offered to transfer responsibility and ownership of their networks to Atlas. In this connection, Atlas may integrate into its own offerings third-party products already owned by customers who wish to keep such offerings, as the case may be.

6. Due to the high cost of building and operating the networks needed to provide advanced corporate services, such services can be commercially viable only if provided to large businesses and other large telecommunications users who generate continued high traffic volumes [3]. Customers for advanced services targeted by Atlas are multinational corporations, extended enterprises, and other intensive users of telecommunications and notably the largest among these customers. Many of these potential customers have huge telecommunication needs and have often acquired expertise in managing own internal networks; they are not likely to switch to service providers such as Atlas unless doing this proves to be cost-effective. Finally, given their knowledge of the market these customers are in a position to request offers from different competitors.

7. *The market for standardized low-level packet-switched data communications services*

Atlas will also be active on a separate market for packet-switched data communications services. The Commission considers data communications services a distinct telecommunications product market, without prejudice to the existence of narrower markets [4]. One narrower market is that for packet- and circuit-switched services [5]. Packet switching is a means to improve network capacity utilization and consists of splitting data sequences into 'packets', feeding these and other 'packets' into the network optimizing utilization of available capacity, switching the 'packets' to the desired destination and rearranging the 'packets' to obtain the data sequences sent. The most common standard used for the provision of packet-switched data services is the 'X.25' standard.

Packet-switched data communications services constitute a distinct product market because they are provided over basic terrestrial network infrastructure and based on more mature technology. These services are provided to different customer segments within the same products market, namely:

1. On the one hand, customers who generate mostly erratic and geographically widespread traffic. These features are due either to the specific type of use (e.g. banks operating cash machines nationwide, networks of points-of-sale in shops) or to the size of such customers, i.e. small and medium-sized enterprises (SMEs). Such services are billed according to published tariffs that are proportional to the actual time of use of the network.

All incumbent Member State TOs including DT and FT operate dense public data networks with nationwide coverage providing packet-switched data communications services to this customer segment. In each Member State there is only one public data network built by the respective incumbent TO under a public service obligation before market liberalization.

2. On the other hand, larger corporate customers and other extended users generate more substantial and regular traffic. The requirements of these users justify that either third-party service providers or the potential customer itself assume the high cost of creating customized leased lines circuits to meet individual service demand. Packet-switched data communications services to such users are billed according to negotiated rates that take account of the individual demand features of a particular customer.

8. Virtually all companies active in each individual Member State of the European Union are potential if not actual customers for national standardized low-level packet-switched data communications services. These services are also required by SMEs, albeit in smaller volumes and possibly less regularly than by larger users. Seldom will such volumes justify that service providers invest in leased lines with the specific purpose of reaching these SMEs, which are therefore in a weak negotiating position and hardly capable to date of switching from the current provider, typically the incumbent TO, to a competitor.

9. Standardized low-level packet-switched data communications may also be offered as one service combined with advanced corporate service offerings. However, even as part of such combined offerings packet-switched data communications services are provided over standard terrestrial infrastructure. At the national level, choice from a wider range of offerings than merely standardized low-level packet-switched data communications services may also be available to larger customers that are not using the TO's public data networks but are served over customized leased-line circuits. However, most existing customers for standardized low-level packet-switched data communications currently generate annual

[3] See Commission decision in Case No IV/34.857 (BT–MCI) of 27 July 1994 (OJ No L 223, 27. 8. 1994).

[4] Commission's Guidelines on the application of EC competition rules in the telecommunications sector (OJ No C 233, 6. 9. 1991, p. 2, paragraph 27).

[5] As defined in Article 1 (1), 9th indent of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ No L 192, 24. 7. 1990, p. 10), (the 'Services Directive').

turnover of far below ECU 10 000 each and are not therefore potential users of advanced corporate network services. Therefore, packet-switched data communications offered by Atlas constitute a product market separate from the advanced network services market equally targeted by Atlas.

2. Geographic Markets

The markets for advanced telecommunications services to corporate users

10. Given that price differences are quite substantial, demand for these services exists in at least three distinct geographic markets, namely at a global, a cross-border regional and a national level. Atlas will provide advanced telecommunications services to corporate users Europe-wide and nationally. Through Phoenix, advanced telecommunications services offered by Atlas will also have global 'connectivity', i.e. the technical option to extend a given service offering beyond Europe by linking a customer's premises worldwide over the Phoenix 'Global Backbone Network'.

11. Given the considerable costs involved, advanced services are today mainly demanded by large multi-national corporations, extended enterprises, as well as major national and other intensive users of telecommunications. The requirements of such users, that extend to all products or corporate services provided by Atlas, were discussed in detail in the BT–MCI decision [6]. Essentially, customers demand a customized package of sophisticated telecommunications and information services offered by one single provider. This provider is expected to take full responsibility for all services contained in the package from 'end to end'. Accordingly, DT and FT intend to offer such customers through Atlas what existing technology allows to offer from time to time within the applicable regulatory framework. In this regard, the parties have indicated that Atlas will eventually extend to international voice traffic and other basic services, regulation permitting.

12. Due to the cost structure of advanced corporate services, notably the cost of leasing the required infrastructure, prices of such services are related to geographic coverage, as is the cost of additional features (e.g. one-stop-billing, help-desk and technical assistance around the clock, customized billing). There is indication that increasing availability of trans-European networks will ultimately blur the distinction between national and cross-border or ultimately Europe-wide advanced corporate services. However, certain national sophisticated value-added services (e.g. national voice VPN services as well as data communications services based on Asynchronous Transfer Mode (ATM) or equivalent switching technology) currently available from DT and FT in Germany and France respectively will not be integrated into the Atlas offerings. This circumstance illustrates that a distinction between national and cross-border advanced network services remains valid to date.

[6] See footnote 3 above.

The markets for standardized low-level packet-switched data communications services

13. Price differences may be less acute than for advanced corporate services. However, a national, cross-border regional and global geographic level can be distinguished for standardized low-level packet-switched data communications services. In terms of traffic volumes, supply and demand of standardized low-level packet-switched data communications services are mostly national. For instance, in Germany DT's existing Datex-P packet-switched data communications services division hardly ever provides such services across the border while FT's German subsidiary Info AG, in spite of appertaining to FT's seamless cross-border Transpac network, only provides one fifth of its packet-switched data communications services across the border. This assessment was confirmed by interested third parties who submitted observations further to the Commission's notice on the Atlas notification [7].

14. At a global and Europe-wide level, low-level data services and advanced network services may be partly converging to the extent that large customers of the latter do not require separate provision of standardized low-level packet-switched data communications services once such services are available as part of service combinations offered over advanced networks. Accordingly, large European telecommunications users demand services with global 'connectivity', i.e. that may be extended beyond Europe if so required. DT and FT have moved to meet this demand in entering the Phoenix agreements with Sprint. Along with increased availability of advanced cross-border network infrastructure, the market is generally expected to overcome distinctions along national borders in the medium term. However, separate national geographic markets subsist to date for standardized low-level packet-switched data communications services and advanced network services respectively.

C. Market Shares of Atlas

The markets for advanced corporate telecommunications service

15. The parties estimate the European corporate telecommunications services markets (exclusive of data communications services) to be worth approximately ECU 505 million (1993 figures). Of this total, end-to-end services accounted for approximately ECU 15,1 million, VPN services for approximately ECU 220,6 million, VSAT services for approximately ECU 173,2 million and outsourcing services for approximately ECU 96,4 million. According to the notification DT and FT's aggregate market shares (1993 figures) in the European Union were 25% in the end-to-end services market, 27% in the VPN services market and 2,3% in the outsourcing services market. Market shares for VSAT services are difficult to calculate given that TOs mostly use VSAT terminals either as back-up facilities for other services or to extend the geographic scope of services despite terrestrial infrastructure shortcomings; however DT and FT taken together operated 10 907 VSAT terminals by June 1994, equivalent to 29% of the total installed base of interactive, data one-way or business television VSAT terminals in the European Economic Area.

As to different segments of the advanced corporate services market at the national level, DT and FT's aggregate market shares in France and Germany respectively are 93% in the French VPN market (where DT has no presence) against 0% in the German VPN market, and 60% in the French market for end-to-end services against 35% in the equivalent German market. DT and FT's outsourcing joint venture, Eunetcom BV, achieved 36% of total outsourcing turnover generated in France and 29% of total outsourcing turnover generated in Germany. As for VSAT services, DT has installed approximately 25% of all VSAT terminals in Germany; this Member State accounts for 18% of the total installed base of such terminals in the EEA.

[7] Notification of a joint venture (Case No IV/35.337—Atlas) (OJ No C 377, 31. 12. 1994, p. 9).

The market for standardized low-level packet-switched data communications services

16. DT and FT estimate the European market for data communications services to be worth approximately ECU 2,8 billion (1993 figures). According to the notification DT and FT's aggregate shares (1993 figures) of this market were 35%. Among national markets, Atlas will have a particularly strong position in France and Germany. DT and FT's aggregate market share for all data communications services is 79% in Germany and 77% in France, of which approximately half accounts for services provided by DT's Datex-P division and FT's Transpac France subsidiary, both of which remain outside the scope of Atlas until the French and German telecommunications infrastructure and services markets are fully liberalized as scheduled for 1 January 1998.

D. Main Competitors of Atlas

The markets for advanced corporate telecommunications services

17. Since the Commission's BT–MCI decision many players, acting alone or jointly with partners, have entered or are entering the market for international value-added services. Among the most important of these players, albeit with disparate geographic scope and target customers, are: AT&T WorldPartners, Concert, IBM-Stet, International Private Satellite Partners, Unisource or Uniworld. Some of the above are mere projects of strategic alliances between TOs, others are awaiting regulatory approval. However, all of the above share the aim to position the respective partners in view of the full liberalization to come.

The market for standardized low-level packet-switched data communications services

18. The market for standardized low-level packet-switched X.25 data communications services features a substantially larger number of players than that for customized offerings comprising advanced corporate services. Among the global players in this

market are the alliances mentioned at paragraph 17 above competing with providers such as EDS, FNA, Infonet, SITA or SWIFT and operating subsidiaries of large global companies such as AT&T Istel, Cable & Wireless Business Networks, DEC's Easynet, or GEIS.

In addition, a large number of smaller players compete at a cross-border regional or national level in the EEA. For instance, FT's indirect German subsidiary Info AG, that provides most of its data communications services within Germany, is DT's second-largest competitor in the German national market for standardized low-level packet-switched data communications services. None of these smaller players can compare with large alliances in terms of reach, access to transmission capacity and financial backing.

E. The Transaction

19. The Atlas transaction notified to the Commission comprises a set of agreements whose main features are described below.

1. Agreements as Originally Notified

(a) The Atlas Joint Venture Agreement (JV Agreement) is the main agreement providing for the establishment of the Atlas joint venture.

(b) The Intellectual and Industrial Property Transfer and License Agreements will be concluded by each of FT and DT with Atlas SA. Under these agreements FT and DT make available to Atlas SA the intellectual property rights (IPRs) needed to operate the Atlas business.

(c) The Services Agreements will be framework agreements setting forth the basic terms and conditions with respect to the supply by DT and FT of certain services to Atlas SA and the supply by Atlas SA of certain services to FT and DT.

(d) The Distribution Agreements: two substantially similar distribution agreements with FT and DT respectively will lay out, for the home countries (France and Germany respectively), the marketing and sale of Atlas products.

(e) The Agency Agreements under which each parent appoints Atlas SA non-exclusive worldwide agent for the sale of DT and FT's international leased lines (half-circuits) with the territorial exception of Germany as regards DT's half-circuits.

2. Contractual Provisions

20. In particular, the above agreements provide for the following:

1. Structure of the Atlas Venture

Atlas SA will be created as a joint venture between FT and DT, each owning half the share capital. The management structure of Atlas SA will be as follows:

(a) Shareholders' meeting: Prior approval of the shareholders' meeting is necessary for matters such as the amendment of the articles of association, modification of capital, issuance of shares, mergers, sale of all or a substantial part of the assets, and liquidation.

(b) Strategic Board: It is envisaged that the Strategic Board of Atlas SA will have two co-chairmen and eight members, one half appointed by each parent, who may be freely removed and shall meet at least twice a year. The Strategic Board has a quorum of a majority of its members, including at least two members appointed by each party; the co-chairmen do not have a tie-breaking vote. Prior approval by the Strategic Board is required for matters such as the entry into a joint venture or other strategic alliance with a third party, any significant modification of the scope of Atlas's business and such matters as may from time to time be submitted to it by a vote of one half of the members of the Board of Directors. The Strategic Board shall also review all strategic plans of Atlas SA.

(c) The Board of Directors: It is envisaged that Atlas SA's Board of Directors will have nine members, four elected by each of DT and FT and one by Sprint. Prior approval by the Board of Directors is required for a number of important decisions such as the approval of business plans and annual budgets and changes in the scope of Atlas, the conclusion of important contracts, etc. Decisions on changes in the Atlas business, management appointments, and the approval of the business plan, the annual operating plan, and the budget require that at least two directors nominated by each party vote with the majority. Matters on which the Board of Directors fails to reach agreement shall be brought before the Strategic Board.

(d) Chief Executive Officers (CEOs): It is envisaged that Atlas SA will have two CEOs, one nominated by FT among is representatives in the Board of Directors, the other by DT among its representatives in the Board of Directors. The CEOs shall be jointly responsible for day-to-day operations and the management of the business and affairs of Atlas. Approval of both co-CEOs is required for all important decisions including the hiring or dismissal of key employees.

The parties will contribute to Atlas their existing European assets outside France and Germany (as well as some assets in France and Germany) used for the provision of services coming within the scope of Atlas.

2. Purpose and Activities of Atlas

The Atlas venture is to provide seamless national and international end-to-end services to corporate customers (i.e. to multinational companies (MNCs) and SMEs alike). The portfolio of Atlas services comprises data network services, international end-to-end services, (managed links), voice VPN services, customer-defined networks, outsourcing and VSAT services. These services are fully liberalized in the European Union and are widely liberalized worldwide. Atlas will have the responsibility for the services portfolio mentioned above outside of France and Germany.

In France and Germany, Atlas will be providing sales support to FT and DT's sales forces as regards all services mentioned in the Atlas portfolio, with the exception of public X.25 packet-switched network services within France and Germany, which will be provided by FT's Transpac France subsidiary and DT's Datex-P subsidiary respectively until the telecommunications infrastructure and services markets are fully liberalized in France and Germany, as scheduled for 1 January 1998.

Each acting as an exclusive distributor, DT will sell Atlas services in Germany, while FT will sell Atlas services in France. Atlas products will be sold in France and Germany under the common globally used Atlas/Phoenix brands. Passive sales of Atlas services by DT in France, by FT in Germany and by any Atlas operating entity in both Member States will be allowed. Outside France and Germany, Atlas products will be sold by the Atlas operating entity for the rest of Europe.

It is planned that there will be a balancing payment by DT at each closing to equalize the respective contribution values of the two parties. It is further envisaged that certain adjustment payments will be made on the respective net worth of the entities concerned at the time of contribution to Atlas. A separate adjustment payment may be made between FT and DT if the actual performance of the FT contributed businesses in France or the DT contributed businesses in Germany falls significantly short of projections in 1995 (and possibly 1996).

3. Provisions Concerning Dealings With/by Atlas

Mutual service provision between Atlas and FT/DT will be the object of two Services Agreements pursuant to which dealings between FT/DT and Atlas shall be transparent, non-discriminatory and at arm's length.

As for services generally offered by DT or FT, the prices and other terms which DT or FT generally apply from time to time to their customers shall equally apply for Atlas. As for services not generally offered by FT or DT, market prices and terms shall apply and be negotiated between the Parties in good faith at arm's length. Consequently, Atlas will purchase such services from DT or FT at the same prices and conditions that any third party generally offering such services would apply under the same circumstances. If information on relevant market prices is not available, the prices applicable for Atlas shall be determined on the basis of a calculation model that is used, within FT, to make offers to customers with special requests and, within DT, to calculate intra-group transfer prices. Prices resulting from such calculation shall cover, for the relevant period, all costs as well as a reasonable profit margin.

4. Non-Compete Provisions

Pursuant to Article XIII of the Atlas JV Agreement, FT and DT will not engage anywhere in the production of services that are substantially the same or compete directly with the Atlas services, and will not engage outside of France and Germany in the marketing, sale or distribution of services that are substantially the same or compete directly with the Atlas services. Furthermore, FT will not market or distribute Atlas services in Germany and DT will not market and distribute Atlas services in France; passive sales are however permitted by FT outside of France, by DT outside of Germany and by Atlas in both France and Germany.

5. Provisions Relating to Intellectual and Industrial Property

FT and DT will each conclude an Intellectual and Industrial Property Transfer and License Agreement with Atlas SA under

which the parties make available to Atlas SA the intellectual property rights (''IPRs'') which are needed to operate the Atlas business in accordance with the following principles:

(a) IPRs owned by, or licensed to, the parties that are used exclusively for the Atlas business shall be transferred to Atlas SA;

(b) IPRs owned by, or licensed to, the parties that are used predominantly for the Atlas business shall also be transferred to Atlas SA, and a sub-license shall be granted to the parties (Grant Back License sub-license); and

(c) IPRs owned by, or licensed to, the parties that are used predominantly for the parties' business are (sub-)licensed to Atlas SA.

F. Changes Made and Undertakings Given Further to the Commission's Intervention

21. Certain features of the Atlas transaction as notified appeared to be incompatible with Community competition rules. Consequently, the Commission by letter of 23 May 1995 informed the parties of its concerns. In the course of the notification procedure the parties have amended the original agreements and given undertakings to the Commission.

1. Contractual Changes

22. Non-appointment of Atlas SA as an agent for international half-circuits. Further to the Commission's letter of 23 May 1995, DT and FT abolished the Agency Agreements and amended the original Service Agreements to take account of the non-appointment of Atlas SA as a non-exclusive agent for DT and FT's half-circuits.

23. Non-integration of French and German public data networks before full liberalization of the telecommunications infrastructure and services markets. Atlas SA shall not acquire legal ownership or control within the meaning of Article 3 of Council Regulation 4064/89 [8] of the French and German public X.25 packet-switched data networks, Transpac France and Datex-P respectively, before the telecommunications infrastructure and services markets are fully liberalized in France and Germany, as is scheduled to occur by 1 January 1998. Until then, it is envisaged that:

1. Transpac SA will be split into Transpac France and Transpac Europe;

2. Transpac Europe will be contributed to Atlas;

3. Transpac France will be a wholly owned subsidiary of FT;

4. DT's Datex-P services division will be incorporated as a separate company under German law and become a wholly owned subsidiary of DT;

5. DT and FT's outsourcing joint venture, Eunetcom BV, will be fully contributed to Atlas SA; and

6. Atlas SA will create a subsidiary in France and Germany (Atlas France and Atlas Germany respectively) to provide the following services:

(i) sales support regarding Atlas products to distributors in France and Germany; and

(ii) services within the scope of Atlas other than X.25 packet-switched data network services including:

—VSAT services,
—international end-to-end services,
—voice VPN services,
—customer-defined solutions (excluding national X.25 data communications services in France and Germany), and
—outsourcing services.

Provided the telecommunications infrastructure and services markets are fully liberalized in France and Germany on 1 January 1998, Transpac France and Datex-P will be contributed to Atlas on that date in such a way that Atlas France and Atlas Germany will be merged with Transpac France and Datex-P respectively.

24. Technical cooperation. Ahead of full liberalization of the telecommunications infrastructure and services markets in France and Germany, scheduled to occur by 1 January 1998, DT and FT will cooperate in the development of common technical network elements. This cooperation will comprise only the following areas:

1. FT and DT will cooperate in the development of common products and common technical network elements (i.e. such products and elements that share the same features, yet separately built and owned); such cooperation will extend to the French and German public X.25 packet-switched data communications networks. Only the following functions will be managed by Atlas SA for Transpac France and Datex-P respectively:

(a) product management and development, provided that product branding and pricing as well as product implementation in the network will be managed by Transpac France and Datex-P respectively;

(b) certain network planning functions; and

(c) information systems, provided that central information system functions (e.g. billing information and statistics) will be operated by Transpac France and Datex-P respectively.

The above areas of cooperation shall in no case be tantamount to a *de facto* integration of the French and German public switched data networks, which will be controlled by two separate network management centres; and

2. Atlas may subcontract certain operational functions to Transpac France and Datex-P respectively.

25. Non-integration of assets of FT's indirect German subsidiary. The assets of FT's German corporate telecommunications services provider Info AG shall not be integrated into Atlas save as indicated at paragraph 27 below. Moreover, FT shall divest Info AG.

2. Non-Discrimination

26. In order to provide the services described under paragraph 5 above, Atlas or any other service provider is dependent on the public switched telecommunications network (PSTN) and reserved services.[9] In France and Germany, only FT and DT provide both access to the PSTN and reserved services. Given that FT and DT are indirect shareholders of Atlas it is essential for the safeguarding of fair competition between Atlas and other existing or future telecommunications services providers to eliminate the risk that the former are granted more favourable treatment regarding access and use of the French and German PSTN and reserved services.

The Commission set out in its notice on the Infonet joint venture [10] how prohibition to discriminate must be understood in detail. Accordingly, to ensure the absence of discrimination, the Commission intends to decide that DT, FT and Atlas shall comply with the following:

1. Terms and conditions: The terms and conditions applied by DT and FT to Atlas for access to the PSTN and for the provision of reserved services (e.g. provision of leased lines) in connection with the services described under paragraph 5 above shall be similar to the terms and conditions applied to other providers of similar services. This requirement covers availability price, quality of service, usage conditions, delays for installation of requested facilities, and repair and maintenance services among other services.

2. Scope of services available. Atlas shall not be granted terms and conditions, or be exempt from any usage restrictions regarding the PSTN and reserved services, which would enable it to offer services which competing providers are prevented from offering.

3. Technical information: DT and FT shall not discriminate between Atlas and any other service provider competing with Atlas in connection with either a decision to substantially modify technical interfaces for the access to reserved services or the disclosure of any other technical information relating to the operation of the PSTN.

4. Commercial information: DT and FT shall not discriminate between Atlas and other providers of services as described under paragraph 5 above as regards the disclosure of certain commercial information. This means that DT and FT shall not provide Atlas with systemized and organized customer information derived exclusively from the operation of the PSTN or the provision of reserved services if such information would confer a substantial competitive advantage and is not readily and equally available elsewhere by service providers competing with Atlas.

3. Undertakings Given by the Parties

27. *Divestiture of Info AG.* FT shall divest of its interest in Info AG. To the extent separable from the product divisions of Info AG that shall be divested, advanced network services for multinational clients whose headquarters are outside Germany may be transferred to Atlas.

28. DT and FT have also given the additional undertakings described below.

[8] OJ No. L 395, 30. 12. 1989, p. 1.

[9] Reserved services are services which are provided pursuant to special or exclusive rights granted by the EU Member States to their respective TOs in compliance with EC law.

[10] Notice pursuant to Article 19(3) of Council Regulation No. 17 concerning Case No. IV/33.361—Infonet, (OJ No. C 7, 11. 1. 1992, p. 3, at paragraph 9).

1. Use of DT and FT's Public Data Networks

Each of FT and DT will as of 1 January 1996 establish and thereafter maintain third-party access to their public switched data networks in France and Germany respectively. Non-discriminatory, open and transparent access will be granted to all data services providers that offer X.25 packet-switched data communications services. To ensure non-discriminatory access to their national public X.25 packet-switched data networks, FT and DT shall:

(a) establish and maintain standardized X.75 interfaces to access their national public X.25 packet-switched data networks; this interconnection is suitable for the provision of end-to-end services based on X.25 specifications for end-user access speeds up to 64 kbps; and

(b) offer such access on non-discriminatory terms, including price, availability of volume or other discounts and the quality of interconnection provided.

FT and DT shall further ensure non-discriminatory access by making publicly available the standard terms and conditions for such X.75 interface standards, including, if any, volume and other discounts, as of 1 January 1996. FT and DT will make available for inspection by the Commission any agreements relating to such X.75 interfaces, including all specifically agreed terms. Until such time as Transpac France and Datex–P are integrated into Atlas, neither Transpac France nor Datex-P shall disclose to Atlas any such specifically agreed terms that are identified and maintained as confidential by the party obtaining interconnection through such X.75 interfaces. Finally the above obligations shall likewise apply to any generally used CCITT-standardized interconnection protocol that may modify, replace or co-exist as a standard related to the X.75 standard and is used by FT and DT.

Proprietary interfaces may be retained or established among Transpac France, Datex-P and Atlas; such interfaces are defined by the particular type of technology, hardware and software that a network operator uses to provide advanced or customized services. Atlas will be allowed to access the Transpac France and Datex-P public packet-switched data networks through these proprietary interfaces, also for the provision of X.25 data communications services, provided access granted to Atlas through such interfaces is economically equivalent to third-party access to the Transpac France and Datex-P networks.

2. Cross-Subsidization

DT and FT shall not engage in cross-subsidization within the meaning of the Commission's competition guidelines for the telecommunications sector [11] in connection with the Atlas venture. To avoid that Atlas benefits from cross-subsidies stemming from the operation of public telecommunications infrastructure and of reserved services by either DT or FT, all entities formed pursuant to the Atlas venture will be established as distinct entities separate from DT and FT.

Atlas SA, Datex-P and Transpac France shall obtain their own debt financing on their own credit, provided that FT and DT:

(a) may make capital contributions or commercially reasonable loans to such entities as required to enable Atlas SA, Datex-P and Transpac France to conduct their respective business;

(b) may pledge their venture interests in such entities, in connection with non-recourse financing for such entities; and

(c) may guarantee any indebtedness of such entities, provided that FT and DT may only make payments pursuant to any such guarantee following a default by such entities in respect of such indebtedness.

Atlas SA, Datex-P and Transpac France shall not allocate directly or indirectly any part of their operating expenses, costs, depreciation, or other expenses of their business to any parts of FT or DT's business units (including without limitation the proportionate costs based on work actually performed that are attributable to shared employees or sales or marketing of Atlas products and services by DT or FT employees), provided however that nothing shall prevent Atlas SA, Datex-P and Transpac France from billing DT or FT for products and services provided to DT or FT by such entities on the basis of the same price charged third parties (in the case of products or services sold to third parties in commercial quantities) or full cost reimbursement or other arm's length pricing method (in the case of products and services not sold to third parties in commercial quantities).

Atlas SA, Datex-P and Transpac France shall keep separate accounting records that identify payments or transfers to or from DT and FT. Moreover, Atlas SA, Datex-P and Transpac France shall not receive any material subsidy (including forgiveness of debt) directly or indirectly from DT or FT, or any investment or payment from DT or FT that is not recorded in the books of such entities as an investment in debt or equity.

DT, FT and Atlas shall comply with the above until the telecommunications infrastructure and services markets in France and Germany are fully liberalized, as is scheduled to occur by 1 January 1998.

3. Auditing

Atlas SA (which includes its consolidated subsidiaries), Transpac France and Datex-P shall be audited on a regular and customary basis, and such audit shall confirm from an accounting viewpoint that the transactions between these entities, on the one hand, and FT and DT, on the other hand, have been conducted at arm's length. This obligation shall remain in force until the telecommunications infrastructure and services markets in France and Germany are fully liberalized, as is scheduled to occur by 1 January 1998.

4. Recording and Reporting

To allow the Commission to monitor compliance with the undertakings the parties have agreed the following:

(a) *Recording obligations.* DT, FT and Atlas each undertake to keep records and documents suitable to prove compliance with the terms of the above undertakings ready for inspection by the Commission.

(b) *Inspection of records.* For the purpose of ascertaining and ensuring compliance by DT, FT or Atlas with the above undertakings, DT, FT or Atlas shall, on reasonable notice, during office hours, and without a need for the Commission to invoke the powers of inspection pursuant to Regulation No. 17, give the Commission's Directorate-General for Competition access to DT, FT or Atlas' business premises to inspect records and documents covered by the above recording obligations and to receive oral explanations relating to such documents.

(c) *Reporting obligations.* DT, FT and Atlas also undertake to provide the Commission's Directorate-General for Competition, for the purpose of ascertaining whether DT, FT and Atlas comply with the requirements of the above undertakings, with:

—any records and documents in the possession or control of DT, FT or Atlas necessary for that determination, and
—oral or written complementary explanations.

These recording and reporting obligations will remain in force until the telecommunications infrastructure and services markets in France and Germany are fully liberalized, as is scheduled to occur by 1 January 1998.

29. In so far as related to existing obligations under national or Community law, the above is intended to ensure the parties' firm commitment to comply with the applicable legal framework.

G. The Regulatory Situation

30. In letters sent to the Commission, the French and German Governments have undertaken to take the necessary steps to liberalize alternative infrastructure for the provision of liberalized telecommunications services by 1 July 1996 and to liberalize the voice telephony service and all telecommunications infrastructure fully by 1 January 1998. The availability of alternative telecommunications infrastructure in Germany and France render competitors of Atlas independent of DT and FT's infrastructure for the purposes of creating trunk network infrastructure to provide liberalized services.

Early alternative infrastructure liberalization in France and Germany adds to a regulatory framework in the home countries of the Atlas partners that is designed to ensure a level playing field in the telecommunications markets.

1. France

1. Separation of Regulatory and Operative Functions

Pursuant to French law, the minister for telecommunications shall ensure that regulation of the telecommunications markets is undertaken separately of service provision in these markets. A specific national regulatory authority (NRA), the Direction Générale des Postes et Télécommunications (DGPT), is competent for licensing providers of telecommunications networks and services in France based on objective and transparent

[11] Guidelines on the application of EEC Competition Rules in the Telecommunications Sector (OJ No. C 233, 6. 9. 1991, paragraph 102 *et seq.*).

criteria. The DGPT shall survey FT's market behaviour and approve FT's tariffs for (i) reserved services and leased lines and (ii) such liberalized services that are not in fact provided by a third party active in the French market.

2. Non-Discriminatory Access

Further to the adoption of the Commission's Services Directive and the ONP Framework Directive [12] Article L. 32–1–4° of the French Law of 29 December 1990 grants all users equal access to the public network on objective, transparent and non-discriminatory conditions. FT is under an obligation to effectively grant such access and must publish information on the network (e.g. technical features, tariffs and usage conditions) and on leased line offerings. The DGPT may verify FT's compliance with these obligations and investigate complaints filed against FT for non-compliance with these obligations. The DGPT shall further ensure compliance with FT's obligation to share available transmission capacity for liberalized services with competitors and shall publish annual statistical reports on FT's compliance with these obligations.

3. Prevention of Cross-Subsidies

To allow the DGPT to supervise FT's market behaviour, FT is under the legal obligation to keep an analytical accounting system that relates costs to each individual FT service. Where an offering comprises the provision of both reserved and liberalized services, FT must separate each kind of service in the contract and in the invoice. In this connection, FT's data communications services are already provided by a separate legal entity.

2. Germany

1. Separation of Regulatory and Operative Functions

Pursuant to the German 1989 Poststrukturgesetz, the 1994 Postneuordnungsgesetz and the 1994 Post- und Telekommunikation Regulierungsgesetz, regulatory competencies are assigned to a Federal agency created under the Federal Ministry of Post and Telecommunications (BMPT) while telecommunications operations are undertaken by DT, a fully State-owned joint stock corporation. Regulatory obligations of DT are policed by independent bodies, so-called regulatory chambers.

2. Non-Discriminatory Access

Under the current and future German regulatory framework, DT shall provide third parties with both access to monopoly infrastructure and reserved or mandatory services on a non-discriminatory and transparent basis according to objective criteria. Upon application, DT shall supply state-of-the-art leased lines over service-neutral access points without delay. With the only restriction of voice telephony service provision, leased lines may be freely interconnected and used for any service. Leased lines must meet market demand and DT must publish data concerning availability and quality of such lines.

3. Prevention of Cross-Subsidies

The BMPT (i) shall approve both tariffs and other price-sensitive contractual terms for DT's reserved services and (ii) may object to DT's tariffs for mandatory services. The BMPT may also seize DT's profits stemming from tariffs in excess of the approved amount and take any measure necessary to reestablish a fair competitive environment jeopardized by unlawful cross-subsidization. Moreover, DT's subsidiaries an affiliates shall use reserved services for the provision of competitive services under the same terms as DT's customers and must use such terms to account internal services transfer.

The Commission's Intentions

31. On the basis of the foregoing, the Commission intends to take a favourable position on the notified transactions under the competition rules of the EC Treaty and under Article 53 of the EEA Agreement and to grant Atlas an individual exemption pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement. Before doing so, the Commission invites interested third parties to send their observations within six weeks from the publication of this notice to the following address, quoting the reference 'IV/35.335—Atlas':

European Commission, Directorate-General for Competition (DG IV), Directorate for Information, Communication and Multimedia, Rue de la Loi/Wetstraat 200, B–1049 Brussels. Fax: (32–2) 296 98 19.

Notice Pursuant to Article 19 (3) of Council Regulation No. 17 [1] and Article 3 of Protocol 21 of the European Economic Area Agreement Concerning a Request for Negative Clearance or an Exemption Pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement

Case No IV/35.617—Phoenix

(95/C 337/03)

(Text With EEA Relevance)

Introduction

1. The Phoenix transaction was notified to the Commission on 29 June 1995. The Phoenix transaction is linked to a separate transaction bringing about a joint venture, Atlas, owned 50% by France Telecom (FT) and 50% by Deutsche Telekom (DT), given that Atlas is a parent to the joint venture entities created pursuant to the Phoenix agreements. The Atlas Agreements, notified on 16 December 1994, are described in a separate notice published in this *Official Journal of the European Communities.*

2. The Phoenix agreements comprise two main transactions involving two European Union telecommunications organizations (TO) and one US telecommunications operator:

(i) each of FT and DT is to acquire an equity stake of approximately 10% in Sprint obtain proportionate board representation and investor protection as minority shareholders in Sprint; as detailed below, provisions have been included in the Investment Agreement to prevent DT and/or FT, either separately or jointly, from controlling or influencing Sprint; and

(ii) Atlas and Sprint are to create a joint venture, Phoenix, for the provision of enhanced and value-added global telecommunications services and other telecommunications services to corporate users, carriers and consumers. The Phoenix joint venture will be structured into several operational entities under the strategic supervision of a Global Venture Board (collectively referred to as the 'Phoenix entities'). One such entity will provide Phoenix services worldwide except in Europe and the United States (the 'Rest of World (ROW) entity'), a second entity will provide Phoenix services in Europe except in France and Germany (the 'Rest of Europe (ROE) entity') and a third entity will operate the global backbone network of Phoenix (the 'Global Backbone Network (GBN) entity'). The Global Venture Board shall take decisions on matters of policy only and will not engage in the management of individual operational entities created pursuant to the Phoenix agreements.

A. The Parties

3. Deutsche Telekom AG (DT) and France Telecom (FT) are the German and French public TO respectively. DT is the world's second-largest and FT the world's fourth-largest telecommunications carrier in terms of revenue. Details of both undertakings are provided in the notice on the Atlas venture published in this issue of the Official Journal.

4. Sprint Corporation (Sprint) is a holding company in the United States. The Sprint group of companies is a diversified telecommunications group providing global voice, data and video-conferencing services and related products. Sprint's main subsidiaries provide local (US) exchange, cellular wireless as well as domestic (US) and international long-distance telecommunications services. Other Sprint subsidiaries engage in wholesale distribution of telecommunications products and the publishing and marketing of white and yellow page telephone directories. Worldwide turnover for Sprint in 1994 was ECU 10,9 billion; Sprint is the world's 11th largest telecommunications carrier in terms of revenues.

B. The Relevant Market

1. Creation of the Phoenix Entities

5. The Phoenix entities will address several product and geographic markets, namely (i) the markets for value-added telecommunications network services to corporate users both globally and regionally, (ii) the market for traveller services and (iii) the market for so-called carrier's carrier services.

1. Product Markets

The markets for value-added telecommunications network services

6. The Phoenix entities will be active on the same markets for both advanced

[12] Council Directive of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (OJ No. L 192, 24.7. 1990, p. 1).

[1] OJ No 13, 21.2. 1962, p. 204/62.

telecommunications services to corporate users and standardized low-level packet-switched data communications services described in the separate notice on the Atlas venture published in this issue of the Official Journal.

The market for traveller services

7. The market for traveller telecommunications services comprises offerings that meet the demand of individuals who are away from their normal location, either at home or at work. Among the most relevant of these offerings are those offered by the Phoenix entities, namely calling cards (i.e. prepaid cards with or without a code and postpaid cards), including those in combination with credit cards and other branded service cards ('affinity cards').

8. Customers for traveller services include both business travellers and other travellers. In the card business targeted by Phoenix, the former are by far the largest group of buyers. Business travellers are generally intensive card users, the main incentive for card usage being the possibility to avoid paying hotel telephone surcharges.

The market for carrier's carrier services

9. The market for carrier's carrier services comprises the lease of transmission capacity and the provision of related services to third-party telecommunications traffic carriers. Along with liberalization and globalization of telecommunications markets, demand for efficient, high-quality traffic transportation capacity has risen among old and new carriers. In this connection, the traditional model of separate arrangements with other individual carriers is increasingly challenged by players with global network infrastructure that offer carriers an array of services. The most relevant of such services are:

(a) switched transit, i.e. transport of traffic over bilateral facilities between the originating carrier, the transit carrier and the terminating carrier; neither the originating carrier nor the terminating carrier need bilateral facilities between themselves, but only with the transit carrier;

(b) dedicated transit, i.e. transport of traffic over permanent, dedicated facilities through the domestic network of the transit carrier; facilities used for this purpose may include discrete voice circuits or a highbandwidth digital circuit that can be used for both voice and data services; and

(c) traffic hubbing offerings, where the provider takes care of all or part of international connections; these offerings are typically designed for emerging carriers, who are interconnected with the provider over bilateral facilities and whose international traffic is merged with other traffic on the provider's global network.

As international telecommunications markets are deregulated, demand for carrier's carrier services is increasingly driven by alternative carriers concerned with entrusting the incumbent TO with their international traffic, for reasons such as technical dependency and commercial sensitivity of customer information.

10. Purchasers of carrier's carrier services include established and emerging carriers. Both groups of clients have substantial bargaining power and are highly competition-sensitive. Among the latter group, one may distinguish facilities-based carriers that provide telecommunications services over alternative infrastructure or cable television networks seeking greater efficiency in the transport of international client traffic, while non facilities-based carriers seek to preserve a competitive advantage by avoiding dependence on a local TO for international client traffic.

2. Geographic Markets

11. Along the lines of the Commission's findings in its BT–MCI decision,[2] the geographic scope of certain markets targeted by the Phoenix entities as well as the market that must be considered in respect of the investment of DT and FT in Sprint is international and even global. Although national borders subsist for many services, strategic alliances like Phoenix are built not only in anticipation of a market unaffected by national boundaries but even with the express purpose to offer large global telecommunications users seamless end-to-end services anywhere by overcoming the difficulties inherent in the current market structure split along national borders. However, the service offerings of the Phoenix entities will be relevant to different existing geographic markets.

The markets for value-added telecommunications network services

12. As described in the separate Atlas notice, demand by corporate users for advanced services exists in at least three distinct geographic markets, namely at a global, a cross-border regional and a national level. Phoenix services will have global reach given that each of DT, FT, Sprint and the ROE and ROW entities will be interconnected over the Phoenix global backbone network. In the global market for advanced telecommunications services to corporate users, the Phoenix venture will therefore create competition for instance for BT and MCI's existing Concert venture. In the European Union, the ROE entity will cooperate with DT, FT and ATLAS to provide advanced telecommunications services to corporate users at the cross-border regional level; these services will have 'global connectivity', i.e. allow for an extension beyond the European Union if a customer so requires.

13. Standardized low-level packet-switched data communications services in each geographic market mentioned in the previous paragraph are a part of the Phoenix offerings portfolio. However, such services will be provided at the national level only if so decided by the regional Phoenix operating entity. Therefore, the ROE entity will provide Europe-wide packet-switched data communications services, that will initially be based on the existing Transpac and Sprint networks. The extent to which the ROE entity will provide such services in national markets within the EEA will depend on the coordination between Atlas and the ROE entity as the competent Phoenix entity in that region.

The market for traveller services

14. Along with the globalization of the economy the market for traveller services appears to be increasingly global; worldwide travellers demand offerings which include a single bill and integrated functions such as voice messaging, voice response and information systems. Geographic limitations of current traveller service offerings are generally due to technical shortcomings set to be overcome in the near future, such as the incompatibility of mobile communications systems or differences in prepaid cards without an individual user code. As illustrated at paragraph 7 above, none of the services targeted by the Phoenix entities is affected by these shortcomings; however, the geographic scope of the traveller services offered by Phoenix can be left open for the purposes of this case, as the finding of narrow geographic markets would not affect the assessment of the parties' competitive position.

The market for carrier's carrier services

15. Both supply of and demand for carrier's carrier services are by nature international. Geographic proximity between purchaser and supplier of switched transit capacity is hardly relevant for switched transit which carriers use either as a substitute for operating own international lines or to deal with peak traffic on such lines. Likewise, dedicated transit services offer cable- or satellite-based routing capacity across third countries. Finally, using hubbing services is an alternative to entering into an undetermined number of bilateral agreements with individual carriers.

2. DT and FT's Investment in Sprint

16. The acquisition by DT and FT of new equity equivalent to an approximate 20% stake in Sprint aims at consolidating a strategic alliance to enter the global telecommunications markets, which serves the parties best interest to improve and extend service in new market segments. Telecommunications markets are developing quickly and there is uncertainty about what they will look like in a few years' time: the prospect of full liberalization is pushing TO's to take positions, in order to be in the best possible situation when full liberalization comes. As shown by the BT–MCI alliance, investment in a US carrier offers one efficient way to address multinational companies, i.e. the largest target customer group for global value-added telecommunications network services, notably in the United States.

C. Market Shares of Phoenix

The markets for advanced telecommunications services to corporate users

17. Global market. The parents estimate the global value-added telecommunications network services market addressed by Phoenix (exclusive of data communications services) to be worth approximately ECU 4,8 billion (1993). Of this total, end-to-end services accounted for approximately ECU 37,6 million, VPN services for approximately ECU 2,8 billion, VSAT services for approximately ECU 1,4 billion and outsourcing services for approximately ECU 527 million. In 1993, the aggregate turnover of DT, FT and Sprint in the different market

[2] Commission decision of 27 July 1994 (OJ No L 223, 27. 8. 1994, p. 36).

segments amounted to approximately ECU 3,8 million for end-to-end services, approximately ECU 576 million for VPN services and approximately ECU 6 million for outsourcing services, giving Phoenix a theoretical market share of 11,8% in the global market for advanced telecommunications services to corporate users.

18. Cross-border regional market. Services in the European Union (exclusive of data communications services) accounted for approximately ECU 505 million in 1993, According to the notification the Phoenix parents' aggregate market shares in the European Union in 1993 were [. . .] % [3] in the end-to-end services market, [. . .] % [4] in the VPN services market [. . .] % [5] in the outsourcing services market and [. . .] % [6] in the VSAT market. However, market shares for VSAT services are difficult to calculate given that TOs mostly use VSAT terminals as back-up facilities for other services or to extend the geographic scope of services despite terrestrial infrastructure shortcomings.

19. National markets. National markets for advanced telecommunications services to corporate users within the EEA are discussed in the notice on the Atlas venture, published in this issue of the Official Journal. In this regard, Sprint has a significant share of total outsourcing turnover generated in Member States such as the Netherlands [. . .] % [7] and the United Kingdom [. . .] % [8], where DT and FT's outsourcing joint venture, Eunetcom BV, has a lesser presence (5% of total turnover in both Member States). As for France and Germany, adding Sprint to DT and FT brings Phoenix's fictional aggregate share of total turnover generated by outsourcing services to [. . .] % [9] in France and to [. . .] % [10] in Germany, compared with 31% in France and 33% in Germany for the second-largest provider, Concert's Syncordia, in both these national markets.

The market for standardized low-level packet-switched data communications services

20. The global market for standardized low-level packet-switched data services was worth approximately ECU 5,3 billion in 1993, while DT, FT and Sprint's aggregate sales were [. . .] % [11] or [. . .] % [12] worldwide. The European market for data communications services is discussed in the separate notice on the Atlas transaction, published in this issue of the Official Journal. Sprint's turnover for standardized low-level packet-switched data services was [. . .] in 1993, bringing DT, FT and Sprint's aggregate shares of that market to [. . .] % [13]. As for national markets, Sprint achieved its highest turnover in France, Germany, Italy and the United Kingdom. Neither DT nor FT have a significant market presence in the latter two Member States, where Sprint has [. . .] % [14] and [. . .] % [15] market share respectively. In turn, Sprint's turnover in France (ECU [. . .] % [16]) and Germany (ECU [. . .] % [17]) equals market shares in these Member States of only [. . .]% and [. . .]% respectively [18]. The market for traveller services

21. Total calling card revenue in the European Union was approximately ECU 120,5 million in 1994, most of which generated by national dialling. In 1993, DT had issued 200,000 cards (all of which in German), equivalent to 2,1% of the total card subscriber base in the European Union; FT had issued 1,5 million cards (all of which in France), equivalent to 15,7% of the card subscriber base in the European Union; and Sprint had issued 12 million cards worldwide, of which 500,000 (equivalent to a 5,2% market share) in the European Union. The aggregate market shares of the parents would therefore make Phoenix the largest calling-card services provider in the European Union (23% market share) in terms of subscriber numbers, ahead of AT&T and BT with 21 and 17,8% market share respectively. In terms of calling card traffic within the European Union, the aggregate market shares of FT (21%) and DT (3%) are equal to BT's market share of 24%.

The market for carrier's carrier services

22. The market for global switched transit services is estimated to be worth approximately ECU 301,1 million, equivalent to 1 500 million minutes of international traffic or approximately 3% of the world's international telephony traffic. Of this total, approximately ECU 165,6 million are services provided by European carriers, of which approximately ECU 30,1 million to other European carriers. Within the global switched transit market (1994), with 5–6% annual growth, DT had a turnover of ECU [. . .] [19], FT of ECU [. . .] [20] and Sprint of ECU [. . .] [21]. The aggregate market shares of DT, FT and Sprint make Phoenix the thrid largest global switched transit provider behind AT&T and BT (20,2% each).

D. Main Competitors of the Phoenix Entities

The market for value-added telecommunications network services

23. The situation in these markets is discussed in the separate notice on the Atlas venture published in this issue of the Official Journal.

The market for traveller services

24. More than one third of calling cards in Europe are issued by US operators. AT&T is estimated to have 2 million postpaid card customers in Europe, equivalent to 21% of all cards issued there. These customers generate 59% of calling card traffic initiated in Europe on the US route. MCI is estimated to have 1 million postpaid card customers in Europe (10,5%), which generate 27% of calling card traffic initiated in Europe on the US route. Executive Telecard International (ETI) markets calling cards in Europe through agreements with local operators or credit card companies; ETI's market position is similar to that of MCI.

The market for carrier's carrier services

25. Major players in the market for carrier's carrier services and notably global switched transit services competing in the EEA include AT&T, BT (each holding approximately one fifth of the market), Cable & Wireless, MCI and Teleglobe Canada. Along with the increasing proliferation of new carriers that seek to be independent of the incumbent TO for their international traffic, new suppliers of such services, some with substantial infrastructure resources, are emerging in the market, e.g. Hermes Europe Railtel.

E. The Transaction

26. The transaction notified to the Commission comprises a set of agreements whose main features are described below.

1. Agreements as Originally Notified

1. Agreements Regarding the Phoenix Joint Venture

The parties have to date submitted one final agreement: the Phoenix Joint Venture Agreement (the 'JV Agreement'), that sets out the parties' essential commitments and business objectives. Attached as annexes to the JV Agreement are detailed term sheets for all agreements described below, which will be submitted upon closing of the Phoenix Transaction. These term sheets detail the agreed content of the following agreements:

(a) the Transfer Agreements will provide for the transfer by Sprint, FT, DT, and Atlas (collectively referred to an the 'parents') of certain basic and related businesses to the relevant ROE, ROW, and GBN entities.

(b) The Intellectual Property and Trademark Licence Agreements will concern the grant by the parents and certain affiliates to the Phoenix entities of non-exclusive, non-transferable licences to use certain of the parents' technical information and trademarks.

(c) The Services Agreements will specify the terms and conditions of trading relationships among Sprint, Atlas, and the ROE and ROW entities, including the supply and support services needed to provide Phoenix services worldwide.

2. Agreements Regarding FT and DT's Investment in Sprint

(a) The Investment Agreement will provide for the purchase by each of FT and DT of approximately 10% of the common stock of Sprint.

(b) The Standstill Agreement will bind FT and DT for a period of 15 years not to acquire additional shares in Sprint which would increase their combined aggregate voting rights to more than 20%.

(c) The Registration Rights Agreement is required in order for each party to consummate the transactions contemplated by the Investment Agreement.

[3] Business secret (less than 30%).
[4] Business secret (less than 30%).
[5] Business secret (less than 5%).
[6] Business secret (less than 25%).
[7] Business secret (less than 10%).
[8] Business secret (less than 10%).
[9] Business secret (less than 45%).
[10] Business secret (less than 40%).
[11] Business secret.
[12] Business secret (less than 25%).
[13] Business secret (less than 40%).
[14] Business secret (less than 5%).
[15] Business secret (less than 5%).
[16] Business secret.
[17] Business secret.
[18] Business secret (less than 5% respectively).
[19] Business secret (market share less than 10%).
[20] Business secret (market share less than 15%).
[21] Business secret (market share less than 5%).

2. Main Contractual Provisions

1. Concerning the Phoenix Entities

(a) Structure of the Phoenix Venture

The JV Agreement provides for the creation of the following operating entities: Phoenix Rest of Europe (ROE), Phoenix Rest of the World (ROW) and Global Backbone Network (GBN). The ROE entity will conduct the Phoenix business within the ''rest of Europe'' region (i.e. outside of France and Germany), while the ROW entity will conduct the Phoenix business within the ''rest of the world'' region (i.e. outside Europe and the United States). The GBN entity will own and operate as global transmission network over which Phoenix services and other traffic will be routed.

FT and DT will each be the exclusive distributor of Phoenix services in France and Germany respectively; however, FT and DT will meet unsolicited customer requests for services regardless of the customer's location. Moreover, the French and German subsidiaries of Atlas will provide FT and DT with (i) sales support services regarding Phoenix products to distributors in France and Germany; and (ii) services within the scope of Phoenix other than X.25 packet-switched data network services.

A new, wholly-owned subsidiary of Sprint (the ''Sprint Subsidiary'') and Atlas will each initially own 50% of the outstanding voting equity of each of the parent entities of the ROW entity and the GBN entity. The Sprint Subsidiary and Atlas will initially own 33⅓ and 66⅔%, respectively, of the voting equity of the parent entity of the ROE entity.

A Global Venture Board will be established to set global policies and monitor compliance of the operating groups with their business plans. Any initiative of the Global Venture Board will generally require a unanimous vote.

Day-to-day operations will be the responsibility of the chief executive officers of the operating entities, who are under the supervision of the governing board of the relevant parent entity of either ROE, ROW, or GBN entity. Most decisions of each governing board will be adapted by simple majority vote of the members present. Unanimous consent is however required for a number of important decisions including final approval of business plans, certain changes in structure and capitalization, and certain decisions on technology and investments.

(b) Purposes and Activities of Phoenix Entities

The business of the joint venture will initially consist of the provision of (i) global international data, voice, and video business services for multinational companies and business customers; (ii) international services for consumers, initially based on card services for travellers, and (iii) carrier services providing certain transport services for the parents and other carriers. The Phoenix entities may also offer telecommunications equipment and invest in national operations.

To market these services the Phoenix joint venture will be responsible for the planning and management functions of operations, as well as marketing and customer support, including the following:

(i) Central coordination of product development and management to ensure seamless global services; the Phoenix entities shall notably define functionality, technical standards, and service level requirements for Phoenix services;

(ii) Implementation of a common global network and information systems platform rationalizing and integrating the currently separate international data, voice, and overlay networks of the parents; the GBN will link overlay and backbone networks in each operating area (i.e. ROE and ROW) while proprietary interfaces will allow provision of seamless services; within its first few years of operating, Phoenix will begin to deploy the next generation of Asynchronous Transfer Mode (ATM) technology, comprising any and all of transmission, switching, signalling, network intelligence, and service management elements;

(iii) Integration and development of information systems for coordinated billing, customer support, and other backoffice functions, supporting national distributors; and

(iv) Development of a sales presence in the ROE and ROW territories either directly or through distribution arrangements using a common ''masterbrand''; in particular, national service operations will be established or consolidated in each major country, and will be responsible for distributing Phoenix services within that country; in addition, regional sales offices will be established to provide technical and sales support, including identification of potential customers and assisting in preparation of customer proposals.

(c) Provisions Concerning Dealings With/by Phoenix Entities

Pursuant to the JV Agreement, transactions among the Phoenix entities, on the one hand, and FT, DT, and Atlas, on the other, will generally be conducted on the most favourable terms and conditions that are offered to third parties. If products, services, or facilities relevant to these transactions are not commercially available, such transactions shall be conducted in accordance with an arm's length pricing method, using full-cost reimbursement or such other arm's length pricing method as may be agreed on by the parties. The parents shall have the first right to offer to supply certain products, services, and facilities to the Phoenix entities. Notwithstanding, each Phoenix entity may purchase from a third party which, on otherwise comparable terms and conditions, offers lower prices, either once the parties have been given the opportunity to match such terms and conditions or if a customer so requires.

Each of the Phoenix entities and their parents have the first right to offer to perform in their respective territory any facilities or services required by another party to the Phoenix agreements. Such services may be obtained from a third party at a lower price under comparable terms and conditions, or where a customer so requires. In accordance with this principle, the ROE and ROW entities will be required to purchase telecommunications network transmission capacity from the GBN entity to the extent available.

(d) Non-Compete Provisions; Distribution

Pursuant to the JV Agreement as originally notified, albeit subject to various exceptions, no party or affiliate of a party may distribute any international telecommunications services which are either provided by the Phoenix entities or substitutable for such services. Likewise, no party or affiliate of a party may invest in any entity that offers such services. Moreover, no party or any of its affiliates may offer national long-distance services in competition with either a national operation of Phoenix or a pubic telephone operator affiliated with Phoenix (e.g. a national distributor of Phoenix). Nor may any party or any of its affiliates make investments in any entity offering such competing national long distance services or in any national operation allied with a major competitor of Phoenix.

Outside the parents' home countries exclusivity will be granted to distributors on a case-by-case basis. Passive sales by one distributor to customers in the respective sales territory of any other distributor will be allowed in the EEA.

(e) Licenses to be Granted to Phoenix Entities

Under the Intellectual Property Agreements; each parent will grant each of the Phoenix entities non-exclusive, non-transferable licences to use certain technical information of that parent in the respective territories of such entities to conduct the Phoenix business. Each Phoenix entity shall have the right to sub-license the rights granted to any other Phoenix entity or any affiliated national operation or local partner, to the extent such sub-licence is necessary to conduct the Phoenix business. Likewise, each Phoenix entity shall on request also sub-licence such rights to any parent or affiliate of such parent, to the extent such sub-licence is necessary to conduct the Phoenix business.

Royalties shall be payable as customary in the market and negotiated by the parties on an arm's-length basis. License rights granted to a party under the Intellectual Property Agreements will continue in the event of either termination of the Phoenix venture or transfer of such party's interest in the Phoenix venture.

Similarly, pursuant to the Trademark Licence Agreement each parent grants each of the Phoenix entities non-exclusive, non-transferable rights to use certain trademarks owned by or licensed to such parent in connection with the marketing or sale of certain authorized products and services in the respective territories of such entity.

2. Concerning FT and DT's Investment in Sprint

(a) Restrictions on Transfer of Shares by FT or DT and Limits on Increases of Their Shareholding in Sprint

Pursuant to the Investment Agreement, neither FT or DT may dispose of its shares in Sprint for five years after the closing date. Thereafter restrictions apply to large transfers, which would in most circumstances give Sprint the rights of first refusal.

Pursuant to the Standstill Agreement, FT and DT shall each have the right to acquire additional Sprint shares to reach and

maintain a 10% shareholding, but shall not for 15 years after the closing date acquire additional shares that would increase their aggregate voting rights to more than 20%. Once this initial 'standstill' period has expired, FT and DT may acquire additional shares, but may not increase their aggregate voting rights about 30% nor conduct certain activities intended at taking control of Sprint.

(b) Consent Rights and Board Representation of FT and DT

FT and DT have the right to elect directors to the Sprint board in proportion to their shareholding, provided that each has the right to elect at least one director. Neither FT or DT may have access to confidential, competitive information on Sprint's activities in the EEA through their representation on Sprint's board. Nor may these representatives provide Sprint with confidential information that FT or DT may have obtained from US competitors through correspondent relationships.

As the sole holders of Sprint's class A common stock, FT and DT have been granted substantial consensual rights with respect to certain corporate actions of Sprint, which nevertheless fall considerably short of control. These actions include major equity issuances, disapproval of investments in Sprint by major competitors, participation rights in transactions involving change of control, and other bilateral corporate transactions. FT and DT have a right of first offer with respect to long-distance assets of Sprint for a fixed period of time.

F. Changes Made and Undertakings Given Further to the Commission's Intervention

27. Some features of the agreements as notified appeared to be incompatible with the Community competition rules. In the course of the notification procedure the parties have amended certain clauses in their agreements and given undertakings to the Commission.

1. Contractual Changes

28. Non-appointment of Phoenix as an agent for international half-circuits. Following an announcement made in the Phoenix notification, which did not yet reflect the parties commitments regarding Atlas further to the Commission's intervention, DT, FT, Atlas and Sprint have deleted FT and DT's 'international private lines', i.e. FT and DT's international half-circuits, from the list of products that Phoenix would distribute as agent.

29. Non-compete provisions. The parties have not yet sought an exemption pursuant to Articles 85 (3) of the EC Treaty and 53 (3) of the EEA Agreement for any specific agreements regarding national long-distance services. The non-compete clause in the original JV Agreement has therefore been amended: the parties are now obliged to refrain only from either (i) competing with or (ii) investing in a competitor of entities providing long-distance services provided such entities are controlled by Phoenix.

2. Non-Discrimination

30. Just as DT and FT shall be prohibited from discriminating in favour of the joint venture, as described in the separate notice on the Atlas transaction, the Commission intends likewise to prohibit DT and FT from discriminating in favour of the Phoenix entities. The same is true for the specific elements covered by this requirement.[22]

3. Undertakings Given by the Parties

31. Carrier's carrier services. Neither Atlas, Phoenix, DT, FT, Sprint or any affiliate of these entities shall make a particular telecommunications operator's ability to use Phoenix international carrier services conditional upon use or distribution by that telecommunications operator of services provided by Atlas, Phoenix, FT, DT or Sprint. Neither shall Atlas, Phoenix, DT, FT, Sprint or any affiliate of these entities make its commercial dealings (i.e. terms, conditions, price, discounts) with any telecommunications operator conditional upon use or distribution by that telecommunication's operator of services provided by Atlas, Phoenix, FT, DT or Sprint.

32. DT, FT and Sprint have also given further undertakings that mirror the undertakings given in connection with the Atlas notification; reference is therefore made to the separate notice on the Atlas transaction published in this issue of the Official Journal.

1. Cross-Subsidization

As in the context of the Atlas transaction, DT and FT shall not engage in cross-subsidization within the meaning of the Commission's competition guidelines for the telecommunications sector[23] in connection with the Phoenix venture. To avoid that the Phoenix entities or their distributors benefit from cross-subsidies stemming from the operation of both public telecommunications infrastructure and reserved services by either DT or FT, all entities formed pursuant to the Phoenix venture will be established as distinct entities separate from DT and FT.

The ROE and ROW entities will obtain their own debt financing on their own credit, provided that Sprint, FT and DT:

(a) may make capital contributions or commercially reasonable loans to such entities as required to enable the ROE and ROW entities to conduct the Phoenix business;

(b) may pledge their venture interests in such entities in connection with non-recourse financing for such entities; and

(c) may guarantee any indebtedness of such entities, provided that Sprint, FT and DT may only make payments pursuant to any such guarantee following a default by such entities in respect of such indebtedness.

The ROE and ROW entities shall not allocate directly or indirectly any part of their operating expenses, costs, depreciation, or other expenses of their businesses to any parts of DT or FT's business units (including without limitation the proportionate costs based on work actually performed that are attributable to shared employees or sales or marketing of Phoenix products and services by DT or FT employees). However, nothing shall prevent such Phoenix entities from billing DT or FT for products and services provided to DT or FT by such entities on the basis of the same prices charged to third parties (in the case of products or services sold to third parties in commercial quantities) or full cost reimbursement or other arm's length pricing method (in the case of products and services not sold to third parties in commercial quantities).

The ROE and ROW entities shall keep separate accounting records that identify payments or transfers to or from DT and FT. The ROE and ROW entities shall not receive any material subsidy (including forgiveness of debt) directly or indirectly from DT or FT, or any investment or payment from DT or FT that is not recorded in the books of such entities as an investment in debt or equity.

2. Recording and Reporting

The same undertakings apply as described in the notice on the Atlas transaction published in this issue of the Official Journal.

33. In so far as related to existing obligations under national or Community law, the above is intended to ensure the parties' firm commitment to comply with the applicable legal framework.

G. The Regulatory Situation

34. The regulatory situation in France and Germany is described in the notice on the Atlas transaction. As for the United States, pursuant to the 1934 Communications Act, Sprint shall publish tariff schedules and contracts describing its network arrangements and services. Furthermore, the 1934 Communications Act, enforced by the Federal Communications Commission (FCC), prohibits Sprint from providing services that unjustly or unreasonably discriminate against Sprint's competitors or foreign correspondents, which may lodge a formal complaint before the FCC if Sprint does not comply with these obligations.

35. While the European Commission was assessing the Phoenix notification under Community law, the US Department of Justice has concluded a procedure under US anti-trust law by entering a consent decree. This consent decree spells out undertakings by the parties that largely resemble those described in this notice.

The Commission's Intentions

36. On the basis of the foregoing, the Commission intends to take a favourable position on the notified transaction under the competition rules of the EC Treaty and under Article 53 of the EEA Agreement and to grant Phoenix an individual exemption pursuant to Article 85 (3) of the EC Treaty and Article 53 (3) of the EEA Agreement. Before doing so, the Commission invites interested third parties to send their observations within six weeks from the publication of this notice to the following address, quoting the reference 'IV/35.617—Phoenix':

European Commission,
Directorate-General for Competition (DG IV),
Directorate for Information, Communication and Multimedia,
Rue de la Loi/Wetstraat 200,
B–1049 Brussels.

[22] See notice pursuant to Article 19 (3) of Council Regulation No 17 concerning Case No IV/33.361—Infonet (OJ No C7, 11. 1. 1992, p. 3, at paragraph 9).

[23] Guidelines on the application of EEC Competition Rules in the Telecommunications Sector (OJ No C 233, 6. 9. 1991, p. 2, paragraph 102 *et seq.*).

Fax: (32 2) 296 98 19.

Exhibit I

Federal Republic of Germany Ministry for Post and Telecommunication

United States Department of Justice,
Antitrust Division,
Mr. Carl Willner,
Telecommunications Task Force,
Judiciary Center Building,
555 4th Street, NW,
Washington, DC 20001

Your reference, Your letter of
Your telefax of 29 November 1995

My reference, my letter of 112b B 1311
Bonn 14–11 28

U.S. Antitrust Review of ''PHOENIX'' Joint Venture including Deutsche Telekom AG

Dear Mr. Willner: Thank you very much indeed for your telefax of 29 November 1995 requesting additional information on the planned legal framework governing telecommunications. I am of course pleased to provide you with such information on specific regulatory issues at short notice. In doing so. I also take account of your intention to use these clarifications in the above antitrust review.

1. Your first question concerns the regulation of ownership and landing rights for submarine cables.

Under the draft Telecommunications Act any company will be allowed to set up and operate transmission lines and offer voice telephony, However, both activities—if offered to the public—will be subject to license and may hence also be subject to certain requirements. The setting up and operation of transmission lines will be permitted as from 1 July 1996 provided that such lines are not used to offer voice telephony for the public (alternative infrastructures); provision of voice telephony to the public will be permitted as from 1 January 1998.

Regulatory intervention through the licensing of operators of transmission lines and voice telephony providers is exclusively limited to German territory which include German coastal waters covering three, in some cases 12, nautical miles.

Unlike US law (Submarine Cable Landing License Act), German law does not provide for the granting of landing licenses for access to the national territory. As a consequence, a particular landing license is neither envisaged for the future nor does it exist under current German law. This regulation is based on the idea that unnecessary state intervention in market developments should be avoided. In addition, the nationality of the operator or owner of the submarine cable is of no legal relevance. This means that we will have a non-discriminatory, open and transparent access regulation in Germany for submarine cables.

In order to preclude possible misunderstandings I wish to point out that the above regulations refer to the telecommunications market. There are also further legal provisions from other areas such as the environmental and nature protection or marine traffic legislation which must be complied with in respect of submarine cables. Such legislation does not, however, refer to market entry in telecommunications.

2. The second question refers to the regulation of interconnection with public telecommunications networks. A draft ordinance of this Ministry on this issue has not been drawn up as yet. Nor has an exact date for its submission been scheduled at present. It is however intended to issue the relevant ordinance immediately following the entry into force of the Telecommunications Act. This ordinance will also be in line with the targets laid down by the European Union. Might I also request you to consider in this respect that recently, ie on 31 August 1995, the European organs submitted a Proposal for a European Parliament and Council Directive on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network provision (ONP). As regards the legal procedure at European level it is fair to say that to date the EU has not fully determined all details to which further action in Germany will strictly be geared in the future. Some preparatory work has yet to be done in this field.

I hope that this information will be of assistance to you in the above antitrust review. Please do not hesitate to contact me if you require clarification on further aspects of our planned market regulation.

Sincerely yours,

By direction of the Minister

Dr. Witte

Exhibit J

French Republic

Paris, December 8, 1995.

Ministry Delegate of Post, of Telecommunications and of Space
Directorate General of Posts and Telecommunications

The Director General

Dear Mr. Willner, I understand that, in connection with the review by the Department of Justice of the Phoenix transaction, you have asked counsel for France Telecom whether U.S. companies will be able to participate fully in the liberalized French telecommunications market after July 1, 1996. Currently, French law does not limit foreign equity participation in the construction and operation of facilities, or in the provision of liberalized services. Indeed, today, several U.S. companies hold VSAT licenses and MFS has just been granted a license to build a metropolitan fiber network in Paris to provide services that have been liberalized.

The only exception in French law to the general rule is that companies not established in the European Union can own up to 20% of entities providing public wireless services. By law, however, this cap may be lifted if other countries have opened their public wireless markets to French enterprises.

Furthermore, as demonstrated by the very liberal offer of the European Union in the context of the World Trade Organization discussions, France fully supports opening up all telecommunications services in all markets. We hope that agreement can be reached among like-minded countries on the rules for further market liberalization and that, as a consequence of these negotiations or, should the latter fail, on a bilateral basis, any then-existing restrictions in French law on foreign ownership of infrastructure or service providers would be removed for U.S. companies.

As an evidence of this policy, I would like to stress that the Government-sponsored recent draft legislation which will permit the granting in 1996 of experimental licenses for innovative multimedia services, including the provision of public voice telephony services on geographically limited areas does not contain any foreign-ownership limit for wire-line based services.

Very truly yours,

Bruno Lasserre,

Carl Willner, Esq.,

Antitrust Division, Telecommunications Task Force, U.S. Department of Justice.

Exhibit K

November 21, 1995.

Carl Willner, Esq.,
Antitrust Division, United States Department of Justice, 555 4th Street, N.W.,
Washington, D.C. 20001

Re: *U.S. v. Sprint Corp.*

Dear Carl: Enclosed is the text of a revision to Section 10.6(b) of the Joint Venture Agreement among Sprint, FT and DT. The revision to Section 10.6(b) will be part of the closing documentation for the transaction. The attached language has been presented to the European Commission for purposes of their review. It should resolve any confusion by third parties regarding the scope of the Agreement among Sprint, FT and DT. Specifically, I want to assure you that it was never the intent of the parties to cause FT or DT to steer customers of FT and DT reserved services to Phoenix. In order to resolve any doubt on this issues, however, the parties have agreed to the revised language enclosed with this letter.

Sincerely,

Kevin R. Sullivan

KRS:ss
Enclosure
cc: J. Cunard, M. Ryan, J. Hoffman

King & Spalding

November 21, 1995.

Carl Willner, Esq.,
Antitrust Division, United States Department of Justice, 555 4th Street, N.W., Washington, D.C. 20001

Re: *U.S. v. Sprint Corp.*

Dear Carl: Enclosed is the text of a revision to Section 10.6(b) of the Joint Venture Agreement among Sprint, FT and DT. The revision to Section 10.6(b) will be part of the closing documentation for the transaction. The attached language has been presented to the European Commission for purposes of their review. It should resolve any confusion by third parties regarding the scope of the Agreement among Sprint, FT and DT. Specifically, I want to assure you that it was never the intent of the parties to cause FT or DT to steer customers of FT and DT reserved services to Phoenix. In order to resolve any doubt on this issues, however, the parties

have agreed to the revised language enclosed with this letter.

Sincerely,

Kevin R. Sullivan

KRS.ss
Enclosure
cc: J. Cunard, M. Ryan, J. Hoffman
November 21, 1995.

Phoenix JVA Section 10.6(b) [p. 81]; Unsolicited Customer Requests

''(b) If a Party or any of its Affiliates receives an unsolicited request from a customer of a Party or any of its Affiliates or of the Joint Venture to enter into a Contract to provide to such customer in conjunction with other Persons a service that is then currently Offered by the Joint Venture, such Party or its Affiliates will use commercially reasonable efforts to persuade such customer to purchase such service from the Joint Venture. If despite such Party's efforts, the customer prefers not to purchase such service from the Joint Venture, such Party will refer such matter to the Global Venture Office which, within ten (10) Business Days, will present its observations regarding such matter to one of the representatives of such Party on the Global Venture Committee for final resolution by such representative. Not withstanding the foregoing, the Parties agree that the customer's preference will be honored in all cases. *The Parties further agree that, notwithstanding the foregoing, this Section 10.6(b) shall not apply to ''FT or DT Products and Services'' as defined in Section V.L. of the Final Judgment in U.S. v. Sprint Corporation, Civ. No. 95–1304 (D.D.C. July 17, 1995), provided that, for purposes hereof, such FT or DT Products or Services are agreed to include not only ''leased lines or international half circuits between the United States and France or between the United States and Germany'' as defined in Subpart V.L. (iii) of such Final Judgment, but also international leased lines or international half circuits between France or Germany and any other country or territory.''*

[FR Doc. 96–1742 Filed 2–1–96; 8:45 am]

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federal register

Friday
February 2, 1996

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1904 and 1952

Occupational Injury and Illness Recording and Reporting Requirements; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1904 and 1952

[Docket No. R–02]

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of Proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise Title 29 of the Code of Federal Regulations Part 1904, Recording and Reporting Occupational Injuries and Illnesses, the supplemental recordkeeping instructions, and replace the recordkeeping forms. This revision is expected to result in: a greatly simplified injury and illness recordkeeping system for employers, improved information concerning occupational injuries and illnesses, increased utility of the injury and illness records at the establishment/site level, increased use of modern technology, including computers and telecommunications equipment, and improved employee awareness and involvement.

This rulemaking is part of the overall effort to simplify and revise Part 1904. One section, Reporting of Fatality or Multiple Hospitalization Incidents, was revised in a separate rulemaking. The text of the revised § 1904.8, which became effective May 2, 1994, is included in this proposal as section 1904.12 due to reorganization of the various sections of Part 1904. However, § 1904.12 in this proposal includes three additional changes which are intended to further clarify the earlier revision.

Also included in this rulemaking is the revision of 29 CFR 1952.4. § 1952.4 establishes the recordkeeping and reporting requirements for States that have their own occupational safety and health programs and have been approved by OSHA to enforce safety and health regulations in their State. The revision of this section is a clarification of the requirements based on the existing interpretation of the current § 1952.4.

DATES: 1. Written comments on the proposed regulation must be postmarked on or before May 2, 1996.

2. A public meeting will be held in Washington, D.C. in the U.S. Department of Labor auditorium at 200 Constitution Avenue NW beginning at 8:30 am on March 26, 1996 and extending through March 28th, if necessary.

ADDRESSES: Comments are to be submitted in writing in quadruplicate, or 1 original (hard copy) and 1 disk (5¼″ or 3½″) in WP 5.0, 5.1, 5.2, 6.0 or ASCII. Note: Any information not contained on disk; e.g., studies, articles, etc. must be submitted in quadruplicate. All comments shall be submitted to: Docket Officer, Docket No. R–02, Occupational Safety and Health Administration, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–7894. Comments of 10 pages or less may be transmitted by facsimile to (202) 219–5046 provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Notice of intention to appear at the meeting is to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. R–02, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, OSHA, U.S. Department of Labor, Office of Information and Consumer Affairs, Room N–3647, 200 Constitution Ave., NW., Washington DC 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION

I. Background

Administrative History

Following the passage of the Occupational Safety and Health (OSH) Act of 1970, the Occupational Safety and Health Administration (OSHA) was formed to promulgate and enforce safety and health regulations and standards. In 1971, OSHA published the occupational injury and illness recording and reporting regulation, 29 CFR Part 1904. During that same year, the Secretary of Labor delegated responsibility for the occupational injury and illness statistical program to the Bureau of Labor Statistics (BLS).

Since 1971, OSHA and BLS have operated the injury and illness recordkeeping system as a cooperative effort. OSHA promulgated and enforced the recordkeeping regulations while BLS prepared survey forms, published recordkeeping forms and supplemental instructions, provided outreach, and conducted the Annual Survey Of Occupational Injuries And Illnesses. In 1990 the agencies decided to reorganize these duties, and the Department of Labor announced that the recordkeeping function was being transferred to OSHA. Pursuant to a memorandum of understanding (MOU), BLS retained responsibility for conducting the Annual Survey Of Occupational Injuries And Illnesses, while responsibility for administering the recordkeeping system was transferred to OSHA (ex. 6). OSHA's responsibility includes developing, publishing, and providing outreach for recordkeeping regulations and instructions. In 1991, OSHA created the Office of Statistics to assume these responsibilities and to meet the data needs of the agency.

Purpose of the Records

The injury and illness records are intended to have multiple purposes. One purpose is to provide information for employers and employees, raising their awareness of the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. In this role, the records serve as a ''management tool'' for the administration of company safety and health programs. Likewise, employees who are provided information on injuries and illnesses will be more aware of hazards in the work environment, and therefore more likely to follow safe work practices, and report workplace hazards. This would generally raise the overall level of safety and health in the workplace.

Another purpose for keeping these records is to provide OSHA compliance staff with information which can facilitate safety and health inspections. During the initial stages of an inspection, the inspector reviews the injury and illness data for the establishment and subsequently focuses his or her inspection efforts on the safety and health hazards revealed by the injury and illness records.

Another use of the injury and illness records is to produce statistical data on the incidence of workplace injuries and illnesses, thereby measuring the magnitude of the injury and illness problem across the country. BLS and participating States make the survey data available at an aggregate level by industry group for research purposes and for public information. OSHA also will use employer specific information to help focus its intervention efforts on the most dangerous worksites and the worst safety and health hazards.

Regulatory/Interpretation History

When Part 1904 was first implemented, industry safety experts were concerned that the regulations and the instructions on the forms did not provide adequate guidance for

employers. They requested that the Department of Labor provide additional instructions on employer recordkeeping obligations to clarify several recordkeeping issues. The Bureau of Labor Statistics responded in 1972 by publishing supplemental instructions to the recordkeeping forms, *BLS Report 412, What Every Employer Needs To Know About OSHA Recordkeeping* (ex. 1). These supplemental instructions were designed to meet the needs of employers by providing detailed information on when and how to record injury and illness cases on the recordkeeping forms.

A major concept established in the supplemental instructions was the definition of work relationship. Although the Act and regulations required ''occupational'' or ''work-related'' injuries and illnesses to be recorded, neither provided a detailed definition of the terms. The 412 booklet defined work relationship as follows: 1) cases that occurred at the employer's establishment (on premises) were considered work-related; and 2) cases that occurred off the employer's premises were considered work-related if the employee was engaged in a work activity or was present as a condition of employment.

The BLS 412 booklet was updated in 1973 and 1975. In 1978, the booklet was again updated to reflect changes in the regulations exempting small employers from the recordkeeping requirements, and to allow employers to computerize their records. The updated versions of the instructions included lists of first aid and medical treatments, flow charts to describe the recordkeeping decision-making process, and answers to many of the questions most frequently asked by employers.

In response to requests from labor and industry, and after publication in the Federal Register and a formal comment period, the BLS 412 report series was replaced in April of 1986 by the *Recordkeeping Guidelines For Occupational Injuries And Illnesses* (ex. 2). The revised version of the supplemental instructions contained an expanded question and answer format similar to the BLS 412 report, but provided additional information on the legal basis of the requirements for recordkeeping under Part 1904. The Guidelines provided clearer definitions of the types of cases to be recorded, discussed employer recordkeeping obligations in greater detail, introduced exceptions to the on-premises presumption of work relationship for instances where the application of the general rule was considered inappropriate or overly burdensome, updated the medical treatment/first aid lists, and addressed new recordkeeping issues. A short version of the Guidelines, *A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses* (ex. 7), was also produced.

While the 1986 guidelines clarified the existing requirements, concerns still persisted about the quality and utility of the injury and illness data. Some employers believed that the guidelines were too long and that some of the recordkeeping concepts were too complex and difficult to understand.

These continued concerns about the injury and illness records and the related statistics led to the 1987 Keystone National Policy Dialogue on Work-related Illness and Injury Recordkeeping (described in the Reports Section below). The Keystone dialogue group identified many problems with the recordkeeping system and provided numerous suggestions for improving the recordkeeping definitions.

Under a Memorandum of Understanding (MOU) dated July 11, 1990 (ex. 6), the responsibility for administering the national injury and illness recordkeeping system was transferred from the Bureau of Labor Statistics to OSHA. As a result, OSHA developed and is now proposing this revision of the regulations, forms, and supplemental instructions.

Compliance Activities

In 1981 OSHA changed its use of employers' injury and illness records in its programmed inspection activity. At the beginning of a planned programmed inspection, the compliance safety and health officer would do a ''records-only check'' to determine the lost workday injury incidence rate for the establishment. If the establishment had a rate below the national average, the compliance officer would end the inspection.

Beginning in 1986, OSHA discovered numerous instances of significant underreporting of injuries and illnesses. The Agency began issuing large penalties for recordkeeping violations. These highly publicized recordkeeping cases resulted in an even greater awareness of, and sensitivity to, the injury and illness recordkeeping requirements among the safety and health community. In 1989, OSHA discontinued its ''records-only check'' policy of terminating inspections because of concerns that this policy might have been an incentive to underrecord injuries and illnesses.

Other Criticisms

OSHA enforcement policies of the 1980s led to increased awareness of recordkeeping requirements which resulted in renewed criticisms of the existing recordkeeping system. One persistent objection has been that the current injury and illness recordkeeping guidelines are too lengthy and complex. Another objection is that the current definition of work relationship captures some cases which employers believe should not be considered work-related. Examples include employees injured while participating in voluntary wellness programs, cases related to the consumption of food and drink, and cases involving workers performing personal tasks at the workplace during non-work hours.

Reports

Since the middle 1980s, several studies have evaluated the utility of the current OSHA injury and illness recordkeeping system. The National Research Council (NRC), the Keystone Center, and the General Accounting Office (GAO) each published reports which evaluated the recordkeeping system and generated proposals for improvement.

NRC Report: In 1984, because of concern over the possible underreporting of occupational injuries and illnesses and other issues related to the accuracy of the national data collected by the Bureau of Labor Statistics (BLS), Congress appropriated funds for BLS to conduct a quality assurance study of its Annual Survey on Occupational Injuries and Illnesses. BLS requested the National Research Council to convene an expert panel to address the issue of the validity of employer records and the BLS annual survey, problems related to determining and reporting occupational diseases, and other issues related to the collection and use of data on health and safety in the workplace.

In 1987, the National Research Council issued a report, *Counting Injuries and Illnesses in the Workplace: Proposals for a Better System* (ex. 4), which contains the panel's recommendations. Twenty-four specific recommendations were made (see Ch.8 of ex. 4), which generally were intended to accomplish the following: (1) modify the BLS Annual Survey to provide increased information about the injuries and illnesses recorded; (2) discontinue the supplementary data system and replace it with a grant program for States and individual researchers and include criteria for the detail and quality of data collected; (3) conduct an

ongoing quality assurance program to identify underreporting on the BLS Annual Survey by comparing the information on employers' logs with independent sources; (4) implement occupational disease surveillance, including collection of exposure data; (5) improve the collection of national occupational fatality data; (6) implement an administrative data system which would allow OSHA to be able to obtain individual establishment data to conduct an ''effective program for the prevention of workplace injuries and illnesses * * *'' (p.10); and (7) implement a thorough evaluation of recordkeeping practices in individual establishments, using additional resources requested from Congress for that purpose so as to avoid reducing the number of OSHA inspections of workplace hazards.

Keystone: In 1987, The Keystone Center, an independent non-profit organization that facilitates national policy consensus-building dialogues, convened 46 representatives from labor unions, corporations, health professions, government agencies, Congressional staff and academia for a year-long dialogue to discuss occupational injury and illness recordkeeping.

In 1989, Keystone issued its final report, *Keystone National Policy Dialogue on Work-related Illness and Injury Recordkeeping, 1989* (ex.5). The report focused on four major topics: (1) recordkeeping criteria; (2) OSHA enforcement procedures; (3) injury and illness data systems; and (4) occupational illnesses. The report detailed issues within each topic and made specific recommendations. By topic and in summary, the Keystone report recommended: (1) revision of various aspects of the recording criteria; (2) use of injury and illness data by OSHA for targeting enforcement and revision of the guidelines to make them easily and uniformly understood; (3) development of a national system for the collection and dissemination of occupational injury and illness information; and (4) broadening the type of information collected concerning occupational illness and making the information available to employees and government agencies for appropriate purposes such as research and study.

In 1995, Keystone reassembled a group of business, labor, and government representatives to discuss draft proposed changes to the recordkeeping system. OSHA shared its draft proposed revision with the participants. The draft was also reprinted in several national safety and health publications. OSHA received feedback on the draft. This document reflects many of the issues and concerns raised. Written comments generated by the on-going dialogue have been entered in the docket (ex. 12).

GAO: An August 1990 report by the United States General Accounting Office, *Options for Improving Safety and Health in the Workplace* (ex. 3), discussed the importance of the employer injury and illness records, including: (1) for many entities, the general descriptive value to better understand the nature and extent of occupational safety and health problems; (2) identification by employers and employees of safety and health problems in the workplace which will enable them to correct the problems; (3) use by OSHA to conduct research, evaluate programs, allocate resources, and set and enforce standards. The report focused on the use of the records in OSHA enforcement, particularly in targeting industries and worksites for inspections and determining the scope of inspections.

The GAO report found ''possibly significant injury and illness underrecording and subsequent underreporting'' (p.3). Reasons for inaccurate recordkeeping include: (1) intentional underrecording in response to OSHA inspection policies or employer safety competitions; (2) unintentional underrecording because of a lack of understanding of the recording and reporting system; and (3) inaccurate recordkeeping because of the lack of priority placed on recordkeeping by employers which results in lack of appropriate supervision of recordkeepers. The GAO noted that OSHA's revised enforcement procedures, which included increasing the size of the fines for recordkeeping violations and modifying its records-review procedures, should help improve the accuracy of recordkeeping. The GAO recommended that the Department of Labor conduct studies to assess the accuracy of the records using independent data sources, evaluate how well employers understand the revised guidelines [revisions could be tested pre-publication], and utilize a recordkeeping audit program in selected enforcement activities.

Advisory Committee on Construction Safety and Health (ACCSH): OSHA provided the Advisory Committee on Construction Safety and Health (ACCSH) with a written briefing on the draft proposal to revise 29 CFR Part 1904 and made an oral presentation to the Committee on October 13, 1994. During its meeting on December 9, 1994, the Committee presented its recommendations to Assistant Secretary Joseph Dear. The Committee recommended that OSHA ''immediately publish the NPRM on recordkeeping for public comment.'' The Committee reiterated its recommendation in its May, 1995 meeting. In addition, the ACCSH presented OSHA with specific recommendations on particular provisions of the revision which are of significance to the construction industry. OSHA has given the ACCSH recommendations careful consideration and modified the proposal in several areas.

The ACCSH recommendations, OSHA's written briefing, and the relevant portions of the transcripts of the October and December 1994 ACCSH meetings, are part of the public record (ex. 10).

OSHA would like to have the benefit of public comment on the ACCSH recommendations, as well as the specific issues for comment and the provisions of the proposed rule.

Outline

The following is an outline of the remainder of this preamble. The regulatory text and appendices follow the preamble.

II. Summary and Explanation
1. Reorganize sections
2. Definitions (Proposed § 1904.3)
   a. lost workday
   b. employee
   c. establishment
   d. first aid
   e. health care provider
   f. medical treatment
   g. responsible company official
   h. restricted work activity
   i. site controlling employer
   j. subcontractor employee
   k. work environment
   l. work related
3. Recording criteria—(Proposed § 1904.4)
4. New case—(Proposed § 1904.4)
5. 7 days to complete—(Proposed § 1904.4)
6. Computerize/centralize Log—(Proposed § 1904.4)
7. Computerize/centralize Incident Records—(Proposed § 1904.5)
8. Year-end summary—(Proposed § 1904.6)
9. Centralize records—(Proposed § 1904.7)
10. Retention—(Proposed § 1904.9)
11. Access—(Proposed § 1904.11)
12. Fatality/multiple hospitalization reporting—(Proposed § 1904.12)
13. Reports—(Proposed § 1904.13)
14. Exceptions/variance—(Proposed § 1904.15)
15. Subcontractor records—(Proposed § 1904.17)
16. Mandatory Appendix B
   a. Blood lead
   b. Cadmium
   c. Hearing loss
   d. Skin disorders
   e. Asthma
   f. Asbestos
   g. Bloodborne

h. Tuberculosis
i. All other
III. Specific Issues for Comment
Issue 1—Exemptions—(Proposed § 1904.2)
Issue 2—Work relationship/severity—(Mandatory Appendix A)
Issue 3—First aid/medical treatment—(Proposed § 1904.3)
Issue 4—Restricted work activity—(Proposed § 1904.3)
Issue 5—Musculoskeletal disorders—(Mandatory Appendix B)
Issue 6—Reluctance to record
Issue 7—Employee involvement
Issue 8—Access/privacy—(Proposed § 1904.11)
Issue 9—Software
IV. Forms
OSHA 300
OSHA 301
V. Legal Authority
VI. State Plans
VII. Regulatory Impact Assessment
VIII. Regulatory Flexibility Certification
IX. Environmental Impact Assessment
X. Federalism
XI. Public Participation
XII. Paperwork Reduction Act of 1995
XIII. List of Subjects
XIV. Authority

II. Summary and Explanation of the Proposed Rule, Supplemental Instructions

The changes to the recordkeeping system are being proposed as regulatory changes in Part 1904. This proposed rule would make 18 significant changes in the requirements of Part 1904:

1. Reorganize the sections within the rule to place the purpose, coverage and definitions for the rule at the beginning, in keeping with the commonly accepted regulatory format. The change would also improve the logical placement of the various sections, provide more meaningful titles for the sections, and combine sections where appropriate. The following table summarizes the proposed reorganization of the rule:

REDESIGNATION TABLE

New section	Old section
1904.1 Purpose	1904.1 Purpose and scope.
1904.2 Coverage and exemptions	1904.15 Small employers and 1904.16 Establishments classified in Standard Industrial Classification codes (SIC) 52–89, (except 52–54, 70, 75, 76, 79, and 80).
1904.3 Definitions	1904.12 Definitions.
1904.4 OSHA Injury and Illness Log and Summary (OSHA Form 300 or equivalent).	1904.2 Log and summary of occupational injuries and illnesses.
1904.5 OSHA Injury and Illness Incident Record (OSHA Form 301 or equivalent).	1904.4 Supplementary record.
1904.6 Preparation, certification and posting of the year-end summary	1904.5 Annual summary.
1904.7 Location of records	1904.14 Employees not in fixed establishments.
1904.8 Period covered	1904.3 Period covered.
1904.9 Retention and updating of occupational injury and illness records.	1904.6 Retention of records.
1904.10 Change of ownership	1904.11 Change of ownership.
1904.11 Access to records	1904.7 Access to records.
1904.12 Reporting of fatality or multiple hospitalization incidents	1904.8 Reporting of fatality or multiple hospitalization incidents.
1904.13 Reports by Employers	1904.20 Description of statistical program, 1904.21 Duties of employers and 1904.22 Effect of State plans.
1904.14 Recordkeeping under approved State plans	1904.10 Recordkeeping under approved State plans.
1904.15 Petitions for recordkeeping exceptions	1904.13 Petitions for recordkeeping exceptions.
1904.16 Falsification of, or failure to keep records or reports	1904.9 Falsification, or failure to keep records or reports.
1904.17 Subcontractor records for major construction projects.	New Section.
Mandatory Appendix A. Work-relatedness	New appendix.
Mandatory Appendix B. Recording of specific conditions	New appendix.
Appendix C. Decision tree for recording occupational injuries and illnesses.	New appendix.

2. Changes in recordkeeping definitions. The recordkeeping system is very dependent on the definitions used to determine the recording of specific cases. Some specific modifications included in the proposed § 1904.3 are to redefine ''restricted work activity'', ''establishment'', and ''medical treatment''; and provide new definitions for an ''employee'', ''subcontractor employees'', ''health care provider'', and ''work environment''. The following addresses each proposed change to the definitions:

a. Eliminate the term ''lost workdays'', by replacing it with a definition of ''days away from work''. The OSHA recordkeeping system has historically defined lost workdays as involving both days away from work and days of restricted work activity. The proposal would change the system to eliminate the counting of days of restricted work activity altogether and only count the number of days away from work. OSHA has found no evidence that the current restricted work activity day counts are being used in safety and health program evaluation. It therefore sees no purpose in continuing the restricted work activity day count requirement.

Employers will not be required to count days away from work that extend beyond 180 days (six months). OSHA believes day counts greater than 180 days add negligible information for injury and illness case analysis while entailing significant burden when updating the OSHA records. OSHA solicits comment on the appropriateness of the 180 day criteria. Should the days away from work count be capped? Is 180 days too short or long of a period? If so, should the count be capped at 60 days? 90 days? 365 days? or some other time period?

Although not in the proposed rule, OSHA is considering a modification to the concept of days away from work to include days the employee would normally not have worked (e.g. weekends, holidays, etc.). OSHA believes this change to calendar days would greatly simplify the method of counting days away by eliminating the need to keep track of, and subtract out, scheduled days off from the total time between the employee's first day away and the time the employee was able to return to full duty. OSHA asks for

comment on whether the reduction of burden associated with this approach justifies the change in the type of information that will be collected.

Another potential benefit of changing to calendar days would be that the day count would more accurately reflect the severity of the injury or illness. The day count would capture all the days the employee would not have been able to work at full capacity regardless of work schedules. For example, if an employee, who normally does not work weekends, is injured on a Friday and is unable to work until the following Tuesday, the ''days away from work'' would be three (3), using calendar days, rather than one (1) day, using work days. If the same injury occurred on a Monday, the day count would be three (3) using either calendar or workdays. Changing the day count to calendar days would eliminate discrepancies based upon work schedules. Thus, the day counts would be easier to calculate and potentially more meaningful.

One of the potential problems with this change would be that economic information on lost work time as a measure of the impact of job related injuries and illnesses on work life would no longer be available. Employers could, however, estimate work time lost by applying a work day/calendar day factor to the recorded day counts. OSHA solicits comment on the idea of counting calendar days rather than work days, in particular, what potential do these methods have for overstating (i.e., counting calendar days) or understating (i.e. counting work days) the severity of injuries and illnesses?

b. Clarify ''employee''. ''Employee'' is defined in Section 3(6) of the Act. A regulatory note is included within the definition to clarify that for OSHA recordkeeping purposes ''employees'' include those workers whom the employer supervises on a day-to-day basis. These workers may include workers provided by a temporary help service, a contractor, or a personnel leasing service. This is consistent with case law and the interpretation currently used by OSHA.

c. Redefine ''establishment''. The definition of an establishment describes the location the records cover. To be most useful the records must be specific to a particular location. ''Establishment'' means a single physical location that is in operation for 60 calendar days or longer where business is conducted or where services or industrial operations are performed. This definition is a minor modification of the definition of establishment found in the Standard Industrial Classification Manual, 1987. The definition was modified by introducing the 60 day provision. The current injury and illness recordkeeping system defines an establishment as a single physical location that is in operation for 1 year or longer. OSHA believes the proposed shorter time period (60 days) will facilitate the use of information at more transient workplaces, such as construction sites. OSHA requests comment on the costs and benefits of this change.

The proposed definition of establishment includes the primary work facility and other areas such as recreational and storage facilities, restrooms, hallways, etc. The current system excludes both parking lots and recreational facilities from the definition of establishment. OSHA is proposing that the current practice of excluding the company parking lot from the establishment be continued, but is including recreational facilities in the definition (see section below for discussion of exemptions to work-relatedness). OSHA believes that, by including related geographic areas, such as recreational facilities, the recordkeeping system will be simplified. OSHA requests comment on this change.

The concept of separate establishments for separate activities found in the current supplemental instructions will be incorporated into the regulations. When distinct and separate economic activities are performed at a single physical location, each activity may represent a separate establishment. For example, contract construction activities conducted at the same physical location as a lumber yard may be treated as separate establishments. Each distinct and separate activity should be considered an establishment when (1) no one industry description (Standard Industrial Classification, 1987) includes such combined activities, and (2) the employment in each such economic activity is significant, and (3) separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, or other types of establishment information. This approach is based on the definition of an establishment found in the Standard Industrial Classification Manual, 1987.

d. Redefine ''first aid''. The definition of first aid has been modified to consist of a comprehensive list of treatments considered first aid. OSHA has attempted to include those treatments that are, in and of themselves, associated with only minor cases. Any treatment or care other than those found on the first aid list would be considered medical treatment for recordkeeping purposes. OSHA believes injuries and illnesses requiring only the treatments listed as first aid would be minor in nature and the recording of them would not be consistent with the intent of the Act. OSHA also believes a finite list will reduce confusion, lead to consistent recordkeeping decisions and greatly simplify the decision-making process.

A treatment may be considered preventive only when there is no work-related injury or illness prior to its use. A treatment may not be defined as preventive when given to stop an existing work-related condition from becoming worse. The only exception to this rule is tetanus/diphtheria shots/boosters. Tetanus/diphtheria shots/boosters will continue to be included as first aid treatment. OSHA seeks comment on whether this approach to recording tetanus/diphtheria shots is appropriate, or whether they should be considered medical treatment.

For further discussion of first aid and medical treatment, see Issue 3 in the Issues for Comment section of this preamble.

e. Define ''health care provider''. This is a person operating within the scope of his or her health care license, registration or certification. OSHA recognizes that this definition differs from definitions of health care provider found in other government regulations and requests comment on its appropriateness for OSHA injury and illness recordkeeping purposes. OSHA is considering qualifying this definition, for example by limiting it to personnel with specific training. OSHA requests comment on this limitation.

f. Redefine ''medical treatment''. Medical treatment is defined to include any treatment other than first aid treatment. The definition focuses on the nature of the treatment given and not on the person administering the treatment (e.g. physician, registered health professional, etc.). Any treatment not included in the definition of first aid is considered medical treatment, making the two groups mutually exclusive. This approach provides clear guidance for employers and thus eliminates any ''grey areas'' that must be interpreted by employers. For further discussion of first aid and medical treatment, see Issue 3 in the Issues for Comment section of this preamble.

g. Define ''Responsible Company Official''. The definition of responsible company official is central to directing the accountability for the accuracy and completeness of the OSHA records for an establishment to the upper management level of the firm. The proposed definition will place the responsibility to certify the accuracy and completeness of the Log and

Summary with an owner of the company, an officer of the corporation, the highest ranking company official at the establishment or his or her supervisor.

OSHA believes that by requiring a higher level employee of the firm to certify the Log, companies will have a greater incentive to take appropriate measures to assure the accuracy and completeness of the information.

h. Define ''Restricted Work Activity''. The definition of restricted work activity will be modified to include injuries and illnesses where the worker is not capable of performing at full capacity for a full shift (1) the task he or she was engaged in at the time of injury or onset of illness; (2) any activity that he or she performed or was expected to perform on the day of injury or onset of illness. OSHA believes this definition will focus on the hazardous tasks that lead to serious injuries and illnesses and lead to greater consistency in the recording of these more severe cases. For further discussion of restricted work activity, see Issue 4 in the Issues for Comment section of this preamble.

I. Define ''site controlling employer''. A site controlling employer is an employer in the construction industry (SIC codes 15, 16 and 17) with contractual, legal and/or practical control over the performance, timing, or coordination of other employers' work on the construction project. An employer (such as a general contractor) that retains another employer to work on the project is presumed to have sufficient control over the subcontractor's performance to be considered a site controlling employer. In addition, an employer (such as a construction manager) is a site controlling employer if it has managerial or supervisory authority with respect to employers engaged on the project, regardless of whether it has a contractual relationship with those employers. For further discussion of subcontractor records, see number 15 of this section.

j. Define ''subcontractor employees''. This proposal requires site controlling employers in the construction industry, for construction projects with an initial total contract value of $1 million or more, to maintain separate injury and illness records for certain on-site employees other than their own, as described in number 15 of this section. Separate records must be kept for those ''subcontractor employees'' who are present at a construction project in connection with their construction job, and are not employees of the site controlling employer at that construction project.

k. Define ''work environment''. The definition of work environment is central to determining work-relatedness. The proposed definition is compatible with the definition traditionally used in the supplemental instructions. The work environment is defined as the employer's establishment and other locations where employees are engaged in work-related activities or are present as a condition of their employment.

l. Define ''work-related''. Although employers are required to record occupational, or work-related injuries and illnesses, the current regulations do not provide a definition of work-related. This proposal includes ''work-related'' in the definition section of the regulatory text and further clarifies the concept in Mandatory Appendix A. The proposed definition is based on the definition in the current supplemental instructions, but is modified to create several new exceptions to the presumption of work-relatedness, which are explained below. Additionally, for injury and illness recordkeeping purposes, if an event in the work environment either caused or contributed to the case or aggravated a pre-existing condition, then it is considered work-related.

It has also been suggested that work-relationship should be limited to where it is demonstrated that the work environment contributed substantially (fifty percent or more) to the condition. OSHA requests input on the proper level of work-relationship that should be used. OSHA requests input on how work contribution can be objectively measured for such a purpose.

For OSHA injury and illness recordkeeping purposes, the concept of ''work-related'' has traditionally been based on a geographic concept of the work environment. The presumption has been made that if injuries or illnesses occur at the employer's establishment, then the case is work-related. This includes cases occurring while the employee is on break, in the rest room or in storage areas when located on the employer's premises. Many employers have criticized this policy, citing cases that occur at the establishment that they believe have a limited workplace relationship. As a result, the 1986 guidelines provided for several exceptions to this rule: removing employee parking lots and recreational facilities from the definition of the premises under certain conditions; excluding those cases where symptoms arise at work, but are caused by accidents or exposures away from work; excluding cases where the employee was at the establishment as a member of the general public rather than as an employee; and excluding cases arising solely from pre-existing conditions.

As recommended in the Keystone report, the proposed revision continues to use the geography based presumption of work-relatedness. Parking lots will continue to be excluded from the proposed definition of establishment. Company access roads will be added to the exclusion. By excluding parking lots and access roads, some injuries and illnesses will be excluded while employees are arriving to or leaving from work. OSHA seeks input on whether the exception for parking lots should be continued, and/or whether OSHA should continue to exclude injuries and illnesses that occur while employees are commuting to and from work.

While recreational facilities are being included in the definition of establishment, injuries or illnesses occurring on company recreational facilities may still be excluded by the proposed ''voluntary participation in wellness programs'' exception explained below. The exception will be based on the activity the employee was engaged in rather than the physical location itself to preserve and simplify the geography based presumption of work-relatedness.

Several new and/or revised activity-based exceptions to the presumption of work-relatedness are being proposed. OSHA requests comment on any and all of the following proposed exceptions:

- Cases resulting solely from voluntary participation in wellness programs, fitness activities, recreational activities, and medical programs. This would include cases occurring during exercise activities, blood donations, physicals, flu vaccination programs, etc. unless the employee was participating as a condition of employment.
- Cases involving eating, drinking, or preparing one's own food when unrelated to occupational factors. This exception would eliminate the recording of cases such as an employee who cuts a finger opening a can of food for lunch or is burned while drinking coffee.
- Cases that are solely the result of employees doing personal tasks (totally unrelated to their job) at the establishment outside of normal working hours. This would exclude those cases where the employee is injured because the employer was allowing the worker to use employer equipment at the establishment for personal uses outside of normal working hours. OSHA requests comment on the appropriateness of this approach,

especially on the limitation that these events occur ''outside of normal work hours''.

• Cases resulting solely from acts of violence committed by family members, a former spouse, or self-inflicted when unrelated to the employee's work situation. This exemption is based on the Keystone's recommendation that injuries and illnesses involving an intentional act of violence in the work environment should be considered work-related unless it can be clearly established that the act was not related to the employee's work situation. The intent of the Keystone group was to exclude those cases that are clearly related to a domestic dispute that leads to subsequent violence in the workplace, such as a worker who is assaulted by a spouse or ex-spouse.

For situations involving violence committed by individuals other than family members or a former spouse, OSHA believes it would be difficult, if not impossible, to determine if the case was related to work or to a domestic situation. For this reason, the exemption to work-relatedness has been limited to violence committed by family members or former spouses. Personal acts of violence perpetrated by employees, co-workers, customers, or others would not be excluded. OSHA requests comment on whether this exemption should be expanded to other kinds of personal relationships. If so, how should it be defined? Also, should the definition of family be limited or defined? If so, how?

• Cases involving workers who were never engaged in any duty at work that could have placed stress on the affected body part. This would exclude those cases where symptoms arise at work, but are caused by accidents or exposures away from work.

• Cases involving workers who were never exposed to any chemical or physical agent at work that would be associated with the observed injury or illness. This would also exclude those cases where symptoms arise at work, but are caused by accidents or exposures away from work.

• Cases resulting solely from activity in voluntary community or civic projects away from the employer's establishment. This reflects and clarifies the work-relationship criteria of injuries and illnesses occurring away from the employer's establishment. Cases occurring away from the employer's establishment are considered work-related if the employee is engaged in a work activity or is there as a condition of employment.

• Cases that result solely from normal body movements, including walking unencumbered, talking, tying a shoe, sneezing, or coughing, provided the activity does not involve a job-related motion and the work environment does not contribute to the injury or illness. The Keystone report recommended this exemption. The report suggested that injuries and illnesses related to a pre-existing condition should not be recorded if they are not related to an identifiable work activity. The exclusion would not apply if it involved repetitive motion or if the work environment either caused or contributed to the injury/illness.

• A mental illness will not be considered work related, except mental illnesses associated with post-traumatic stress. OSHA seeks input on the following questions:

(A) How should OSHA define mental health conditions for recordkeeping purposes, and when and how should the conditions be entered into the injury and illness records?

(B) How should employers determine the work-relatedness of mental health conditions?

(C) How would employers gain knowledge of mental health conditions, given the issue of patient/doctor confidentiality?

For injury and illness recordkeeping purposes, OSHA has historically evaluated injuries and illnesses experienced by employees working in their homes as cases occurring off the employer's premises. Because alternative work place policies (allowing employees to work out of their homes) are becoming more commonplace, OSHA is incorporating a section within Mandatory Appendix A to address the issue of ''work-relatedness'' for employees who work at home. An injury or illness will be considered work-related if it occurs while the employee is performing work for pay or compensation in the home, if the injury or illness is directly related to the performance of work rather than the general home environment or setting. OSHA is considering whether this policy should be maintained, or whether work-relatedness should be presumed for injuries and illnesses of these employees. OSHA solicits comment on this issue.

For further discussion of work relatedness, see Issue 2 in the Issues for Comment section of this preamble.

3. Modify the meaning of ''recordable occupational injury or illness'' (see proposed section 1904.4 in the regulatory text). At the present time certain injuries are to be recorded, namely those which result in death, and injuries other than minor injuries requiring only first aid and which do not involve loss of consciousness, restriction of work or motion, medical treatment, or transfer to another job. Currently, all diagnosed (recognized) occupational illnesses are to be recorded, regardless of severity. The distinction between illnesses and injuries is currently based on the nature of the precipitating event or exposure. Cases which result from instantaneous events are considered injuries, and cases which result from non-instantaneous events are considered illnesses. This current distinction between injuries and illnesses often results in confusion and arbitrary and counter-intuitive decisions on how to record a case. For example, a small cut resulting in an infection would be recorded as an injury, even though infection is commonly considered an illness.

The proposed change would eliminate the need for employers to make a distinction between injuries and illnesses. One set of criteria would be used to evaluate all cases thereby minimizing confusion and inconsistent recording. This proposal represents a major simplification of the recordkeeping system, which would result in more accurate injury and illness data, and reduce the recordkeeping burden for employers who are required to maintain records.

Currently, detailed data for coding cases is collected by BLS only for injuries and illnesses that involve days away from work. If recordkeeping changes are made and no changes are made to the current BLS survey methodology, separate information for injuries and illnesses will no longer be published by BLS for cases that do not result in days away from work. Published information would continue to be available for combined injuries and illnesses, combined injuries and illnesses resulting in days away from work and combined injuries and illnesses without days away from work. In addition, if the survey methodology were modified to collect and code a sample of case characteristics for cases which do not involve days away from work, separate injury and illness information could be published for all cases.

The proposed criteria for recordable occupational injuries and illnesses would require employers to record any case where (1) an injury or illness exists; and (2) is work-related; and (3) meets one or more of the following criteria: (a) involves medical treatment; OR (b) involves death, loss of consciousness, or in-patient hospitalization for treatment; OR (c) involves a day(s) away from work, restricted work activity, or job transfer; OR (d) includes any condition as listed in Mandatory Appendix B.

4. Provide clear guidance for determining when an injury or illness case is resolved. Determination of case resolution is particularly important because employers may be dealing with a reinjury or recurrence of a previous case and must decide whether the recurrence is a ''new case'' or a continuation of the original case. Historically, the supplemental instructions to the recordkeeping regulations required employers to evaluate previously recorded injuries and illnesses as new cases if they were aggravated by additional work-related events or exposures. OSHA developed and included new guidance for evaluating cumulative trauma disorders as new cases in the *Ergonomics Program Management Guidelines For Meatpacking Plants* (ex. 11) which were published in 1990. The ''Meatpacking Guidelines'' provide: If and when an employee who has experienced a recordable CTD becomes symptom free (including both subjective symptoms and physical findings), any recurrence of symptoms establishes a new case. Furthermore, if the worker fails to return for medical care within 30 days, the case is presumed to be resolved. Any visit to a health care provider for similar complaints after the 30-day interval ''implies reinjury or reexposure to a workplace hazard and would represent a new case.''

OSHA is now proposing to expand the use of the criteria found in the ''Meatpacking Guidelines'' to all cases (including injuries and illnesses of the back and lower extremities), while increasing the number of days to 45. A recurrence of a previous work-related injury or illness will be presumed to be a new case when it either (1) results from a new work accident, or (2) 45 days have elapsed since medical treatment, restricted work activity and days away were discontinued and the last signs or symptoms were experienced. This presumption is rebuttable by medical evidence indicating that the prior case had not been resolved. In doing so, OSHA believes it will simplify the decision-making process for determination of a ''new case'' and result in more complete and consistent data. This method of defining case resolution/duration should provide better data on the incidence of illness cases that frequently last only 2–3 weeks (e.g. dermatitis, some CTDs, etc.) and recur on a regular basis.

OSHA solicits comment on the appropriateness of the 45-day interval. Is 45 days too short or long of a period? If so, should the period be 30 days? 60 days? 90 days? or some other time period? Should different conditions (e.g., back cases, asthma cases, etc.) have different time intervals for evaluating new cases?

OSHA is also seeking input for an improved way to evaluate new cases. Should a new category of cases be created to capture information on recurring injuries and illnesses? One option is to add an additional ''check box'' column to the proposed OSHA Form 300 for identifying those cases that are recurrences of previously recorded injuries and illnesses. This would allow employers, employees and OSHA inspectors to differentiate between one time cases and those that are recurrent, chronic conditions. This approach may help to remove some of the stigma of recording these types of disorders and lead to more complete records. OSHA solicits input on this approach. Will a recurrence column reduce the stigma of recording these types of cases? Should recurrences be included in the annual summaries? Should a time limit be used to limit the use of a recurrence column?

5. The proposal will also require that the proposed forms (OSHA 300 and 301) be completed within 7 calendar days, rather than the currently required 6 workdays. OSHA believes this will simplify the requirements by replacing a varying amount of time (depending on the establishment's work schedule) with a standard week.

6. Enhance the ability to computerize/centralize the OSHA 300 Log in proposed § 1904.4. The current regulations and instructions provide for computerization of the OSHA 200 Log, providing that the employer has available at the establishment a paper copy of the Log current within 45 calendar days. This proposal would allow employers to keep their OSHA Log on computer, provided that the employer is able to produce a copy of the Log within 4 hours of a request by an authorized government representative who is permitted access to the Log under proposed § 1904.11. This proposal will reduce the employer's cost of recordkeeping and allows for maximum flexibility when employers choose to computerize their records, without decreasing the access to those records by authorized personnel.

7. Allow for the computerization of Incident Records in proposed § 1904.5. At the present time, the regulations provide for the computerization of the OSHA 200 Log, but not for the computerization of the supplementary record, the OSHA 101. This proposal would allow employers to computerize both of the forms, which may result in less paperwork burden for employers without compromising the quality of those records. The provisions for computerization parallel the proposed changes for computerization of the OSHA 300 Log found in proposed § 1904.4.

8. Modify the proposed § 1904.6 (formerly 1904.5) to provide a new title, require annual average number of employees and total hours worked by all employees to be included in the year-end summary, and require a responsible company official to certify the accuracy and completeness of the records. The section would be titled ''Preparation, Certification and Posting of the Year-End Summary''. The proposal to require an estimate of the employees' total hours worked to be listed on the year-end summary would facilitate hazard analysis and incidence rate calculation. An injury and illness incidence rate is the number of injuries and/or illnesses related to a common exposure base of 100 full-time workers. The common exposure base enables meaningful comparisons of the data regardless of industry, firm size and time period. Information on annual average employment and total hours worked can be obtained from payroll or other company records, and is often available from other reports required by the government, such as unemployment insurance or workers' compensation reports. For some employers, the added burden will be negligible because of their participation in the BLS Annual Survey of Occupational Injuries and Illnesses which already requires a compilation of this information. Approximately 10 percent of employers who regularly are required to keep records are selected each year to participate in the BLS survey. OSHA requests comment on the costs and benefits associated with this requirement and suggestions for alternative methods for collecting the information necessary to calculate these incidence rates.

The proposal will require the employer to post the year-end summary for the entire year, from February 1 to January 31 of the following year. Because the records are kept on a calendar year basis, OSHA believes one month (January) is a reasonable time period for completing the summary section of the form. The year long posting requirement will impose no additional burden on the employer while presenting employees with the opportunity to examine the totals throughout the year. This requirement will also allow employees hired during any time of the year to gain knowledge

about the safety and health environment of the workplace.

9. Modify the location requirements to provide for enhanced centralization of records. This proposal would combine the current § 1904.14, Employees not in fixed establishments, and some of the provisions for centralization of records found in the current § 1904.2, Log and summary of occupational injury and illness, into the proposed § 1904.7, Location of records. The new section contains criteria for records pertaining to employees who either work at an establishment, or who report to an establishment but work elsewhere, or who are engaged in physically dispersed work activities. Under the current system; (1) records pertaining to employees that report to an establishment must be kept at the establishment, (2) for employees that report to an establishment but work elsewhere, the records must be kept at the establishment where they report, and (3) when employees do not report to a fixed establishment on a regular basis, the records must be kept in a central location with telephone access.

The location requirements will be modified to allow for the maintenance of records at an alternate, centralized location. The current regulations do not provide for centralization of the supplementary records, but do allow centralization of the OSHA 200 Log, providing that the employer has available at the establishment a paper copy of the Log current within 45 calendar days. This proposal would eliminate the need for a current copy of the required records at the establishment, provided the employer is able to produce copies of the records within 4 hours of a request by an authorized government representative who is permitted access to the records under the proposed § 1904.11. The employer can either transmit a copy of the records to the worksite or to the government representative's office. This proposal allows for greater flexibility when employers choose to centralize and/or computerize their records without decreasing the access to those records by authorized individuals and provides for recent and future technological developments. OSHA requests comment on situations where the 4 hour requirement may be infeasible. Should the requirement be restricted to business hours, and if so, to the business hours of the establishment to which the records pertain or the establishment where the records are maintained?

The current system requires a separate set of records for each single physical location of a multi-establishment firm, regardless of employment size of the location. The proposal modifies this requirement by allowing an employer to consolidate its records for all establishments with less than 20 employees as long as the establishment location is specified in the Department column on the proposed OSHA Form 300.

10. Modify the retention of records section (§ 1904.6) by renumbering and retitling it to § 1904.9 Retention and updating of work-related injury and illness records, reducing the retention period from five to three years, and requiring employers to update the injury and illness records during the three year retention period to include newly discovered injuries and illnesses. The employer will be required to revise the Log to reflect changes which occur in previously recorded injuries and illnesses, including changes in the count of days away from work. Employers must also update totals or summaries at least quarterly. OSHA asks whether the summary update should be more or less frequent? Employers will not be required to update the OSHA Form 301 to reflect changes in previously recorded cases.

The current § 1904.2 states that employers shall maintain a Log and summary of injuries and illnesses, which has been interpreted to require the updating of the Log, but not the updating of supplementary records or annual summary, to reflect newly discovered cases or to reflect newly discovered information concerning a case.

The proposed change would clarify the employers' obligations to update these records during the three year retention period, if and when they receive additional or updated information concerning a case.

11. Modify the access to records section, currently § 1904.7 and proposed § 1904.11, to require employers to provide copies of records to government representatives. The current section states that ''Each employer shall provide, upon request, records provided for in §§ 1904.2, 1904.4 and 1904.5 for inspection and copying * * *''. In some instances, instead of providing copies of the records, some employers have attempted to provide OSHA compliance personnel only with access to the records, with the copying to be done by hand. The proposed change would clearly require employers to provide copies of the records to government personnel authorized to access injury and illness records.

The section, compatible with section 1910.20 Access to Employee Exposure and Medical Records, will also be modified to clarify that the request for access by authorized government representatives can be made in person or in writing. This, in conjunction with proposed § 1904.13, will allow for collection of the records through the mail.

Currently, only government representatives are authorized access to the injury and illness supplementary forms (OSHA No. 101). This proposal will expand the access authorization to employees, former employees, and their designated representatives. OSHA believes this will increase employee and/or labor groups' ability to perform meaningful safety and health program analysis.

The section will also be modified to require employers to provide copies of the OSHA Log to authorized individuals at no cost. This will remove existing barriers to easy access to the forms by employees, former employees and their designated representatives.

The proposal will specify time limits the employer must meet in providing the injury and illness records once a request of access is made. Employers must provide: 1) copies of the OSHA Forms 300 and 301 within 4 hours of a request made in person by an authorized government representative; 2) access to the OSHA Forms 300 and 301 for review by the close of business on the next scheduled workday when a request is made by an employee, former employee or their designated representative(s); 3) copies of the OSHA Forms 300 and 301 within seven calendar days when a request is made by an employee, former employee or their designated representative(s); or 4) within 21 calendar days of a written request received from an authorized government agency. OSHA solicits input on these time limitations. Are they reasonable? Should they be shortened or extended?

12. Clarify the requirements of reporting fatalities and multiple hospitalization incidents, currently § 1904.8 and proposed § 1904.12. As can be seen in Section III. of the preamble to the April 1, 1994 final rule of the reporting requirements (FR Vol. 59, No. 63, 15599), it was OSHA's intent to require employers to make their reports in a manner which allows OSHA immediate access to the information. However, because the regulatory text reads, ''shall orally report'', there is the possibility that some employers may leave a message on an answering machine during non business hours to satisfy the requirement. Therefore, for clarification purposes, the regulatory text will be changed to read ''* * * shall, report the fatality/multiple

hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U. S. Department of Labor, that is nearest to the site of the incident during regular business hours, or by using the OSHA emergency toll-free central telephone number (1–800–321–OSHA [6742]) during non business hours.''

OSHA will also clarify the requirement to report three or more in-patient hospitalizations which occur at a single site. The site controlling employer or designee will be responsible for making the report if no more than two employees of a single employer were hospitalized but, collectively, three or more workers were hospitalized as in-patients.

The OSHA toll-free telephone number will also be added to the regulatory text for clarification purposes.

13. Clarify an employer's responsibility to report injury and illness information to the Secretary of Labor and the Secretary of Health and Human Services. The proposed § 1904.13 consolidates current §§ 1904.20, 1904.21, and 1904.22 and reflects the transfer of some responsibilities from the BLS to OSHA. Injury and illness data required to be maintained by employers may be collected periodically by mail or other means. Data could be collected for a variety of purposes, including but not limited to, injury/illness surveillance; development of information for promulgating or revising safety and health standards; evaluating the effectiveness of OSHA's enforcement, training and voluntary programs; public information; and for directing OSHA's program activities, including workplace inspections.

14. Change the procedure for petitioning recordkeeping exceptions. The current variance section will be deleted. Instead, all requests for recording exceptions or variances will be made pursuant to the procedures in 29 CFR 1905. This change eliminates duplicate sets of rules/procedures found in Title 29 of the Code of Federal Regulations. The ability to request an exception or variance to the requirements under Part 1904 will continue using the procedures outlined under Part 1905.

Under the current recordkeeping requirements, one variance has been granted to AT&T, and subsequently expanded to the Bell companies. The variance allows AT&T to keep records of its ''field force'' by division, rather than by establishment. The centralization of records provision contained in this proposal will eliminate the continued need for this variance. All exemptions granted prior to the publication date of the final rule of revised Part 1904 will be null and void.

15. Require comprehensive records for ''subcontractor employees'' in the construction industry in proposed § 1904.17. The Keystone report originally proposed the use of ''site logs'' or comprehensive injury and illness records for major construction activities. The report noted that construction sites are normally composed of multiple contractors and subcontractors, each of which may be present at the site for a relatively short period of time. Under the current regulations there are no records readily available to represent the injury and illness experience for the entire site.

Accordingly, the proposal would require site-controlling employers (or their designees) in the construction industry to maintain a separate record reflecting the injury and illness experience of employees working for construction firms other than their own, working at the construction site when the initial construction contract value exceeds $1,000,000. In addition to the normal OSHA Log entry and Incident Record (OSHA Forms 300 and 301) which must be completed for all injuries and illnesses involving the site controlling employer's own ''employees'', a separate, additional record requiring an abbreviated entry shall be completed for injuries and illnesses of ''Subcontractor employees''. (''Subcontractor employees'' are defined as employees of construction firms (in SICs 15,16, and 17) who are present at a construction project in connection with their job(s) who are not employees of the site controlling employer at that construction project.) The site controlling employer would only have to record injuries and illnesses of ''subcontractor employees'' who are employed by construction employers with 11 or more employees at any time during the previous calendar year. The site-controlling employer would only be required to enter the name of the injured ''subcontractor employee'', his or her company, date, and a brief description of the injury or illness. The site controlling employer has the option of using a separate OSHA Form 300, an equivalent form, or a collection of records obtained from the subcontractor employers (e.g. photocopies of subcontractors' Logs) to satisfy this requirement. The increase in burden for employers is offset for those employers who already maintain information on these cases for liability and other purposes. OSHA invites comment on limiting the requirement to injuries and illnesses experienced by ''subcontractor employees'' whose employers, because of their size, are covered by the OSHA injury and illness recordkeeping requirements. Should this requirement be expanded to record the injuries and illnesses experienced by all ''subcontractor employees'' on site, regardless of the employer's status under the recordkeeping requirements coverage?

The site-controlling employer would not be responsible for updating the records or entering counts of days away from work or restricted workdays for these ''subcontractor employees''. The ''actual'' employer of the worker (if not otherwise exempt from OSHA recordkeeping requirements) would be responsible for completing in detail any entries on their own OSHA records. Employers covered by the standard for the Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents, 29 CFR 1910.119, are currently required to keep similar records.

The injuries and illnesses recorded for ''subcontractor employees'' under this requirement would not be included in the national statistics generated by the BLS Annual Survey. Records for ''subcontractor employees'' will be kept separately from the OSHA 300 Log; therefore, while site controlling employers and subcontractors with 11 or more employees will both maintain the injury and illness records, there will be no double counting of injuries and illness in the statistical system.

An alternative to this section has been suggested: Each contractor with 11 or more employees in an individual project, shall yearly or upon completion of their work on the project, provide the project owner, or agent for the owner, with a copy of their project specific OSHA 300 Log. The project owner would have the responsibility to collect the data and send it to OSHA, as required. OSHA invites public comment on this alternative.

16. Provide special guidance in a mandatory appendix for the recording of specific types of injuries and illnesses (see proposed Mandatory Appendix B). OSHA believes all of these conditions are recordable under the current recordkeeping requirements. However, in order to capture significant non-fatal cases that may not meet the other general criteria contained in this proposal, OSHA has developed a listing of specific conditions and corresponding recording criteria for each condition, and has incorporated the listing into the proposed regulations as a mandatory appendix. The application of this list will assist in

collecting more timely and complete data on non-minor occupational illnesses and injuries which are serious, significant or disabling but otherwise would not be captured consistently by the other recording criteria discussed in change number 3 above. The application of the list will also provide clear direction that is needed by employers to determine the proper recording of these conditions, and will incorporate the recordkeeping guidance that OSHA has developed in various guidelines, directives and letters of interpretation.

The current recordkeeping system requires ''all'' occupational illnesses to be recorded. An occupational illness is currently defined as ''any abnormal condition or disorder'' arising from a non-instantaneous work-related event or exposure. This definition is intended to collect comprehensive information on occupational illnesses as soon as they are detected or recognized. Detection or recognition can result from a clinical diagnosis, or through lab tests, x-rays, or other diagnostic techniques. The language of the current general illness recording criteria is so broad and inclusive that, in theory, it should encompass all illnesses, regardless of severity or duration. However, because there is no specific guidance for individual conditions, employers are often unsure of which diagnostic results constitute detection or recognition of an illness that should be entered into the records.

OSHA believes that by providing specific guidance for specific conditions, even though that guidance may be less inclusive than the general definitions currently in use, employers will be more likely to understand and comply with the recordkeeping requirements and the data will be improved.

In many instances, OSHA standards require employers to conduct certain tests or medical evaluations. In most cases, the lowest test results or medical criteria used as action thresholds within the standards are being proposed as the recording criteria for injury and illness recordkeeping purposes. OSHA does not believe that the recordkeeping criteria are restricted by these action thresholds prescribed in specific standards, but believes that using the same criteria for different standards and regulations improves the simplicity of the overall regulatory system. For example, the lowest biological and other monitoring test results used as threshold levels in the lead and cadmium standards will be used as the recording criteria. Under such circumstances, employers are required to use a single set of criteria to meet the obligations of both rules. The burden on employers may be reduced when parallel requirements exist.

OSHA believes that early recognition and recording of injuries and illnesses promote more timely resolution of the hazardous conditions causing them. The recording of injuries and illnesses in their early stages provides information that would allow the employer to correct hazardous conditions before they result in material impairment or do more serious damage to the employee. For this reason, the proposed criteria for recordable conditions are not limited to clinical diagnosis of an illness or injury by a physician. Recording of conditions listed in the Mandatory Appendix B when the applicable criteria are met will enhance the utility of the log as an information source and management tool.

OSHA selected the conditions listed in Appendix B using multiple criteria, as follows: 1) The condition would not be recorded, or would not be recorded accurately or consistently, using the general criteria, 2) The condition occurs commonly and large numbers of employers need specific guidance, and/or 3) The condition has a history of controversy that warrants specific guidance. If any of these conditions were met, OSHA also considered 1) existing standards covering the condition or hazard, 2) existing interpretations covering the proper recording of the condition, and/or 3) threshold recording criteria that could be developed using objective methods for determining the proper recording of an injury or illness. OSHA asks for input on whether these criteria are appropriate, or whether other criteria should be used for determining which conditions are listed in Appendix B. OSHA also asks for input on the specific criteria that have been chosen for each condition, including the effects of adopting these criteria, possible alternatives, and the potential benefits and costs associated with various alternatives.

The listed conditions must be recorded and entered into the injury and illness records when the proposed criteria are met. Some of these conditions are:

(a.) Elevated blood lead levels. The current recordkeeping system requires employers to record cases where an employee's blood lead level is in excess of 50 micrograms (μg) per 100 grams of whole blood. This has been the criteria in the recordkeeping guidelines since 1986. OSHA is proposing to revise this criteria to 40 micrograms (μg) per 100 grams of whole blood to match the lowest biological monitoring test result used as an action threshold within the lead standard (29 CFR 1910.1025(j)(2)(B)). Employers would record cases where an employee's blood lead level is in excess of 40 micrograms (μg) per 100 grams of whole blood.

OSHA asks for input on what level should be used and any other criteria which could be used to record lead related illnesses.

(b.) Cadmium. Employers would record cases where an employee's cadmium levels are as follows: level of cadmium in urine (CdU) exceeding 3 micrograms per gram of creatinine (μg/g Cr); level beta-2 microglobulin in urine (β2–M) exceeding 300 micrograms per gram of creatinine (μg/g Cr); or level of cadmium in blood (CdB) exceeding 5 micrograms per liter of whole blood (μg/lwb). These criteria are based upon the surveillance levels found in the Cadmium Standard, 1910.1027.

(c.) Hearing loss. Employers would record any work-related case resulting in an average shift of 15 decibels or more at 2000, 3000 and 4000 hertz in one or both ears as measured from the employee's original baseline established under 29 CFR Part 1910.95 Occupational Noise Exposure. The hearing test may be adjusted for aging and the recorded case may be removed if a retest performed within 30 days does not confirm the original shift. A presumption of work-relatedness is used for hearing loss occurring to employees covered by the Occupational Noise Exposure standard, i.e. those who are exposed to noise levels in excess of an 85 dB 8 hour time weighted average.

The lowest action level in the noise standard is an average shift of 10 decibels or more at 2000, 3000 and 4000 hertz. OSHA is proposing the 15 decibel criteria for recordkeeping purposes to account for variations in the reliability of individual audiometric testing results.

OSHA asks for input on which level of a shift in hearing should be used as a recording criteria; 10 decibels? 20 decibels? 25 decibels? For each level, what baseline should be used? Preemployment (original) baseline? Audiometric zero? Is adjusting for presbycusis appropriate?

(d.) Skin disorders. Employers would record skin disorders lasting beyond 48 hours, including, but not limited to, allergic or irritant dermatitis. OSHA asks if there are significant skin disorders, such as urticaria, which may not be captured by this criterion coupled with the general recording criteria (i.e. medical treatment, restricted work activity, days away from work, etc.)?

(e.) Asthma and other obstructive airway disease. Employers would record

an initial episode of work-related asthma diagnosed by a health care professional. Employers would also record subsequent work-related episodes that result in the administration of prescription drugs and/or diagnosis by a health care provider. There are an estimated 200,000 cases of occupational asthma every year according to the National Institutes of Health. There are over 250 identified agents found in a diverse range of materials and industrial processes that can cause occupational asthma. OSHA believes it is essential to collect information on episodes of work-related asthma in order to identify and abate workplace conditions which lead to this illness. OSHA is, however, concerned that its proposed policy may result in the over-recording of occupational asthma when employees have chronic, recurrent cases of the disease. OSHA asks for input on possible ways to reduce or eliminate over-recording that will not result in the loss of significant asthma cases. OSHA also requests information on how to differentiate between episodes of asthma that are induced by the work environment and those which are not.

(f.) Asbestos-related disorders. Employers would record any case resulting in a diagnosis by a health care provider of asbestosis or mesothelioma, or the recognition of any other parenchymal or pleural abnormality (e.g. radiograph profusion category of 1/1 or greater by the ILO classification system, pleural plaques and/or pleural thickening). These criteria are based on information found in Appendix D of the asbestos standard (29 CFR Part 1010.1001) which discusses the signs and symptoms of exposure-related disease.

(g.) Bloodborne pathogens diseases (AIDS, HIV infection, Hepatitis B., etc.). OSHA is proposing to require employers to record exposure incidents which result in disease (e.g., HIV, hepatitis B, hepatitis C). Furthermore, OSHA is proposing that employers be required to record lacerations or puncture wounds involving contact with another person's blood or other potentially infectious materials since these are clearly non-minor ''injuries''. OSHA believes that these criteria meet the Agency's mandate to collect information related to the death, illness, and injury of workers. OSHA requests comment on whether it is appropriate to record these small puncture wounds and lacerations if they do not lead to disease.

The above criteria limit the number of ''exposure incidents'', as defined in the Bloodborne Pathogens standard, which are to be recorded. Incidents which result in exposures to blood or other potentially infectious materials to the eyes, mouth, other mucous membrane, or non- intact skin would not be OSHA recordable.

OSHA is aware that some health care facilities already collect data on all bloodborne pathogens exposure incidents because these events are believed to be of serious magnitude. For example, many employers collect information about needle punctures, blood splashes to the eyes, and exposures on non-intact skin. In light of this, OSHA is considering other options for the recordability criteria of bloodborne pathogens diseases. One option would require employers to record all ''exposure incidents''. An ''exposure incident'', as defined in the Bloodborne Pathogens standard, paragraph (b) of 29 CFR 1910.1030, means ''a specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties''. Using this same definition for the recordability criteria may simplify the task of identifying what events need to be recorded for OSHA recordkeeping.

OSHA believes that the collection of information about ''exposure incidents'' is useful to employers in the control of bloodborne pathogens hazards. OSHA recognizes, however, that this second option requires the recording of ''exposures'' rather than strictly illnesses or injuries.

OSHA is seeking comments on this issue. What data is useful to collect? Are there other criteria for the recording of bloodborne infectious diseases which should be considered? What experience do employers have in data collection systems for this hazard?

In an attempt to address the concerns of personal privacy OSHA is additionally proposing that the exposure incidents described above be recorded simply as the type of bloodborne pathogen exposure incident, regardless of the outcome of the incident. In other words, employers shall record occupationally acquired bloodborne pathogen disease, such as Hepatitis B or C, simply as the initial bloodborne exposure incident and note the type of exposure (e.g. needlestick). The seroconversion status and specific type of bloodborne disease need not be entered. This strategy would enable employers to consider data about needle punctures or lacerations (or other bloodborne pathogens exposure incidents) while protecting the privacy of individual employee's medical information. (Please refer to the Issues for Comment section regarding confidentiality for further discussion of the employee privacy concerns.) These recording criteria apply to all employees covered by the Act and are not limited to those covered by the Bloodborne Pathogens Standard.

(h.) Tuberculosis infection or disease. OSHA is proposing that newly detected tuberculosis infections and cases of active tuberculosis in workers with occupational exposure be recorded. The criteria proposed is consistent with that published by previous OSHA directives to the field (Memorandum from Leo Carey to Regional Administrators, February 26, 1993).

Work-relatedness is presumed in work sites where the Centers for Disease Control and Prevention (CDC) has published reports of epidemics among workers resulting from workplace exposures, i.e., correctional facilities; health care facilities; homeless shelters; long-term care facilities for the elderly; and drug treatment centers. The employer can rebut this presumption of work relationship by providing evidence that the employee is known to have had a non-work exposure to active TB. Examples include situations in which (1) an employee is living in a household with a person diagnosed with active TB or (2) the Public Health Department lists the employee as a contact to a case of active TB.

All other industries would record tuberculosis infections or disease only if the employee was exposed to tuberculosis in the worksite. For example, in industries where tuberculosis is not a recognized hazard resulting from work duties, tuberculosis infections or disease would not routinely be recorded. However, if a worker with infectious tuberculosis disease infected their co-workers, the co-workers' infection/disease would be recordable.

OSHA is seeking to learn if there are other industries, aside from those listed in the proposal, where reasonably anticipated occupational exposure to tuberculosis is occurring. Are there other types of worksites where the presumption of work-relatedness should be applied?

(I.) In addition to these conditions, Mandatory Appendix B provides guidance for cases resulting in carbon monoxide poisoning, mercury poisoning, benzene poisoning, UV burning of the eye, lacerations, hepatitis A, mesothelioma, byssinosis, hypersensitivity pneumonitis, toxic inhalation injuries, pneumoconiosis, eye injuries, musculoskeletal disorders, fractures of bones or teeth, and burns.

OSHA asks for input on possible additions, deletions, and revisions to the list, different or additional criteria (e.g. diagnostic test results) or any other information that might be used for establishing the existence of, and lead to the accurate, consistent recording of injuries and illnesses.

III. Specific Issues for Comment

OSHA invites comment on the proposed changes in the regulations, forms and supplemental instructions. OSHA has identified the following nine issues. For some issues, the agency is considering using alternative regulatory text which is included in this ''Specific Issues for Comment'' section. OSHA would like to receive specific comment on these issues, including any cost and benefit estimates on the various options discussed below:

Issue 1. Exemptions from OSHA injury and illness recordkeeping requirements. The current regulations include exemptions from most of the recordkeeping requirements for small employers (no more than 10 employees) and establishments in specific services and retail standard industrial classifications (SICs 52–89). Industries traditionally targeted for OSHA enforcement, which are those in SICs 01 through 51, are not exempted. (Note the ''exemption'' is really a partial one because ''exempt'' employers must still comply with the provisions of the current § 1904.8, Reporting of fatality and multiple hospitalization accidents (proposed § 1904.12) and § 1904.21, Duties of employers (proposed § 1904.13). Because the exemption is a partial one, affected employers are referred to as ''partially exempt'').

SIC Exemption. In 1983, the industries selected for the partial exemption were chosen from major industry groups within SICs 52–89, at the two 2-digit level, whose average lost workday case injury rate for 1978–80 was at or below 75% of the private sector average. Industries traditionally targeted for OSHA enforcement, which are those in SICs 01 through 51, are not exempted. Application of this formula resulted in the current list of partially exempted industries:

SIC	Industry
55	Automotive dealers and gasoline service stations.
56	Apparel and accessory stores.
57	Furniture, home furnishings, and equipment stores.
58	Eating and drinking places.
59	Miscellaneous retail.
60	Depository institutions.
61	Nondepository institutions.
62	Security and commodity brokers.
63	Insurance carriers.
64	Insurance agents, brokers and service.
65	Real estate.
67	Holdings and other investment offices.
72	Personal services.
73	Business services.
78	Motion pictures.
81	Legal services.
82	Educational services.
83	Social services.
84	Museums, art galleries and botanical & zoological gardens.
86	Membership organizations.
87	Engineering, accounting, research, management and related services.
88	Private Households.
89	Miscellaneous services not elsewhere classified.

Since the partial recordkeeping exemption based on SIC codes was implemented, the injury and illness rates of the major industry groups have changed. If the same formula were applied to the 1990–92 lost workday injury rate statistics for SICs 52–89, at the 2-digit level, no additional industries would be added to the partial exemption. Two industries would lose their partial exemption and be required to keep records: eating and drinking places (SIC 58), and museums, art galleries and botanical & zoological gardens (SIC 84).

Within certain major industry groups (2-digit SICs), there exist high hazard industries and industry groups (4 and 3-digit SICs) (ex.8). To address this ''nesting'' problem, OSHA applied the 1983 evaluation criteria to the 1990 through 1992 BLS lost workday injury data at the 3-digit SIC level. Where no information was available at the 3-digit level, OSHA used information at the 2-digit level.

The proposed text in this NPRM modifies the partial exemption for industries in Standard Industrial Classifications (SICs) 52 through 89 to reflect this refinement to address the ''nesting'' problem. Current partially exempt industries which would have to comply are:

SIC 553 Auto and Home Supply Stores,
SIC 555 Boat Dealers,
SIC 571 Home Furniture and Furnishings Stores,
SIC 581 Eating Places,
SIC 582 Drinking Places,
SIC 596 Nonstore Retailers,
SIC 598 Fuel Dealers,
SIC 651 Real Estate Operators and Lessors,
SIC 655 Land Subdividers and Developers,
SIC 721 Laundry, Cleaning, and Garment Services,
SIC 734 Services to Dwellings and Other Buildings,
SIC 735 Miscellaneous Equipment Rental and Leasing,
SIC 736 Personnel Supply Services,
SIC 833 Job Training and Vocational Rehabilitation Services,
SIC 836 Residential Care,
SIC 842 Arboreta and Botanical or Zoological Gardens, and
SIC 869 Membership Organizations Not Elsewhere Classified.

The following industries, currently required to comply with the injury and illness recordkeeping regulation, will be partially exempt:

SIC 525 Hardware Stores,
SIC 752 Automobile Parking,
SIC 764 Reupholstery and Furniture Repair,
SIC 793 Bowling Centers,
SIC 801 Offices and Clinics of Doctors of Medicine,
SIC 807 Medical and Dental Laboratories, and
SIC 809 Miscellaneous Health and Allied Services, Not Elsewhere Classified.

If the same analysis, using data at the 3-digit level where available, were applied to those industries in SICs 01 through 51 (industries not historically exempted from OSHA recordkeeping), the following industries would have lost workday case rates less than 75% of the private sector average:

SIC 074 Veterinary Services,
SIC 131 Crude Petroleum and Natural Gas,
SIC 211 Cigarettes,
SIC 233 Women's and Misses' Outerwear,
SIC 234 Women's and Children's Undergarments,
SIC 272 Periodicals,
SIC 273 Books,
SIC 274 Miscellaneous Publishing,
SIC 281 Industrial Inorganic Chemicals,
SIC 282 Plastics Materials and Synthetics,
SIC 283 Drugs,
SIC 286 Industrial Organic Chemicals,
SIC 291 Petroleum Refining,
SIC 319 Leather Goods, NEC,
SIC 357 Computer and Office Equipment,
SIC 366 Communications Equipment,
SIC 367 Electronic Components and Accessories,
SIC 376 Guided Missiles, Space Vehicles, Parts,
SIC 381 Search and Navigation Equipment,
SIC 382 Measuring and Controlling Devises,

SIC 384 Medical Instruments and Supplies,
SIC 385 Ophthalmic Goods,
SIC 386 Photographic Equipment and Supplies,
SIC 387 Watches, Clocks, Watchcases and Parts,
SIC 391 Jewelry, Silverware, and Plated Ware,
SIC 448 Water Transportation of Passengers,
SIC 461 Pipelines, Except Natural Gas,
SIC 472 Passenger Transportation Arrangement,
SIC 481 Telephone Communications,
SIC 483 Radio and Television Broadcasting,
SIC 489 Communications Services, NEC,
SIC 491 Electric Services,
SIC 504 Professional and Commercial Equipment,
SIC 506 Electrical Goods,
SIC 507 Hardware, Plumbing and Heating Equipment,
SIC 513 Apparel, Piece Goods, and Notions, and
SIC 516 Chemicals and Allied Products.

OSHA solicits comment on the appropriateness of its exemption procedure, expanding it to SICs 01 through 51, or alternative approaches that would reduce employer paperwork burden while retaining needed injury and illness information. Specifically OSHA requests comment on whether to expand the partial exemption to some, all, or none of these industries as classified by SIC code. Please include any estimates of costs and benefits associated with these exemptions.

Small Employer Exemption. The proposed text in this NPRM also modifies the partial exemption for small employers. Employers in the construction industry with 10 or fewer employees, and non-construction employers with 19 or fewer employees will now be exempted from all requirements except the Reporting of Fatality and Multiple Hospitalization Incidents (proposed § 1904.12) and Duties of Employers (proposed § 1904.13). The BLS Annual Survey data show that small employers generally experience much lower patterns of injuries and illnesses than medium and larger size firms. However, the BLS Annual Survey also shows that small employers in the construction industry account for a significant percentage of recordable injuries and illnesses. In 1991, over 66,000 recordable cases occurred in construction firms with 11 to 19 employees. These cases accounted for 13% of the total recordable cases in the construction industry. In contrast, in the manufacturing industry, only 2.4% of the recordable cases were found in firms with 11 to 19 employees. OSHA believes, given these numbers and the transient nature of the construction industry, that employers in the construction industry with 11 or more employees should be required to keep OSHA injury and illness records.

Discussion. The modification of both the small employer and SIC partial exemptions is designed to ensure that OSHA's recordkeeping requirements cover those employers with the highest rates of occupational injuries and illnesses. These changes shift the recordkeeping responsibilities from historically low hazard employers to employers experiencing higher rates of injuries and illnesses. The net effect of these changes in scope will be the recording of more injuries and illnesses, but fewer establishments will be covered by the regulation.

Employers in the proposed partially exempt industries and small employers will be required to maintain the OSHA Injury and Illness Log and Summary (proposed Form 300) when they are notified that they have been selected for the BLS Survey of Occupational Injuries and Illnesses for a given year. Partially exempt employers may also be required to provide reports related to occupational safety and health, as required by the proposed § 1904.13. Additionally, these employers will be required to comply with reporting requirements for Fatality and Multiple Hospitalization Incidents (proposed § 1904.12).

OSHA asks for specific input on the following items:

(1) Should the list of partially exempt industries based on SIC codes remain the same, be eliminated, or be expanded?

(2) How often should the SIC exemption be updated using current data?

(3) What are other options for addressing the SIC exemption issues?

(4) Should the small employer partial exemption remain the same, be eliminated, or be expanded?

(5) What would the cost be (time and money) for keeping the records to employers currently exempt from the recordkeeping requirements but proposed to be covered? and

(6) What benefits would accrue from the proposed changes (monetize or quantify where feasible)?

Issue 2. Case recordability criteria—injury/illness severity and work-relationship. Section 8(c)(2) of the Act, which deals with injury and illness recordkeeping, mandates the maintenance of accurate records of ''work-related deaths, illnesses and injuries other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.'' Section 24(a), which deals with statistics, mandates the collection of statistics on ''work injuries and illnesses which shall include all disabling, serious or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.''

The current recordkeeping system, and the system that is being proposed, consider conditions work-related if the work environment either caused or contributed to the conditions or aggravated a pre-existing condition to the extent that it becomes recordable. This proposal, however, includes the exemption of certain activities to avoid recording cases which OSHA believes add no useful information to the records for surveillance purposes. Appendix A. of this proposal describes these exemptions. For example, employers will consider a case non work-related if ''the case results solely from normal body movements, i.e. walking unencumbered, talking, tying a shoe, sneezing, or coughing, provided the activity does not involve a job-related motion and the work environment does not contribute to the injury or illness.''

The proposed system requires the recording of all injuries and illnesses with the exclusion of minor injuries and illnesses. OSHA believes that potentially debilitating illnesses should be recorded as early in their development as possible, to promote the early recognition and resolution of problems that could halt the progression of the illnesses. OSHA believes that the records should capture most injuries and illnesses, in order to provide an effective surveillance system for occupational safety and health program development, but exclude minor injuries and illnesses.

Within the occupational safety and health community, there is a variety of views concerning the interpretation of these Sections of the Act and the types of cases the records should capture. The discussion revolves around two questions: (1) What constitutes work-relationship? (2) What is the level of injury/illness seriousness that should be used to determine the proper recording of a case? OSHA has identified the following three alternative views on both work-relatedness and seriousness

that differ from the positions OSHA proposes in this document:

Work-Relatedness

This issue is especially relevant when dealing with conditions where the specific event or exposure that caused the injury or illness cannot be easily identified, or the condition is the result of both work-related and non work-related causes (such as off-the-job activities, aging, prior medical history or work aggravation of off-the-job injuries). Common examples include lower back pain, hearing loss, and asthma.

Alternative 1: Exclude Cases With Any Non-Work Linkage

Those holding this view believe that the work environment should be the sole, obvious cause of the injury or illness before it is recorded. They believe that cases should only be considered work-related if there is concrete evidence that the causal event or exposure occurred while the employee was engaged in work activities. They believe that if there is any evidence of non work-related factors, the case should be excluded.

Alternative 2: Limit to Predominant Workplace Linkage

Those holding this view believe that the work environment should be a major contributor to the injury or illness for the injury or illness to be considered work-related. They believe that OSHA's position is too harsh a test, amounting to zero tolerance for conditions where work is a minor contributor and non-work factors are the predominant cause of the injury or illness. Those holding this view believe that OSHA's current and proposed criteria for work-relationship cause companies to over-record cases, artificially inflate and overstate workplace injuries and illnesses, undermine the credibility of the system, and have led to general resistance to the recordkeeping system. Those holding this view believe the criteria should be modified so that a case would be considered work-related only if work activity(s) or exposure(s) causes or is the predominate contributor to the condition.

Some of those holding this view have proposed an alternative that would allow a documented determination by a health care provider to decide work-relationship for the following types of cases: hernias, cardiovascular disorders, respiratory conditions, hearing loss, skin disorders or musculoskeletal disorders such as back pain, tendinitis and carpal tunnel syndrome. For this purpose, a check list has been suggested, as follows. (note: In the absence of evaluation by a health care provider, the case would be considered work-related if the work environment caused, contributed to or aggravated the condition in any way.)

1. Injury/illness type
   _____Hernia
   _____Musculoskeletal disorder
      _____back pain
      _____tendinitis
      _____other_____
   _____Respiratory condition
   _____Skin disorder
   _____Non-occupational disease
2. How was injury/illness discovered
   _____During occupational medical visit
   _____Routine physical examination
   _____Non-occupational medical visit
   _____Other: _____
3. Applicable medical history
   _____
   _____
   _____
4. Off-the-job activities which may have contributed
   _____
   _____
   _____
5. Work relationship evaluation
a. Injury/illness characteristics
   _____ Degenerative condition due to aging or non-occupational disease
   _____ Congenital condition
   _____ Aggravation of on-the-job injury or illness
b. Possible work contribution
   _____ Workplace event or exposure?
      _____ yes _____ no
   _____ Workplace aggravation? _____ yes _____ no
   _____ Condition consistent with workplace event or exposure?
      _____ yes _____ no
   _____ Condition would have occurred without regard to workplace duties or exposures?
      _____ yes _____ no
c. Exposure factors for this type of injury/illness

On-the-job	Comments	Off-the-job	Comments
_____ High		_____ High	
_____ Medium		_____ Medium	
_____ Low		_____ Low	
_____ Not sure		_____ Not sure	

6. Work relationship determination
   _____ Work-related. On-the-job exposure factors more predominant than off-the-job exposure factors.
   _____ Not work-related. Off-the-job factors more predominant than on-the-job exposure factors.
   _____ Not sure. Assume work-relationship.

Alternative 3: Include Cases With Any Workplace Linkage

Those holding this view believe that injuries and illnesses should be recorded if the worker ever experienced a workplace event or exposure that had any possibility of playing a role in the case. For example, a cancer case, where the worker had at some time in his or her career worked with a carcinogenic substance, would be considered work-related, even though there is no positive link between the case and a workplace exposure.

Seriousness

The concept of seriousness is particularly relevant when dealing with conditions where the worker is not obviously impaired, but is experiencing some subjective symptom (pain, dizziness, etc.) or has an abnormal health test result. For example, a blood test may indicate that a worker has a relatively high level of cadmium in his or her system, but the worker is not experiencing any symptoms that adversely affect either work or lifestyle. The worker has an abnormality, but should it be considered an injury or illness?

Alternative 1: Days Away From Work or Death

Proponents of this view believe that employers should record only those cases that result in days away from work or death. They believe that this will result in the most meaningful and accurate information (because fatalities and days-away-from-work cases are hard to ''cover up'' and they are unquestionably serious). They also believe that this approach will minimize the burden on employers and focus safety and health efforts on the cases

with the greatest impact on both employers and workers.

Alternative 2: Days Away From Work, Impairment, or Death

Proponents of this view agree with across-the-board application of the basic criteria mentioned in Section 8 of the Act, (days away, medical treatment beyond first aid, etc.) but believe the purpose of proposed Mandatory Appendix B should be limited to capturing ''serious'' cases which may be ''missed'' because they do not meet the basic criteria. Such cases would include disorders where no lost time occurs, or where medical treatment is not provided at the time the case is diagnosed or discovered because medical treatment would not help, but the case is serious nonetheless. Examples include the current criteria for recording hearing loss (25dB), asbestosis, mesothelioma, silicosis, byssinosis and other similarly serious work-related diseases.

Potential guiding language for recording cases missed by the basic criteria would be ''any work-related condition that results in, or is likely to result in, a physical or mental impairment that substantially limits a major life activity.'' In addition to stating such guiding language in, and as a basis for a Mandatory Appendix, clarifying examples of specific known to be serious conditions such as, but not limited to, those mentioned in the paragraph above could be listed.

Those who support this approach believe it meets the ''disabling, serious, or significant'' criteria prescribed in Section 24(a) of the Act and that these criteria must be considered carefully, especially if OSHA intends to collect OSHA Logs and use the data for inspection targeting and intervention purposes. Supporters of this approach also believe it will provide the most meaningful data to employers for improving workplace safety and health efforts by helping to allocate resources for preventing injuries and illnesses which are truly serious.

Alternative 3: No Limitations on Seriousness

Proponents of this view believe that all work-related injuries and illnesses should be recorded. They interpret the Act to require the recording of all work-related illnesses, no matter how minor or how short lived they may be, and the recording of all non-minor injuries. They believe the recording criteria should be expanded to include all signs and symptoms experienced by workers, and perhaps even potentially hazardous exposure incidents and near misses. They believe that this alternative provides the employer and the workers at the worksite with the most effective surveillance tool that will lead to the most complete injury and illness prevention efforts. Proponents of this view have provided alternative language for recording cases where ''signs, symptoms, and/or laboratory abnormalities last longer than 48 hours (either persistently or intermittently)'' excluding minor injuries (minor injuries are minor scratches, abrasions, bruises and first degree burns).''

Implications

The issues of work-relationship and case severity have major implications for all of the parties that use the injury and illness records, including employers, workers and the government. If the criteria are too inclusive, they may appear to overstate the injury and illness experience, undermine the credibility of the system, and fail to focus safety and health efforts on the most serious workplace hazards. If they are too exclusive, they may appear to understate the injury and illness experience, undermine the credibility of the system, and fail to reflect hazardous conditions that require attention. OSHA believes that the OSHA proposal in the NPRM is compatible with the language and intent of the Act, and provides the best way to resolve these issues. OSHA welcomes comment, ideas, and alternative suggestions from the public concerning these issues and the alternatives presented above.

Specifically, OSHA requests input on A) The level of severity and criteria for establishing work-relationship and determining which cases are entered into the records; B) How ''significant/serious/disabling'' should be defined to result in consistent recording practices and data; C) How work contribution can be objectively measured for such a purpose; D) Does the checklist shown above meet these objectives? F) Should work-relationship be established only where work is the predominant causal factor? G) Should work-relationship be established if work was something less than the predominant cause? or H) If work contributed more than 50% to the injury or illness? 25%? 10%? J) How could any of these percentages be measured/determined?

Issue 3. The definitions of first aid and medical treatment. The distinction between first aid and medical treatment is a critical component in determining whether to record a work-related injury or illness. One criterion in the proposed regulatory text requires any work-related injury or illness involving medical treatment beyond first aid to be recorded. A case which involves first aid only (and does not meet any of the other recording criteria) is not recordable. The intent of this distinction is to capture information on injuries and illnesses which are significant and would provide valuable information for safety and health analysis while excluding minor cases which would not provide necessary or useful information for analysis.

The current recordkeeping system defines first aid as any one-time treatment, and any follow-up visit for the purpose of observation, of minor scratches, cuts, burns, and splinters, and so forth which do not ordinarily require medical care. Medical treatment is defined to include any treatment other than first aid treatment administered to injured employees. The definition focuses on the type of treatment given and not on the person administering the treatment (e.g. physician, registered health professional, etc.). These definitions are further clarified within the *Recordkeeping Guidelines for Occupational Injuries and Illnesses* by lists of examples of treatments which are considered either medical treatment or first aid. These lists are not comprehensive and confusion exists concerning the classification of unlisted treatments.

This proposal attempts to clarify the distinction between first aid and medical treatment by defining the terms in a way that will make them mutually exclusive. The proposed regulatory text defines first aid with a finite list of treatments. Medical treatment is defined as any treatment other than those listed in the first aid definition.

''First aid'' means the following treatments for work-related injuries and illnesses:

1. Visit(s) to a health care provider limited to observation
2. Diagnostic procedures, including the use of prescription medications solely for diagnostic purposes
3. Use of nonprescription medications, including antiseptics
4. Simple administration of oxygen
5. Administration of tetanus/diphtheria shot(s) or booster(s)
6. Cleaning, flushing or soaking wounds on skin surface
7. Use of wound coverings such as bandages, gauze pads, etc.
8. Use of any hot/cold therapy (e.g. compresses, soaking, whirlpools non-prescription skin creams/lotions for local relief, etc.) except for musculoskeletal disorders (See Mandatory Appendix B)
9. Use of any totally non-rigid, non-immobilizing means of support (e.g. elastic bandages)

10. Drilling of a nail to relieve pressure for subungual hematoma
11. Use of eye patches
12. Removal of foreign bodies not embedded in the eye if only irrigation or removal with a cotton swab is required
13. Removal of splinters or foreign material from areas other than the eyes by irrigation, tweezers, cotton swabs or other simple means

OSHA asks for comment on the following issues:

(A) Should any treatments on the proposed first aid list be excluded and should any treatments be added?

(B) Should a list of medical treatments also be provided? Which treatments?

(C) Should simple administration of oxygen be defined to exclude more severe procedures such as Intermittent Positive Pressure Breathing (IPPB)? If so, how?

Issue 4. The definition of restricted work. The Keystone Report stated that the recording of restricted work is perhaps the least understood and least accepted concept in the recordkeeping system. Recording cases involving restricted work activity is important because injured or ill employees are unable either to perform all of their normal duties or perform a full day's work. The concept of restricted work activity was included in the Act due to concern that some employers might try to conceal significant injuries and illnesses by temporarily assigning injured or ill workers to other jobs with reduced requirements. This concern still exists today.

The difficulty in determining restricted work lies in the need to determine the employee's ''normal duties''. In the past, OSHA has broadly defined the employee's normal duties to include any work activity included in the employee's job description, even if the activity is performed infrequently. According to the Keystone Report, this definition is problematic because ''(1) few in industry understand the scope of this interpretation; (2) many who do understand it disagree with it; and (3) to maximize productivity, workers are increasingly assigned a wider range of tasks, making it increasingly difficult to measure and/or verify the performance of these greatly divergent and infrequent duties.'' (ex. 5, p. 17)

The Keystone Report recommended that restricted work activity should be recorded if the employee is 1) unable to perform the task he/she was engaged in at the time of injury or onset of illness or 2) unable to perform any activity that he/she would have performed during the week. OSHA believes that the first criterion will focus on the hazardous tasks that lead to serious injuries and illnesses. OSHA believes, however, that the second criterion is not easily defined and could lead to the recording of inconsistent data. This criterion has been narrowed in the proposed text of the regulation to include activities the employee performed or was expected to perform on the day of injury or onset of illness. OSHA believes these activities will be well known and understood and use of this criterion will lead to greater consistency in the recording of these more severe work-related injuries and illnesses.

This proposal also eliminates the requirement for employers to count the days of restricted work activity. The employer will be required to place a check in the restricted work column if the case involved restricted work activity but not days away from work.

OSHA asks for input on whether the proposed language is too limiting or too broad, on alternative ways to define restricted work activity and/or the usual duties of an employee, along with suggested ways to improve employers' understanding and acceptance of the concept of restricted work activity. OSHA's goal is to have employers consistently record cases that involve restricted work by providing a concept which is widely accepted and easy to interpret.

OSHA asks for input on the following questions: (A) Will the elimination of the restricted work activity day count provide an incentive for employers to temporarily assign injured or ill workers to jobs with little or no productive value to avoid recording a case as one involving days away from work? (B) Will the inclusion of question 13 on the proposed OSHA Form 301, ''If the case involved days away from work or restricted work activity, enter the date the employee returned to work at full capacity'', help to reduce such an incentive?

Issue 5. The proper recording of musculoskeletal disorders (MSDs). Over the last 10 years, there has been an increased awareness of work-related disorders associated with ergonomic hazards, i.e. hazards associated with lifting, repeated motion, and repetitive strain and stress on the musculoskeletal systems of workers. OSHA labels these injuries and illnesses, which result from ergonomic hazards, ''musculoskeletal disorders'' (MSDs). MSDs do not include broken bones, chipped teeth, contusions or sprains/strains resulting from falls or being struck.

Although MSDs have always been recordable, OSHA and BLS had not published any specific guidance on how to record them until 1986. The 1986 Recordkeeping Guidelines provided some limited specific guidance by requiring all back cases to be evaluated as injuries using the general injury criteria, and to record carpal tunnel syndrome as an illness. The 1986 Guidelines did not provide specific directions on which criteria to use for recording other types of musculoskeletal disorders.

Historically, for recording purposes, disorders caused by repeated or cumulative trauma were covered by the general illness criteria because these disorders are caused by prolonged exposure to various risk factors, rather than being caused by a single instantaneous event. The existing definition of occupational illness (in place since 1971) is very inclusive: ''Any work related abnormal condition or disorder (other than an occupational injury)''. (1986 Recordkeeping Guidelines, P 39) Thus, the current criteria for recording illnesses requires the employer to record each and every occupational illness, including MSDs.

Theoretically, all musculoskeletal disorders, even the less severe cases which do not meet the recording criteria for injuries, would be recordable as a result of applying the general illness recording criteria. Despite their recordability, OSHA observed that very few, if any, of these disorders were being recorded on employers' OSHA Logs. As a result, OSHA developed an enforcement policy limiting the issuance of citations and penalties for unrecorded MSDs to those cases which involve:

- a clinical diagnosis by a health care provider; or
- at least one physical finding, (i.e., an objective symptom such as redness or swelling); or
- a subjective symptom, such as pain or numbness, coupled with either medical treatment or lost workdays, (i.e., days away from work and/or days of restricted work activity).

In 1990, OSHA published specific criteria for the proper recording of MSDs in the *Ergonomics Program Management Guidelines For Meatpacking Plants* (Meatpacking Guideline). These criteria have been the basis for all of OSHA's interpretations involving the proper recording of musculoskeletal disorders to the upper extremities (shoulder, arms, wrist and hands) since that time.

Even though the specific criteria in the Meatpacking Guidelines defined fewer recordable cases than the general illness criteria, the number of recorded cases has increased dramatically. While OSHA believes that these types of

disorders are increasing in number, OSHA believes that the increase in recorded MSD cases is also the result of OSHA providing employers with specific guidance on the subject, in conjunction with enforcement of the requirements. Compliance with the recordkeeping requirements improved substantially and the resulting data and statistics have reflected that improvement.

One purpose of this proposed revision of 29 CFR Part 1904 is to consolidate in the regulation various criteria, guidelines and interpretations policies which are currently found in a number of different documents. Another purpose is to simplify the recordkeeping requirements, in order to make the system more ''user friendly'' and to encourage more accurate and consistent recording of injuries and illnesses. Consistent with these purposes, OSHA is proposing to incorporate the criteria for recording MSDs found in the Meatpacking Guidelines in mandatory Appendix B of the proposed regulation, and to simplify the system by applying those criteria equally to cases involving the upper extremities, the back and the lower extremities.

The criteria in proposed Mandatory Appendix B require employers to record new, work-related musculoskeletal disorders: (1) whenever they are diagnosed by a health care provider, or (2) if the employee has objective findings (redness indicative of inflammation, deformity, swelling, etc.). When either of these criteria, or when any of the general criteria for recording illnesses and injuries in § 1904.4(b) (i.e. death, loss of consciousness, days away from work, restricted work activity, job transfer, or medical treatment beyond first aid) is met, the case is required to be recorded on the OSHA Form 300. OSHA's proposal represents a continuation of the current recording policy, and is intended to ensure the early recognition and recording of musculoskeletal disorders so appropriate actions may be taken.

The current recording of these cases is also dependent on the definitions of first aid, medical treatment and restricted work. Because OSHA is proposing to change those definitions, the recording of musculoskeletal disorders will be affected. OSHA recognizes that hot and cold treatments for most injury and illness conditions should be considered first aid treatments, as indicated in the proposed definition of first aid. However, NIOSH (NIOSH, Cumulative trauma disorders: A manual for musculoskeletal diseases of the upper limbs, Taylor and Francis, 1988, p. 125) and other recognized authorities (Hales & Bertsche, ''Management of Upper Extremity Cumulative Trauma Disorders'', AAOHN Journal, March, 1992, Vol. 40, No. 3; Nanneman, D., ''Thermal modalities: Heat and cold: Review of physiological effects with clinical applications'', AAOHN Journal, 1991, Vol. 39, No. 2) recognize hot and cold treatments as therapeutic modalities in the conservative, early treatment of MSDs. Because these treatments may cause negative effects if not properly administered, OSHA is proposing that two or more hot and cold treatments be considered medical treatment for MSDs only when directed by a health care professional.

There is a concern that the proposed criteria will result in a situation where workers could be working with significant pain for an extended period of time, without their case being entered into the records. OSHA has been asked to consider an additional recording criterion for these cases: record when the employee reports symptoms (pain, tingling, numbness, etc.) persisting for at least 7 calendar days from the date of onset. OSHA asks for input on this criterion.

OSHA recognizes that its proposed recording policy does not provide a mechanism for excluding cases that involve short term job transfers for minor soreness that commonly occurs to newly hired employees or employees on rehabilitation assignments during a ''break in'' stage. OSHA asks for input on whether a method for excluding these cases should be developed? If so, what method should be used?

Issue 6. The reluctance of some employers to enter cases into the records. For a variety of reasons, some employers have historically shown a reluctance to enter injuries and illnesses into the OSHA records.

Some employers mistakenly believe that recording a case implies fault on the part of the employer. Some fail to recognize that the requirements of OSHA recordkeeping have nothing to do with workers' compensation insurance or any other system outside of the OSHA requirements. While many OSHA recordable injuries and illnesses may be compensable under an insurance program, others are not. Furthermore, many employers use a workers' compensation or insurance form in lieu of the OSHA supplementary record. However, some employers who use these forms in lieu of the OSHA supplementary record mistakenly believe that completing the forms for OSHA recordkeeping purposes automatically makes the case compensable. While reducing the paperwork burden on employers, perhaps this equivalency option perpetuates this misunderstanding and should be eliminated.

Many companies use the information from the OSHA records to establish ''accountability systems'' for management as well as their safety and health professionals. Often these systems are linked to performance evaluations of the affected individuals. These performance evaluations may be used to help determine bonuses, promotions, or compensation levels. Affected employees may be discouraged from fully and accurately recording injuries and illnesses in the OSHA records when they may be, or may perceive to be, personally penalized for complying with the OSHA recordkeeping requirements.

The OSHA recordkeeping proposal includes several items intended to reduce the effects of these potential problems on the accuracy of the records. Certification of the accuracy and completeness of the OSHA Log by a responsible company official and disclaimers of a relationship between OSHA injury and illness recordkeeping and implications of fault for insurance systems are included in the regulatory text and on the proposed forms. The ''employer use column'' can be utilized by companies to indicate those cases that the firm does not wish to include in their internal safety statistics.

OSHA asks for input on (A) ways to encourage accurate injury and illness records, (B) how the confusion between OSHA recordkeeping and workers' compensation/insurance requirements can be minimized, and (C) how the adverse effect of accountability systems on the OSHA records can be reduced.

Issue 7. Improving employee involvement. The Keystone report stated that overall workplace safety and health would benefit if the information in the injury and illness records were more widely known. The report noted that employee involvement and awareness are minimal for three reasons: (1) Lack of knowledge that access is permitted, (2) fear of employer reprisal, and (3) employee apathy. The Keystone report concluded that employee notification could improve employee involvement in recordkeeping and enhance the quality of the data, increase employees' knowledge of hazards, promote better cooperation between employers and employees in reducing hazards, and contribute to safer, more healthful workplaces.

OSHA asks for input on (A) whether employees should be notified that their individual injuries and illnesses have been entered into the records, (B) the

possible mechanisms employers could use to meet such a requirement and the degree of flexibility employers should be given, (C) any other ideas on methods for improving employee involvement in the injury and illness recordkeeping system, and (D) cost (including burden) and benefit information on each alternative.

Issue 8. Access to the OSHA forms and the privacy of injured or ill employees. The current regulation and the proposed regulatory text both require that employees, former employees, and their designated representatives have access to the entire OSHA injury and illness log, which includes personal identifiers. Furthermore, the current regulation does not provide employees or their designated representatives access to the OSHA injury and illness supplementary forms while the proposed regulatory text provides employees or representatives designated by employees access to all OSHA injury and illness supplementary records (proposed OSHA Form 301, Incident Record) of the establishment.

OSHA's historical practice of allowing employee access to all of the information on the log permits employees and their designated representatives to be totally informed about the employer's recordkeeping practices, and the occupational injuries and illnesses recorded in the workplace. However, this total accessibility may infringe on an individual employee's privacy interest. At the same time, the need to access individuals' Incident Records to adequately evaluate the safety and health environment of the establishment has been expressed.

These two interests—the privacy interests of the individual employee versus the interest in access to health and safety information concerning one's own workplace—are potentially at odds with one another. For injury and illness recordkeeping purposes, OSHA has taken the position that an employee's interest in access to health and safety information on the OSHA forms concerning one's own workplace carries greater weight than an individual's right to privacy. More complete access to the detailed injury and illness records has the potential for increasing employee involvement in workplace safety and health programs and therefore has the potential for improving working conditions. Analysis of injury and illness data provides a wealth of information for injury and illness prevention programs. Analyses by workers, in addition to analyses by the employer, lead to the potential of developing methods to diminish workplace hazards through additional or different perspectives.

OSHA is considering alternatives to the existing and proposed regulatory text to address the conflict between the privacy interests of the individual and the interest in total access to health and safety information concerning one's own workplace. One alternative to the regulatory text would be to require the removal of personal identifiers for only certain types of cases that might have higher privacy concerns than others.

The alternative described above raises additional questions to which the public is invited to respond. What other pieces of information, if any, on the currently proposed forms (proposed Forms 300 and 301—see section IV of this preamble) ought to be considered personal identifiers and included on the side of the form which is not disclosed once it is folded over? If only certain types of cases should be shielded, which types of cases ought to be considered ''confidential'' and subject to having the personal identifiers removed? Should a coding system be used for these cases to enable some people, but not others, to have access to the entry information, and if so, what type of system? Who should have access to the personal identifier information? Should the right to access an individual's Incident Record be limited to that individual?

It is OSHA's intention to make the forms readily accessible to employees and employee representatives who can use the information to affect safety and health conditions at the workplace. OSHA does not intend to provide access to the general public. OSHA asks for input on possible methodologies for providing easy access to workers while restricting access to the general public. OSHA also asks for input on the possible benefits and costs of making the information accessible, and any negative results that could occur from such access. Specifically, for employers who use State workers compensation, insurance, or other forms as equivalents to the OSHA form, are there data elements contained on those forms which could not be released to employees or their designated representatives? If so, what are those data elements? How would this affect the employer's ability to use equivalent forms?

OSHA invites the public to suggest other options or alternative regulatory language which would address this issue of confidentiality and access to information. Please include any information on costs and benefits that will result from these alternatives, including any ideas on how to quantify those costs and benefits.

Issue 9. The development of computer software to assist employers in the task of recordkeeping. To make injury and illness recordkeeping easier for employers, OSHA is considering the development of recordkeeping computer software. Once developed, the program could have the following minimum features:

(a) employ a decision-making logic for determining if an injury or illness is recordable, and if so the proper classification, and include questions to elicit the necessary information to complete and generate the OSHA required records;

(b) automatic form(s) generation;

(c) the ability to assist the employer in evaluating the entered data through several preset analytical tools (e.g. tables, charts, etc.);

(d) contain a tutorial section to assist employers in training employees in proper recordkeeping procedures;

(e) be in the public domain and/or be available at cost to the public.

OSHA is requesting comments on all facets of this approach toward development of software. In addition, OSHA would like to know what percentage of employers have computers to assist them in their business? What percentage of employers currently use computers for tracking employee-related information (payroll, timekeeping, etc.)? Should the distribution be through the Government, public domain shareware distribution, or other channels? Should OSHA develop the software or only provide specifications of its requirements?

IV. Proposed OSHA Forms

In conjunction with this proposed rulemaking, the OSHA recordkeeping forms are also being modified. OSHA is continuing to try to reduce the employer's paperwork burden through these modifications and reducing the number of duplicate questions on the forms. At this point, some duplicate questions remain and are needed for each form to ''stand alone''. OSHA believes if the duplication were reduced further, employers would be required to refer frequently to both forms at the same time, which would add additional burden. OSHA requests comment on any of these modifications, the remaining duplications, or any other related issues to the proposed forms.

The forms are being included in this preamble for informational purposes.

The OSHA 200 Log will be replaced with the OSHA 300 Log which includes reformatted columns and an additional column for the employer's use. The

proposed elimination of the requirement that employers distinguish between injuries and illnesses in order to record a case would eliminate the need for separate groups of columns for injuries and illnesses on the Log. The proposed elimination of the requirement to count days of restricted work activity also eliminates the need for the restricted day count columns found on the OSHA 200 Log. The result is a simplified form that fits on standard size paper which can easily be copied and kept on a personal computer. This also results in space to create an employer use column which can be utilized by employers to tailor the Log to meet the needs of their particular safety and health program. For example, this column could be used by employers to enter causation, or injury and illness codes, or other information useful to the company. This employer use column may provide employers with additional flexibility, reducing their need to maintain multiple sets of records for various purposes.

Cases that end in permanent work restrictions, job transfer, or termination of employment will be noted by placing an asterisk next to the employee's name. This information could provide employers, employees, inspectors and researchers with another measure of severity for injuries and illnesses. A statement will be included on the summary portion informing employees, former employees, and their designated representatives of their right to access the entire Log.

A disclaimer will be included on the Log which states ''Cases listed below are not necessarily eligible for Workers' Compensation or other insurance. Listing a case below does not necessarily mean that the employer or worker was at fault or that an OSHA standard was violated''. The intent of this disclaimer is to dispel the mistaken belief that recording a case on the Log affects workers' compensation or establishes a finding of fault.

Some stakeholders have expressed the need for a column containing information on cases involving musculoskeletal disorders such as low back pain, tendinitis, and carpal tunnel syndrome. OSHA solicits comment on the inclusion of an MSD column on the form.

The Supplementary Record of Occupational Injuries and Illnesses (OSHA No.101) will be replaced with the OSHA Injury and Illness Incident Record (OSHA Form 301) in order to collect more useful information. Additional questions will be added to gather data on the events leading up to the injury or illness; on the equipment, material, or substance involved; and on the activity taking place when the injury or illness occurred. An employer use section will be added to provide the employer with space to record any additional information that is desired. A statement will be included on the form notifying employees, former employees, and their designated representatives of their right to access all OSHA injury and illness records of the establishment.

While the new OSHA 300 Log presents information on injuries and illnesses in a condensed format, an Incident Record provides more detailed information about the affected worker, the injury or illness, workplace factors associated with the accident, and a brief description of how the injury or illness occurred.

Currently, many employers use their insurance or State workers' compensation forms in place of the supplementary record. This reduces the burden on employers by allowing them to fill out a single form for multiple purposes. Several States have notified OSHA that they intend to modify their forms to qualify as equivalents to the OSHA form. OSHA anticipates that many other States will also modify their forms to qualify as equivalents to the OSHA form so employers may continue to have the benefit of interchangeable forms. OSHA is currently working with the International Association of Industrial Accident Boards and Commissions (IAIABC) to standardize the recording forms for occupational injuries and illnesses.

OSHA also requests comment on the concept of a single form which would meet all of the informational needs of the recordkeeping system. What items would be included? What format would be used? How would the use of a single form, as opposed to two forms, affect the employers ability to use State Workers—Compensation forms as equivalents to the OSHA form?

Information concerning the establishment name and address and the employee's social security number, regular job title, and the department in which the injured person is regularly employed will no longer be requested.

BILLING CODE 4510–26–P

OSHA Injury and Illness Log and Summary

Public Law 91-596 and 29 CFR 1904 require you to:

- Enter all recordable occupational injuries and illnesses. (See instructions on back.)
- Update and retain completed form for three years.

Failure to complete, update and post can result in the issuance of citations and penalties.

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved O.M.B. No. 1218-0000
See O.M.B. disclosure statement on back.

For calendar year _____

Page ____ of ____

This form is not an insurance form. Cases listed below are not necessarily eligible for Workers' Compensation or other insurance. Listing a case below does not necessarily mean that the employer or worker was at fault or that an OSHA Standard was violated.

Establishment Name _____

Establishment Address _____

Mailing Address if different _____

Industry description and Standard Industrial Classification (SIC) if known *(e.g. Manufacture of motor truck trailers, SIC 3715)*

A. Employee's Name (e.g. Doe, Jane B.)	CASE IDENTIFICATION B. Case Number *(e.g. 1, 2,3...)*	C. Date of injury or illness (m/d)	D. Department and location where event occurred *(e.g. loading dock north end)*	E. Regular job title *(e.g. Welder)*	CASE DESCRIPTION F. Description of injury or illness; part(s) of body affected, and object/substance which directly injured or made employee ill *(e.g. Second degree burns on right forearm from acetylene torch)*	CASE CLASSIFICATION *(Check only one)* G. Death (X)	H. Involving Days Away (X)	(# Days)	I. Without Days Away: Restricted Work Activity (X)	Other (X)	OTHER J. Employer Use
						☐	☐		☐	☐	
						☐	☐		☐	☐	
						☐	☐		☐	☐	
						☐	☐		☐	☐	
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						☐	☐		☐	☐	
						☐	☐		☐	☐	
						☐	☐		☐	☐	

YEAR END SUMMARY
Complete the year end portion of this form, even if there were no cases during the year. **Fold along line to the right and post this form from February 1 to January 31 where**

Employees, former employees, and their representatives have the right to review all OSHA Injury and Illness Records, in their entirety, for this establishment.

Year end totals ___ ___ ___ ___ ___

Annual average number of employees _____

Total hours worked by all employees _____

I have examined this Log and Summary and certify its accuracy and completeness X_____ (Responsible Company Official) Title _____ Phone ( ) _____ Date __/__/__

Knowingly falsifying this document can result in fine, imprisonment, or both. Draft OSHA Form 300 (10/95)

General Instructions OSHA Form 300

The OSHA regulation, Recording and Reporting Occupational Injuries and Illnesses (29 CFR Part 1904) provides comprehensive instructions and definitions necessary to find out if you need to keep these records, for completing the forms, as well as other detailed recording and reporting requirements. The instructions on this form are intended to supplement the instructions in the regulation. To obtain the regulation and related guidance, contact your local OSHA office.

The Occupational Safety and Health Act of 1970 requires most employers to maintain injury and illness records. One part of the requirements is to keep an OSHA Injury and Illness Log and Summary. In order to fulfill this requirement, the employer may use this form or an equivalent form.

Work Relationship
A case is considered work related if an event in the work environment either causes or contributes to an injury or illness or aggravates a preexisting condition.

Recordable Cases
Work related injuries or illnesses are to be recorded on this form within seven calendar days of receiving information that a recordable injury or illness has occurred. An injury or illness is recordable if it results in death, days away from work, restricted work activity, job transfer, loss of consciousness, medical treatment beyond first aid, or is a condition listed in Mandatory Appendix B of 29 CFR Part 1904.

Restricted work activity means the employee is not capable of performing at full capacity for a full shift: (1) The task he or she was engaged in at the time of injury or onset of illness (the task includes all facets of the assignment the employee was performing); OR (2) His or her daily work activity (daily work activity includes all assignments the employee was expected to perform on the day of injury or onset of illness).

Medical treatment includes any medical care or treatment beyond first aid that is provided, or should have been provided. The distinction between medical treatment and first aid is based solely on the treatment involved, not the person providing the treatment. Health care professionals may provide first aid while non-professionals may provide medical treatment. First aid is defined as the following treatments:
1. Visit(s) to a health care provider limited to observation
2. Diagnostic procedures, including the use of prescription medications solely for diagnostic purposes (e.g. eye drops to dilate pupils)
3. Use of nonprescription medications, including antiseptics
4. Simple administration of oxygen
5. Administration of tetanus or diphtheria shot(s) or booster(s)
6. Cleaning, flushing or soaking wounds on skin surface
7. Use of wound coverings such as bandages, gauze pads, etc.
8. Use of any hot/cold therapy (e.g. compresses, soaking, whirlpools, non-prescription skin creams/lotions for local relief, etc.) except for musculoskeletal disorders (See Mandatory Appendix B)
9. Use of any totally non-rigid, non-immobilizing means of support (e.g. elastic bandages)
10. Drilling of a nail to relieve pressure for subungual hematoma
11. Use of eye patches
12. Removal of foreign bodies not embedded in the eye if only irrigation or removal with a cotton swab is required
13. Removal of splinters or foreign material from areas other than the eyes by irrigation, tweezers, cotton swabs or other simple means

Any treatment not on this list is considered medical treatment.

See Mandatory Appendix B of 29 CFR Part 1904 for a complete listing of additional recordable conditions.

Specific Instructions

Employer Identification
Industry Description: Enter a brief description of the establishment's primary activity, determined by the principal product manufactured or sold, or service rendered. For example, wholesale trade of enamel paints or automotive body shop. Also enter the Standard Industrial Classification (SIC) number if known. For example, SIC 7532.

Employee Identification
A. Enter the employee's last name, first name and middle initial.

Case Identification
B. Enter unique numbers. For example: 1991-1, 1991-2, ... or 1, 2, ... This number must also be entered on the corresponding Incident Record (OSHA Form 301).

C. For injuries, enter the date (month/day) the employee was injured. For illnesses, enter the date the illness was recognized. If there is no definite date of recognition, enter the date the illness was clinically diagnosed.

D. Enter the department and location where the event occurred. For example: maintenance tool room. If the event did not occur at the employer's establishment, enter the specific address or location. For example: client's office at 452 Monroe Street, Washington, DC.

E. Enter the employee's regular job title, not the specific task he/she was performing at the time of the injury or illness.

Case Description
F. Enter a detailed description of the injury or illness, indicating the part(s) of the body affected and the object/substance which directly injured or made the employee ill. For example: cut left index finger with hack saw or carpal tunnel syndrome of the left wrist from using price scanning equipment.

Case Classification Each recordable case must only have one entry in either column G., H. or I.
G. Enter a check if the case resulted in death.

H. Enter a check if the case did result in days away from work. Enter the total number of such days. Enter only whole numbers. Do not count the day the employee was injured or the day the employee became ill.

I. Enter a check in the appropriate box if the case resulted in restricted work activity or met the other recording criteria but did not involve days away from work.

NOTE: If a case ends in a permanent work restriction/job transfer, or the employee is terminated after the injury or illness occurred, an asterisk must be entered next to the case number in column B. If the description or outcome of a case changes, remove the original entry, and enter the new information to reflect the more severe consequence. For example: if a case is originally recorded without days away and later results in days away from work, remove or line out the entry in column I. and enter the information in column H.

Other
J. This column is optional and reserved for employer use. The employer may enter additional information, such as whether the case was compensable under Workers' Compensation, etc.

Year End Totals
To prepare the summary, total the number of checks and the number of days for columns G, H, and I for the calendar year. These totals are entered in the "Year-end totals" line of this section. If there were no recordable injuries or illnesses, enter zeroes in the spaces provided.

Annual average number of employees: Enter the average number of employees (full and part-time) who worked during the calendar year. Annual average employment should be computed by summing the employment from all pay periods during the year and then dividing that sum by the total number of pay periods, including periods with no employment.

Total hours worked by all employees: Enter the total number of hours actually worked by all employees during the calendar year. If hours worked are not separately maintained, please enter an estimate based upon total number of employees and average hours worked.

Certified by: An owner of the company, an officer of the corporation, the highest ranking company official working at the establishment, or his or her supervisor must sign and enter title, phone number and the date of completion.

OMB Disclosure Statement
Public reporting burden for this collection of information is estimated to vary from 4 minutes to 30 minutes per line entry with an average of 10 minutes per line entry including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. It is estimated the average firm will require 1 hour and 56 minutes to complete the entire form. If you have any comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, please send them to the OSHA Office of Statistics and/or the Office of IRM Policy, Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. **Do not send the completed form to either of these offices.**

OSHA Injury and Illness Incident Record

Public Law 91-596 and 29 CFR 1904 require you to update and retain completed form for three years.

Failure to complete this form can result in the issuance of citations and penalties.

Employees, former employees, and their representatives have the right to review all OSHA Injury and Illness Records, in their entirety, for this establishment.

This form is not an insurance form. Cases listed below are not necessarily eligible for Workers' Compensation or other insurance. Listing a case below does not necessarily mean that the employer or worker was at fault or that an OSHA Standard was violated.

U.S. Department of Labor
Occupational Safety and Health Administration

Form approved O.M.B. No. 1218-0000
See O.M.B. disclosure statement on back.

_____ Case number from OSHA Form 30

Employee

1. Last name First name MI

2. Male ☐ Female ☐ 3. Date of birth / /

4. Home address

5. Date hired / /

Health Care Provider

6. Name of health care provider

7. If treatment off-site, facility name and address

8. Hospitalized overnight as in-patient? (If emergency room only, mark "no") yes ☐ no☐

Employer Use (Optional)

Completed by

Name Title

Phone ( ) Date

Illness or Injury

9. Specific injury or illness
(e.g. Second degree burn or Toxic hepatitis)

10. Body part(s) affected *(e.g. Lower right forearm)*

11. Date of injury or illness: / / 12. If employee died, date of death / /

13. If the case involved days away from work or restricted work activity, enter the date the employee returned to work at full capacity: / /

14. Time of event: (Specify a.m. or p.m.) 15. Time employee began work: (Specify a.m. or p.m.)

16. All equipment, materials, or chemicals employee was using when the event occurred.
(e.g. Acetylene cutting torch, metal plate)

17. Specify activity the employee was engaged in when the event occurred
(e.g. Cutting metal plate for flooring) Indicate if activity was part of normal job duties.

18. How injury or illness occurred. Describe the sequence of events and include any objects or substances that directly injured or made the employee ill.
(e.g. Worker stepped back to inspect work and slipped on some scrap metal. As she fell, worker brushed against the hot metal)

Draft OSHA Form 301 (10/95)

General Instructions OSHA Form 301

The OSHA regulation, Recording and Reporting Occupational Injuries and Illnesses (29 CFR Part 1904) provides comprehensive instructions and definitions necessary to find out if you need to keep these records, for completing the forms, as well as other detailed recording and reporting requirements. The istructions on this form are intended to supplement the instructions in the regulation. To obtain the regulation and related guidance, contact your local OSHA office.

Establishments which must maintain the OSHA Injury and Illness Log and Summary (OSHA Form 300) must also complete this form for each case required to be recorded on the OSHA Form 300. This form must be completed within seven calendar days of receiving information that a recordable injury or illness has occurred. Some state workers' compensation, insurance or other reports may be acceptable substitutes. Any substitute form must contain all of the information requested on this form, with questions 16 through 18 being identical in content and order presented to be considered an equivalent. If the alternate form does not contain all of the required information, you must attach an OSHA Form 301 to it and provide all missing information.

The records must be kept for three years following the end of the calendar year to which they relate. For example, a 1990 incident record must be saved until January, 1994.

Specific Instructions

Case Number
Enter the corresponding case number from the OSHA Form 300.

Employee

5 Enter the date the employee was hired by the employer.

Health Care Provider

6 Enter name of primary health care provider (e.g. physician, nurse, etc.) who rendered medical treatment.

7 If the employee received medical treatment off-site, indicate: Health care facility name and address.

8 If employee was treated at a hospital, check whether he/she was admitted as an in-patient. Check no if the employee received emergency room treatment only.

Employer Use (Optional)
This section is optional. The employer may enter additional information, such as whether the case was compensable under Workers' Compensation, etc.

Injury or Illness
Each data element in this section should provide specific information about the event which resulted in the injury or illness and the subsequent outcome. Include as much detail as possible.

9 Describe the injury or illness. Be specific, for example: two inch laceration, carpal tunnel syndrome, or 15 dB shift in hearing threshold.

10 Enter the body part(s) affected. Be specific, for example: right index finger, left wrist, right ear.

11 Date of injury or illness (month/day/year): For injuries, enter the date the employee was injured. For illnesses, enter the date the illness was recognized. If there is no definite date of recognition, enter the date of the clinical diagnosis.

12 If the employee died, enter the date of death (month/day/year).

13 If the case involved one or more days away from work beyond the day of injury or the diagnosis of an illness, or restricted work activity, enter the date the employee returned to work at full capacity.

14 Enter the time of the event which resulted in the injury or illness. Indicate a.m. or p.m. Enter "NA" if no specific time can be determined.

15 Enter the time the employee arrived at his/her initial worksite. Indicate a.m. or p.m.

16 List all of the equipment, materials and chemicals the employee was using, applying, handling or operating when the injury or illness occurred. Be specific, for example: decorator's scaffolding, electric sander, paintbrush, and paint. Enter "NA" for not applicable if no equipment, materials or chemicals were being used. NOTE: The items listed do not have to be directly involved in the employee's injury or illness.

17 Describe the specific activity the employee was engaged in when the event occurred, such as, sanding ceiling woodwork in preparation for painting.

18 Describe how the injury or illness occurred. Include the sequence of events and name any objects or substances that directly injured the employee or made the employee ill. For example: Worker stepped to the edge of the scaffolding to inspect work, lost balance and fell six feet to the floor. The worker's right wrist was broken in the fall.

Completed By
Enter the name of the person who completed the form; title; phone number; and date of completion.

OMB Disclosure Statement
Public reporting burden for this collection of information is estimated to average 17 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, please send them to the OSHA Office of Statistics and/or the Office of IRM Policy, Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. **Do not send the completed form to either of these offices.**

V. Legal Authority

The primary purpose of the Occupational Safety and Health Act (the Act), 29 U.S.C. 651 et seq., is to assure so far as possible, safe and healthful working conditions for every American worker over the period of his or her working lifetime. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include:

Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions. [29 U.S.C. 651(b)(1)]

Building upon advances already made through employer and employee initiative for providing safe and healthful working conditions. [29 U.S.C. 651(b)(4)]

Providing for research in the field of occupational safety and health * * * developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems. [29 U.S.C. 651(b)(5)]

Exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems * * * [29 U.S.C. 651(b)6)]

Providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his [or her] work experience. [29 U.S.C. 651(b)(7)]

Providing for appropriate reporting procedures with respect to occupational safety and health which will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problems. [29 U.S.C. 651(b)(12)]

Encouraging joint labor-management efforts to reduce injuries and disease arising out of employment. [29 U.S.C. 651(b)(13)]

Several sections of the Act provide legal authority for promulgation and enforcement of this regulation. A summary of relevant sections is provided below:

Section 8(c)(1) of the Act, requires each employer to ''make, keep and preserve, and make available to the Secretary [of Labor] or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses.'' Section 8(c)(2) further provides that the ''Secretary, in cooperation with the Secretary of Health and Human Services, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.'' Section 8(c)(3) empowers the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c)(3) gives the Secretary authority to require employers to ''maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under Section 6.'' [29 U.S.C. 657(c)]

Section 8(g)(1) authorizes the Secretary ''to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.'' Section 8(g)(2) of the Act empowers the Secretary ''to prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under the Act.'' [29 U.S.C. 657(g)]

Section 9 empowers the Secretary to issue a citation to an employer who the Secretary believes ''has violated a requirement * * * of any regulations prescribed pursuant to this Act'' and may, pursuant to Section 10, assess a penalty under Section 17. [29 U.S.C. 658 and 659]

Section 20 empowers the Secretary of Labor and the Secretary of Health and Human Services to consult on research and related activities, ''including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.'' The Secretary of HHS, on the basis of such research, ''* * * and other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.'' Also, the Secretary of HHS shall conduct research ''to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act.'' Section 20 empowers the Secretary of Labor to disseminate information obtained by the Secretaries of Labor and HHS under this section to employers, employees, and organizations thereof. [29 U.S.C. 669]

Section 24 requires the Secretary to ''develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics * * * The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.'' Section 24 also empowers the Secretary to ''promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics.'' Finally, Section 24 requires employers to ''file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this chapter.'' [29 U.S.C. 673]

VI. State Plans

The 25 States and territories with their own OSHA approved occupational safety and health plans must adopt a comparable rule. These 25 States are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming; and Connecticut and New York (for State and local Government employees only). The current 29 CFR 1952.4 requires that such States with approved State plans under section 18 of the OSH Act (29 U.S.C. 667), must adopt recordkeeping and reporting regulations which are ''substantially identical'' to those set forth in 29 CFR Part 1904. Therefore, the definitions used must be identical to ensure the uniformity of collected information. In addition, § 1952.4 provides that employer variances or exceptions to State recordkeeping or reporting requirements in a State plan State must be approved by the Bureau

of Labor Statistics. Similarly, a State is permitted to require supplemental reporting or recordkeeping data, but that State must obtain approval from the Bureau of Labor Statistics to insure that the additional data will not interfere with ''the primary uniform reporting objectives.'' The proposed revision of 29 CFR 1952.4 keeps the same substantive requirements for the State Plan States, but reflects the organizational shift of some responsibilities of the Bureau of Labor Statistics to OSHA. See also the memorandum of understanding between OSHA and BLS effective January 1, 1991 (ex. 6).

VII. Regulatory Impact Assessment

The average establishment affected by the proposed changes to the recordkeeping requirements would incur a net reduction in recordkeeping costs. Thus the proposed rule will not impose adverse economic impacts on firms in the regulated community. The proposed exemption from the regulation of all non-construction establishments with fewer than 20 employees will mean that most small entities will experience an even larger cost savings. Nor is any significant international effect expected.

VIII. Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Assistant Secretary certifies that the proposed rule will not have a significant adverse impact on a substantial number of small entities. The proposed rule exempts construction employers with less than eleven employees and non-construction employers with less than twenty employees from most of the requirements, and would not have a differential impact on small businesses.

IX. Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), Council on Environmental Quality NEPA regulations (40 CFR Part 1500 et seq.), and the Department of Labor's NEPA regulations (29 CFR Part 11), the Assistant Secretary has determined that this proposed rule will not have a significant impact on the external environment.

X. Federalism

This proposed rule has been reviewed in accordance with Executive Order 12612 (52 FR 41685), regarding Federalism. Because this rulemaking action involves a ''regulation'' issued under section 8 of the OSH Act, and not a ''standard'' issued under section 6 of the Act, the rule does not preempt State law, see 29 U.S.C. § 667 (a). The effect of the proposed rule on States is discussed above in Section VI, *State Plans.*

XI. Public Participation

Interested persons are requested to submit written comments on the issues raised in this proposal. Responses to the questions raised in the proposal are also encouraged. Whenever possible, solutions should be included where the comments are of a critical nature. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue.

These comments must be postmarked by May 2, 1996. Comments are to be submitted in writing in quadruplicate, or 1 original (hard copy) and 1 disk(5 ¼ or 3 ½) in WP 5.0, 5.1, 5.2, 6.0 or ascii. Note: Any information not contained on disk; e.g., studies, articles, etc. must be submitted in quadruplicate. Comments of 10 pages or less may be transmitted by facsimile to (202) 219–5046 provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. All comments shall be submitted to: Docket Officer, Docket No. R–02, Occupational Safety and Health Administration, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–7894.

All written comments received within the specified comment period will be made a part of the record and will be available for inspection and copying at the above Docket Office address.

A public meeting will be held in Washington, D.C. in the U.S. Department of Labor auditorium at 200 Constitution Avenue, N.W. beginning at 8:30 AM on March 26, 1996 and extending through March 28th, if necessary. The purpose of the meeting is to give the public an opportunity to provide information to OSHA concerning the proposed rule. Notices of intention to appear at the public meeting should identify person and organization, the amount of time requested for presenting views, the subject matter, and a brief summary of the intended presentation. The amount of time available for each presenter may be limited by OSHA, if necessary. Notices to appear must be postmarked on or before March 5, 1996. Notice of intention to appear at the meeting is to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. R–02, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C., 20210.

XII. Paperwork Reduction Act of 1995

The proposed regulation contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, summary, description of need, respondent description and estimated reporting and recordkeeping burden are shown below. Included in the estimate of burden is the time and effort for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and financial resources expended for developing, acquiring, installing, and utilizing technology and systems to meet the information collection requirements.

Title: Recording and Reporting Occupational Injuries and Illnesses.

Summary: OSHA is revising 29 CFR 1904 and the associated Forms (OSHA No. 200 and OSHA No. 101), and in addition to providing numerous clarifications and minor modifications, this revision makes several major changes as follows:

Concept	Change/requirement
Exemptions	Expand the Small Employer exemption and modify the Low Hazard Industry (SIC) exemption.
Injury and Illness Records for construction sub-contractors.	Require site controlling employers in the construction industry to maintain additional records on workers other then their own employees.
Computerization	Allow employers to maintain their OSHA injury and illness records on computer file without corresponding hard copies.
Injury vs Illness	Eliminate the employer responsibility to distinguish between injuries and illnesses.
Recordable condition	Redefine the criteria outlining what is a recordable occupational injury or illness.
Forms	The forms will be requesting modified information and will be renumbered as the OSHA Form 300 (OSHA Injury and Illness Log and Summary) and the OSHA Form 301 (OSHA Injury and Illness Incident Record).

Description of need: The OSHA Form 300, Log and Summary; the OSHA Form 301, Incident Record; and the recordkeeping regulations will provide employers with the means and specific instructions needed to maintain records of work-related injuries and illnesses.

Accurate records are necessary for the optimal prioritization of OSHA's scarce resources. For example, inspection priorities are largely based on estimates of occupational injury and illness data collected from employers. The data also play an important part in the administrative procedures mandated by the Supreme Court that allow OSHA to obtain search warrants to conduct safety and health inspections. Others using the data include State and local government agencies, academia, employers, trade associations, labor, and the general public.

Efforts to the fulfill the Congressional mandate that the Federal government protect employees from safety and health dangers on the job would be severely hampered by incomplete, inconsistent, and inaccurate data. The revision of the recordkeeping requirements is an attempt to improve the accuracy, completeness and consistency of these records, while reducing the paperwork burden to the regulated community.

Respondent description: Approximately 620,000 private sector employer establishments will be required to maintain the OSHA Injury and Illness Log and Summary and Incident Records, though a small number of them will not have a recordable case in any given year and will only have to post the summary part of the OSHA Form 300.

Estimated Burden:

EMPLOYERS' BURDEN FOR THE PROPOSED REVISED REQUIREMENTS

Actions	Number of cases	Unit hours per case	Total burden hours
Complete OSHA 301 (Includes research of instructions and case details to complete the form).	508,895 Forms	.28 (17 min/60 min)	142,490
Complete OSHA 300 (Includes research of instructions and case details to complete the form).	5,088,948 Line entries	.166 (10 min/60 min)	844,765
Injury and illness records for construction subcontract workers	74,822 Line entries	.166 (10 min/60 min)	12,420
Fixed burden (Set-up, Summary, and Posting of OSHA 300)	620,879 Establishments	.30 (18 min/60 min)	186,264
Learning System—Turnover	124,176 Establishments	.42 (25 min/60 min)	52,153
Disclosure burden*	444,222 employee requests	.016 (1 min/60 min)	7,107
	40,000 Inspections	.033 (2 min/60 min)	1,320
Total Annual Burden Hours			1,246,519
Learning New System Implementation year only	458,518 Establishments	.25 (15 min/60 min)	114,629
	162,361 Establishments	.42 (25 min/60 min)	68,192
Total Burden Hours for Implementation Year Only			1,429,340

*Based on estimates of OSHA compliance inspections conducted during 1993.

This is an annual decrease in burden of 246,191 hours from the estimate of the current injury and illness recordkeeping requirements, after a smaller decrease of 63,370 hours in the initial year of implementation due to time required to learn the new system. The decrease in hours is primarily due to the simplification of definitions and the reduction of information required on the OSHA Log and supplementary forms.

The agency has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. § 3507(d) of the Paperwork Reduction Act for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including (1) an evaluation of whether the proposed collection of information ensures that the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) an evaluation of the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses. In addition, OSHA requests comment on the nature and extent of any cost burdens, (i.e., monetary costs) that employers would incur due to changes in paperwork requirements that would be necessitated by this proposal. Comments should be sent to OSHA Office of Statistics, 200 Constitution Avenue, N.W., Washington, DC 20210 and to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503, Attn. Desk Officer for OSHA. Comments on the issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice of Proposed Rulemaking, and no later than within 60 days of publication.

List of Subjects

29 CFR Part 1904

Recording and reporting of occupational injuries and illnesses, statistical surveys of occupational injuries and illnesses, occupational safety and health, State plans.

29 CFR Part 1952

Recording and reporting of occupational injuries and illnesses, variances to State recording and reporting requirements, injury and illness statistics, State plans.

XIII. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 8(c), 8(g), 20 and 24 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 673), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 5 U.S.C. 553, it

is proposed to revise 29 CFR Part 1904 and to amend part 1952 as set forth below.

Signed in Washington, DC., this 26 day of January, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1904—[AMENDED]

1. 29 CFR Part 1904 would be revised to read as follows:

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

Sec.
1904.1 Purpose.
1904.2 Coverage and exemptions.
1904.3 Definitions.
1904.4 OSHA Injury and Illness Log and Summary (OSHA Form 300 or Equivalent).
1904.5 OSHA Injury and Illness Incident Record (OSHA Form 301 or Equivalent).
1904.6 Preparation, certification and posting of the year-end summary.
1904.7 Location of records.
1904.8 Period covered.
1904.9 Retention and updating of occupational injury and illness records.
1904.10 Change of ownership.
1904.11 Access to records.
1904.12 Reporting of fatality or multiple hospitalization incidents.
1904.13 Reports by employers.
1904.14 Recordkeeping under approved State plans.
1904.15 Petitions for recordkeeping exceptions.
1904.16 Falsification of, or failure to keep records or provide reports.
1904.17 Subcontractor records for major construction projects.
Appendix A to Part 1904—Work-Relatedness.
Appendix B to Part 1904—Recording of Specific Conditions.
Appendix C to Part 1904—Decision Tree for Recording Occupational Injuries and Illnesses.

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 1–90 (55 FR 9033), and 5 U.S.C. 553.

§ 1904.1 Purpose.

(a) The purpose of this Part is to require employers to record and report work-related injuries, illnesses and fatalities. The records: assist employers and employees in their efforts to discover, evaluate and address workplace hazards; assist occupational safety and health officials in carrying out enforcement and consultation programs; aid in the development and evaluation of safety and health standards; are used to develop information and conduct research regarding the causes and prevention of occupational injuries and illnesses; and accurately describe the nature of occupational safety and health problems for the Nation, State or establishment.

(b) The records required in this Part provide descriptive information concerning the incidence of occupational injuries and illnesses, regardless of fault or preventability. Recording an injury or illness does not necessarily mean that the employer or employee was at fault, that an OSHA standard was violated, or that the employee is eligible for workers' compensation or other insurance benefits. Recordable workplace injuries and illnesses result from a variety of workplace events or exposures, including but not limited to: accidents, exposure to toxic materials or harmful physical agents, intentional acts of violence, or naturally occurring events such as a tornado or earthquake.

(c) The regulations in this Part were promulgated in consultation with the Secretary of Health and Human Services.

§ 1904.2 Coverage and exemptions.

Coverage and exemptions are summarized below and specified in the following table. See table to determine coverage and exemptions.

(a) *Coverage.* (1) All employers covered by the Act, regardless of size or Standard Industrial Classification (SIC), are required to:

(i) Comply with the reporting requirements of § 1904.12 of this Part, concerning fatalities or multiple hospitalizations; and

(ii) Upon being notified in writing by an authorized government agency, maintain an OSHA Injury and Illness Log and Summary and make reports under § 1904.13 of this Part.

(2) Additionally, employers in specific industries listed in columns A and B on the following table are required to comply with other regulations in this Part 1904, except as provided in paragraph (b) of this section.

(b) *Exemptions.* Exemptions from coverage are based upon size and the Standard Industrial Classification (SIC) of the employer:

(1) *Size.* (i) Construction employers with 10 or fewer employees for the entire previous calendar year are exempt from the regulations of this Part 1904, except as noted in paragraph (a)(1) of this section. See column D of the Coverage and Exemption Table in paragraph (b)(2) of this section.

(ii) Employers in industries other than construction with 19 or fewer employees for the entire previous calendar year are exempt from the regulations of this Part 1904, except as noted in paragraph (a)(1) of this section. See column D of the Coverage and Exemption Table in paragraph (b)(2) of this section.

(2) *Standard Industrial Classification (SIC) code.* Within the covered industries (column B), certain specific industries (at the 3-digit SIC level) are exempt from the regulations of this Part 1904, except as noted in paragraph (a)(1) of this section. See column C for the list of exempt SICs.

Note to paragraph (b)(2): Standard Industrial Classification (SIC) shall be determined using the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget. All size thresholds or exemptions are based on the number of employees of the entire firm or corporation, not the number of employees in an individual establishment.

Coverage and Exemption Table

Note 1 to Coverage and Exemption Table: All employers covered by the OSH Act, regardless of size or SIC code are required to comply with §§ 1904.12 and 1904.13. The following table refers to coverage and exemptions to the other requirements of Part 1904.

Covered employers		Exemptions to employers listed in column B	
(A) Industry division	(B) Specific industry	(C) By SIC	(D) By size
Construction	All Industries (SIC 15–17)		10 or fewer employees for the entire previous calendar year.
Mining	All Industries not covered by MSHA		19 or fewer employees for the entire previous calendar year.
Agriculture	All Industries (SIC 01–09)		
Manufacturing	All Industries (SIC 20–39)		
Transportation & Utilities.	All Industries (SIC 40–49)		
Wholesale	All Industries (SIC 50–51)		

Covered employers		Exemptions to employers listed in column B	
(A) Industry division	(B) Specific industry	(C) By SIC	(D) By size
Retail	SIC 52 Building Materials, Hardware Garden Supply and Mobile Home Dealers,. SIC 53 General Merchandise Stores, SIC 54 Food Stores, SIC 553 Auto and Home Supply Stores, SIC 555 Boat Dealers, SIC 571 Home Furniture and Furnishings Stores, SIC 58 Eating and Drinking Places, SIC 596 Nonstore Retailers, SIC 598 Fuel Dealers.	SIC 525 Hardware Stores.	
Finance, Insurance & Real Estate.	SIC 651 Real Estate Operators and Lessors and SIC 655 Land Subdividers and Developers.		
Services	SIC 70 Hotels, Rooming Houses, Camps and Other Lodging Places;. SIC 721 Laundry, Cleaning, and Garment Services;. SIC 734 Services to Dwellings and Other Buildings;. SIC 735 Miscellaneous Equipment Rental and Leasing;. SIC 736 Personnel Supply Services; SIC 75 Automotive Repair, Services, and Parking; SIC 76 Miscellaneous Repair Services; SIC 79 Amusement and Recreation Services; SIC 80 Health Services; SIC 833 Job Training and Vocational Rehabilitation Services; SIC 836 Residential Care; SIC 842 Arboreta and Botanical or Zoological Gardens; and SIC 869 Membership Organizations Not Elsewhere Classified.	SIC 752 Automobile Parking; SIC 764 Reupholstery and Furniture Repair; SIC 793 Bowling Centers; SIC 801 Offices and Clinics of Doctors of Medicine; SIC 807 Medical and Dental Laboratories; and SIC 809 Miscellaneous Health and Allied Services, Not Elsewhere Classified.	

Note 2 to Coverage and Exemption Table: Some States with their own occupational safety and health programs do not recognize the Federal recordkeeping exemptions. Contact your nearest OSHA office or State agency to find out if State requirements differ.

Note 3 to Coverage and Exemption Table: SICs are from the Standard Industrial Classification Manual, 1987: U.S. Office of Management and Budget. Contact your nearest OSHA office or State agency for help in determining your SIC.

Note 4 to Coverage and Exemption Table: The size exemption is based on the employment of the entire firm, not of an individual establishment. Employees include part-time workers and corporate officers.

Note 5 to Coverage and Exemption Table: Employers normally exempt from the recordkeeping requirements must still comply with the following:

(1) Report any occupational fatality or event resulting in the hospitalization of 3 or more employees as required by Section 1904.12; and

(2) Maintain an OSHA Injury and Illness log and Summary and submit reports if directed in writing to do so by an authorized government agency as required by Section 1904.13.

Note 6 to Coverage and Exemption Table: Example of how to read the Coverage and Exemption Table: Employers in SIC 52 (Building Materials, Hardware Garden Supply and Mobile Home Dealers) are covered by the regulation except for employers with 19 or fewer employees in the previous calendar year and Hardware Stores (SIC 525) of any size.

§ 1904.3 Definitions.

The following definitions apply to employer recording and reporting of occupational fatalities, injuries and illnesses.

Act means the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S. 651 et seq.). The definitions contained in section (3) of the Act and related interpretations shall be applicable to such terms when used in this Part 1904.

Days away from work means the number of days the employee would have worked but could not because of an occupational injury or illness. Days away from work do not include the day the employee was injured or became ill and days on which the employee would not have worked even though able to work (e.g. weekends, holidays, prescheduled vacation days, etc.). The count of days away from work ceases with the termination of employment if the termination is completely unrelated to the employee's injury or illness. If the termination is related to the employee's injury or illness, the employer must enter an estimate of the number of days that would have been missed had the employee not been terminated. For extended cases that result in 180 or more days away from work, an entry of ''180'' or ''180+'' in the days away from work column shall be considered an accurate count.

Employee as defined in section 3 of the Act, means an employee of an employer who is employed in a business of his or her employer which affects commerce.

Note to definition of ''Employee'': There are a variety of circumstances which result in an employee/employer relationship for OSHA recordkeeping purposes. The following is meant to be illustrative only, and not meant to be an exhaustive list. Employees include corporate officers as well as full-time, part-time, temporary and limited service workers who receive any form of compensation for their services. Employees include persons who may be labeled ''independent contractors'', or migrant workers, and persons who are provided by a temporary help service or personnel leasing agent when they are supervised on a day-to-

day basis by the employer utilizing their services. Day-to-day supervision occurs when, in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is to be accomplished. Employees do not include sole proprietors, partners, family members of farm employers or domestic household workers when employed in the home (baby sitters, housekeepers, gardeners, etc.).

Establishment means:

(1) A single physical location that is in operation for 60 calendar days or longer where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, grocery store, construction site, hotel, farm, ranch, hospital, central administrative office, or warehouse.) The establishment includes the primary work facility and other areas such as recreational and storage facilities, restrooms, hallways, etc. The establishment does not include company parking lots.

(2) When distinct and separate economic activities are performed at a single physical location, each activity may represent a separate establishment. For example, contract construction activities conducted at the same physical location as a lumber yard may be treated as separate establishments. According to the Standard Industrial Classification (SIC) Manual, Executive Office of the President, Office of Management and Budget, (1987) each distinct and separate activity should be considered an establishment when no one industry description from the SIC manual includes such combined activities, and the employment in each such economic activity is significant, and separate reports can be prepared on the number of employees, their wages and salaries, sales or receipts, or other types of establishment information.

First aid means the following treatments for work-related injuries and illnesses. This list is a comprehensive list of all treatments considered first aid for recordkeeping purposes. These treatments are considered ''first aid'', regardless of the provider, thus they may be provided by a physician, nurse, or other health care provider and are still considered first aid.

(1) Visit(s) to a health care provider limited to observation

(2) Diagnostic procedures, including the use of prescription medications solely for diagnostic purposes (e.g. eye drops to dilate pupils)

(3) Use of nonprescription medications, including antiseptics

(4) Simple administration of oxygen

(5) Administration of tetanus or diphtheria shot(s) or booster(s)

(6) Cleaning, flushing or soaking wounds on skin surface

(7) Use of wound coverings such as bandages, gauze pads, etc.

(8) Use of any hot/cold therapy (e.g. compresses, soaking, whirlpools, non-prescription skin creams/lotions for local relief, etc.) except for musculoskeletal disorders (See Mandatory Appendix B)

(9) Use of any totally non-rigid, non-immobilizing means of support (e.g. elastic bandages)

(10) Drilling of a nail to relieve pressure for subungual hematoma

(11) Use of eye patches

(12) Removal of foreign bodies not embedded in the eye if only irrigation or removal with a cotton swab is required

(13) Removal of splinters or foreign material from areas other than the eyes by irrigation, tweezers, cotton swabs or other simple means

Health care provider is a person operating within the scope of his or her license, registration or certification in health care.

Injury or illness is any sign, symptom, or laboratory abnormality which indicates an adverse change in an employee's anatomical, biochemical, physiological, functional, or psychological condition.

Medical treatment includes any medical care or treatment beyond ''first aid''.

Responsible Company Official is the person accountable for certifying the accuracy and completeness of the entries on the OSHA Injury and Illness Log and Summary. This person must be either an owner of the company, an officer of the corporation, the highest ranking company official working at the establishment, or the immediate supervisor of the highest ranking company official working at the establishment.

Restricted work activity means the employee is not capable of performing at full capacity for a full shift:

(1) The task he or she was engaged in at the time of injury or onset of illness (the task includes all facets of the assignment the employee was performing); OR

(2) His or her daily work activity (daily work activity includes all assignments the employee was expected to perform on the day of injury or onset of illness).

Site controlling employer is an employer in the construction industry (SIC codes 15, 16 and 17) with contractual, legal and/or practical control over the performance, timing, or coordination of other employers' work on a construction project with an initial total contract value of one million dollars ($1,000,000) or more. An employer (such as a general contractor) that retains another employer to work on the project is presumed to have sufficient control over the subcontractor's performance to be considered a site controlling employer. In addition, an employer (such as a construction manager) is a site controlling employer if it has managerial or supervisory authority with respect to employers engaged on the project, regardless of whether it has a contractual relationship with those employers.

Subcontractor employees are employees of construction firms (in SICs 15, 16, and 17) who are present at a construction project in connection with their job(s) who are not employees of the site controlling employer at that construction project.

Work environment means the establishment and other locations where employees are engaged in work or are present as a condition of their employment.

Work-related. An injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition, or aggravated a pre-existing condition. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring at the employer's establishment. Work-relatedness is not presumed for injuries and illnesses resulting from events or exposures away from the employer's establishment; they are considered work-related only if the worker is engaged in a work activity or is present as a condition of employment. See Mandatory Appendix A to part 1904 for a discussion of work-relatedness and criteria for rebutting the presumption of work-relatedness.

§ 1904.4 OSHA Injury and Illness Log and Summary (OSHA Form 300 or Equivalent).

(a) Each employer shall maintain for each establishment an OSHA Injury and Illness Log and Summary [OSHA Form 300 (formerly OSHA No. 200)] or equivalent form for recordable injuries and illnesses experienced by his or her employees. Employers with multiple establishments may maintain a consolidated log for establishments employing no more than 20 employees. Employers who exercise this option must enter the address of the affected employee's establishment in the department column for each recorded injury or illness.

(b) Each employer shall enter every recordable injury and illness within 7 calendar days of receiving information

that a recordable injury or illness has occurred. A recordable injury or illness is one which meets all of the following four criteria:

(1) An injury or illness exists (see the definition of injury or illness for additional information); *and*

(2) The injury or illness is work-related (see the definition of work-related and Appendix A to part 1904 for additional information); *and*

(3) The injury or illness is new. A new injury or illness does not result from the recurrence of a pre-existing condition if no new or additional workplace incident or exposure occurs. A recurrence of a previous work related injury or illness is presumed to be a new case when it either (1) results from a new work event or exposure, or (2) 45 days have elapsed since medical treatment, restricted work or days away from work were discontinued and the last signs or symptoms were experienced;

(Note: This presumption is rebuttable by medical evidence indicating that the prior case had not been resolved.)

and

(4) The injury or illness meets one or more of the following:

(i) results in death or loss of consciousness,

(ii) results in day(s) away from work, restricted work activity or job transfer,

(iii) requires medical treatment beyond first aid, or

(iv) is a recordable condition listed in the Mandatory Appendix B to part 1904.

(5) See Appendix C to part 1904 for a decision tree for recording occupational injuries and illnesses.

(c) Any employer may maintain the OSHA Injury and Illness Log and Summary (OSHA Form 300) on an equivalent form, by means of data processing equipment, or both, when all of the following conditions are met:

(1) The equivalent form or computer printout is as readable and understandable as the OSHA Form 300 to a person familiar with the OSHA Form 300.

(2) The equivalent form or computer printout must contain, at a minimum, the same information as found on the OSHA Form 300.

§ 1904.5 OSHA Injury and Illness Incident Record (OSHA Form 301 or Equivalent).

(a) In addition to the OSHA Injury and Illness Log and Summary (OSHA Form 300) provided for under Section § 1904.4(a) of this Part, each employer, shall complete an OSHA Injury and Illness Incident Record [OSHA Form 301 (formerly OSHA Form 101)] for each recordable injury or illness experienced by employees of that establishment, within 7 calendar days of receiving information that a recordable injury or illness has occurred. Each OSHA Form 301 must contain the unique case or file number relating it to the corresponding case entry on the OSHA Form 300.

(b) An employer may maintain the OSHA Form(s) 301 on an equivalent form(s), by means of data processing equipment, or both, when all of the following conditions are met:

(1) The equivalent form or computer printout is as readable and understandable as the OSHA Form 301 to a person familiar with the OSHA Form 301.

(2) The equivalent form or computer printout must contain, all of the information found on the OSHA Form 301, or must be supplemented by an OSHA Form 301 containing the missing information. The detailed information concerning the injury or illness (questions 16, 17 and 18) must be asked in the same order and using identical language from the Form 301. All other questions may be asked in any manner and in any order.

§ 1904.6 Preparation, certification and posting of the year-end summary.

(a) Each employer shall post a year-end summary of occupational injuries and illnesses for each establishment. This summary shall consist of the year's injury and illness totals from the OSHA Form 300 or equivalent, calendar year covered, company name, establishment name, establishment address, annual average number of employees, the total hours worked by all employees, and the employee access and employer penalty statements as found on the OSHA Form 300. If no injuries or illnesses occurred during the year: Zeroes must be entered on the totals line; annual average number of employees and total hours worked by all employees must be entered; and the form shall be posted. Note: The OSHA 300 Log may be used for the summary. The posting requirement may be met by simply copying and posting the portion of the 300 Log to the right of column A.

(b) A responsible company official (see the definition of responsible company official for further information) shall sign the summary of occupational injuries and illnesses to certify that he or she has examined the OSHA Injury and Illness Log and Summary and that the entries on the form and the year-end summary are true, accurate and complete.

(c)(1) Each employer shall post a copy of the establishment's year-end summary in each establishment in the same manner that notices are required to be posted under 29 CFR 1903.2(a)(1). The summary shall be completed and posted no later than February 1 of the year following the calendar year covered by the summarized records, and shall remain in place until January 31 of the following year.

(2) For employees who do not primarily report to or work at a single establishment, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary to each employee who is on the payroll at any time during the month of January following the calendar year covered by the year-end summary.

(3) For employers who maintain a consolidated log of small establishments under § 1904.4(a), employers shall satisfy this posting requirement by posting a year-end summary based on the consolidated log in each establishment.

(4) Multi-establishment employers do not have to post year-end summaries for establishments that have permanently closed during the calendar year.

§ 1904.7 Location of records.

(a) The records required by §§ 1904.4, 1904.5, 1904.6 and 1904.17 for employees and ''subcontractor employees'' who report to or work at a single establishment, such as a factory, construction site, grocery store, hospital, warehouse, central administrative office, etc. shall be kept at the establishment.

(b) Records for employees who report to a particular establishment but work elsewhere shall be kept at the establishment where the employees report each day.

(c) For employees who normally report to one establishment but are injured or become ill at another establishment within the same company, a recordable injury or illness shall be entered on the Log of the establishment in which they were injured or became ill.

(d) Records for employees who do not report to any establishment on a regular basis may be kept at the transient work site(s) for each operation or group of operations or they may be kept at an established central location by:

(1) Having the address and telephone number of the central location available at each worksite; and

(2) Having personnel available at the central location during normal business hours to provide information from the records kept there.

(e) Any employer may keep the OSHA Form 300 or OSHA Form(s) 301 at a location other than the establishment, as long as the information is retrievable in

accordance with the provisions defined in § 1904.11, Access to records.

§ 1904.8 Period covered.

Records shall be kept on a calendar year basis.

§ 1904.9 Retention and updating of work-related injury and illness records.

(a) *Retention.* OSHA Forms 300 and 301 or equivalents, year-end summaries, and injury and illness records for ''subcontractor employees'' as required under § 1904.17 of this Part shall be retained for 3 years following the end of the year to which they relate.

(b) *Updating.* During the retention period, employers must revise the OSHA Form 300 or equivalent to include newly discovered recordable injuries or illnesses. Employers must revise the OSHA Form 300 to reflect changes which occur in previously recorded injuries and illnesses. If the description or outcome of a case changes, remove the original entry and enter the new information to reflect the more severe consequence. Employers must revise the year-end summary at least quarterly if such changes have occurred.

Note to § 1904.9: Employers are not required to update OSHA Form 301 to reflect changes in previously recorded cases.

§ 1904.10 Change of ownership.

Where an establishment has changed ownership, each employer shall be responsible for recording and reporting occupational injuries and illnesses only for that period of the year during which he or she owned such establishment, but the new owner shall retain all records of the establishment kept by the prior owner, as required by § 1904.9(a) of this Part.

§ 1904.11 Access to records.

(a) *Government Representatives.* Each employer shall provide, upon a request made in person or in writing, copies of the OSHA Forms 300 and 301 or equivalents, and year-end summaries for their own employees, and injury and illness records for ''subcontractor employees'' as required under this Part to any authorized representative of the Secretary of Labor or Secretary of Health and Human Services or to any authorized representative of a State accorded jurisdiction for occupational safety and health for the purposes of carrying out the Act.

(1) When the request is made in person, the information must be provided in hard copy (paper printout) within 4 hours. If the information is being transmitted to the establishment from some other location, using telefax or other electronic transmission, the employer may provide a copy to the government representative present at the establishment or to the government representative's office.

(2) When the request is made in writing, the information must be provided within 21 days of receipt of the written request, unless the Secretary requests otherwise.

(b) *Employee(s), former employee(s) and/or their designated representative(s).* (1) Upon request, the employer shall make the OSHA Form 300 or equivalent available for viewing by an employee(s), former employee(s), and/or their designated representative(s) by the close of business on the next scheduled work day. The employee, former employee, and/or their designated representative(s) shall have access to the entire OSHA Form 300 (Log), including personal identifiers, for any establishment in which the employee is or has been employed. This includes access to the current Log and all Logs retained and maintained pursuant to § 1904.9.

(2) Upon request, the employer shall make available to an employee(s) or former employee(s) for viewing his or her OSHA Form(s) 301 or equivalent for his or her own recordable injury or illness by the close of business on the next scheduled workday.

(3) The employer shall also make copies available within 7 calendar days whenever an individual who has a right to view a record(s) listed in paragraphs (b) (1) and (2) of this section requests a copy, either in person or in writing. The employer shall not, in writing or otherwise, attempt to restrict the employees' use of such copies. The employer shall assure that either:

(i) A copy of the record(s) is provided without cost to the individual;

(ii) The necessary copying facilities (e.g., photocopying) are made available without cost to the individual for copying the record(s); or

(iii) The record(s) is loaned to the individual for a reasonable time to enable a copy to be made.

(4) Whenever a record has been previously provided without cost to an employee(s), former employee(s) and/or their designated representative(s), the employer may charge reasonable, non-discriminatory administrative costs (i.e. search and copying expenses but not including overhead expenses) for a request by the same person for additional copies of the record, except that an employer shall not charge for an initial request of a copy of an updated or corrected record.

(5) Upon request, the employer shall make available to an employee(s), former employee(s) or his or her designated representative access to all OSHA Form(s) 301 or equivalent. Access shall be provided in a reasonable time. The employer may charge a reasonable fee for searching and copying expenses.

(c) Nothing in this section shall be deemed to preclude employees and their designated representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

(d) In the case of a deceased or legally incapacitated employee, the employee's legal representative(s) may directly exercise all the employee's rights under this section.

§ 1904.12 Reporting of fatality or multiple hospitalization incidents.

(a) Within 8 hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, the employer(s) of each employee so affected shall, report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident during regular business hours, or by using the OSHA emergency toll-free central telephone number (1–800–321–OSHA [6742]) during non business hours. Note: The site controlling employer or designee will be responsible for making the report if no more than two employees of a single employer were hospitalized but, collectively, three or more workers were hospitalized as in-patients.

(b) This requirement applies to each such fatality or hospitalization of three or more employees which occurs within thirty (30) days of an incident.

(c) *Exception:* If the employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (a) and (b) of this section, the employer shall make the report within 8 hours of the time the incident is reported to any agent or employee of the employer.

(d) Each report required by this section shall relate the following information: establishment name, location of incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

§ 1904.13 Reports by employers.

(a) Section 24 of the Act, 29 U.S.C. 673, directs the Secretary of Labor, in consultation with the Secretary of Health and Human Services, to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. Section 24 also requires employers to file reports with the Secretary on ''the basis of records made and kept pursuant to Section 8(c) of this Act.'' Section 8(c), 29 U.S.C. 657(c), requires each employer to ''make, keep and preserve, and make available to the Secretary or the Secretary of Health and Human Services, such records regarding his activities relating to this Act'' as prescribed by regulation for enforcement of the Act or ''for developing information regarding the causes and prevention of occupational accidents and illnesses.'' Section 8(c) also directs the Secretary of Labor, in cooperation with the Secretary of Health and Human Services, to prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on work-related deaths, injuries, and illnesses.

(b) Pursuant to the statutory authority described above, the Secretary of Labor and Secretary of Health and Human Services may request reports from employers regarding the employers' activities relating to the Act. These requests for reports shall be in writing, shall describe what information must be reported, and may include a request for copies of records kept pursuant to 29 CFR Part 1904, information that the employer is required to maintain by regulations or standards promulgated pursuant to the Act, information required to participate in periodic surveys of occupational injuries and illnesses, and/or information necessary to determine rates of injury, illness or exposure, such as employment and hours of work. Note: Employers who are otherwise exempted under § 1904.2 of this Part, shall upon notification by the Secretary of Labor or Secretary of Health and Human Services, maintain the OSHA Log and Summary on Injuries and Illnesses for any year in which they are notified that they have been selected for participation in a data collection program of occupational injuries and illnesses.

(c) The employer shall file the requested reports with the Secretary within 21 calendar days of receipt of the request, unless the Secretary requests otherwise.

(d) Nothing in any State plan approved under section 18(c) of the Act shall affect the duties of employers to submit required reports.

§ 1904.14 Recordkeeping under approved State plans.

(a) Recordkeeping and reporting requirements promulgated by State plans are required to be substantially identical to this Part (see 29 CFR 1902.3(k) and 29 CFR 1952.4). State plans shall promulgate recordkeeping and reporting requirements that are identical to the Federal requirements for determining the types of injuries and illnesses that will be entered into the records and the manner in which they are entered. All other recordkeeping and reporting requirements that are promulgated by State plans shall be at least as effective as the Federal requirements.

(b) Records maintained by an employer and reports submitted, pursuant to and in accordance with the requirements of an approved State plan under section 18 of the Act, shall be regarded as compliance with this Part.

(c) State and local government agencies are exempt from Federal OSHA recordkeeping in States under the jurisdiction of Federal OSHA. However, in States with their own OSHA approved safety and health programs, State and local government agencies must keep injury and illness records in accordance with State law and 29 CFR 1952.4.

§ 1904.15 Petitions for recordkeeping exceptions.

All requests or variances for recordkeeping exceptions shall be made in accordance with the procedures set forth in 29 CFR 1905. Any exception granted prior to [Effective date of final rule] is null and void.

§ 1904.16 Falsification of, or failure to keep records or provide reports.

(a) Section 17(g) of the Act provides that ''Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment, for not more than 6 months or both.''

(b) Failure to maintain records or file reports as required by Part 1904, or as required by the forms and instructions issued under Part 1904, may result in the issuance of citations and assessment of penalties as provided for in sections 9, 10, and 17 of the Act.

(c) An employee who is subject to retaliatory discrimination by his or her employer for filing a report of a work-related injury or illness is protected by Section 11(c) of the OSH Act and 29 CFR 1977 Discrimination Against Employees Exercising Rights Under the Williams-Steiger Occupational Safety and Health Act of 1970. An employer who violates section 11(c) may be required to reinstate or rehire a fired employee with back pay.

§ 1904.17 Subcontractor records for major construction projects.

(a) Any site controlling employer in the construction industry (SICs 15, 16 and 17), for construction projects with an initial total contract value of one million dollars ($1,000,000) or more, shall maintain a separate occupational injury and illness record (subcontractor record) for recordable injuries and illnesses sustained by ''subcontractor employees'' (not considered employees of the site controlling employer) while working at the construction project. On the subcontractor record, the site controlling employer is only required to record occupational injuries and illnesses of ''subcontractor employees'' who are employed by a construction firm who had eleven (11) or more full and/or part-time employees at any one time during the calendar year immediately preceding the current calendar year. (Note: The size threshold is based on the number of employees of the entire firm or corporation, not of an individual establishment.)

(b) The site controlling employer shall comply with the requirements of § 1904.4(b) in determining which injuries and illnesses are recordable on the subcontractor record, and when to record them. The injury and illness information for each recordable case occurring to ''subcontractor employees'' shall include the person's name, company, date of the event which resulted in the injury or illness, and a brief description of the injury or illness. The site controlling employer shall also include the location of the site and the period of time covered on the record. The site controlling employer shall maintain all subcontractor records pertaining to one construction site in a consolidated file by calendar year. The site controlling employer has the option of using a separate OSHA Form 300, an equivalent form, or a collection of records to satisfy this requirement. Note: The employer of the ''subcontractor employee'' is not relieved of the responsibility of completing the OSHA Form 300 or equivalent as required by § 1904.4(a).

(c) For those construction projects where there is more than one site controlling employer, those employers may agree to assign the responsibility for maintaining the subcontractor records to one of the site controlling employers by means of a written

agreement. When such a written agreement exists, the other site controlling employers on the project are not required to maintain the subcontractor record regardless of whether they may be deemed to be site controlling employers.

(d) The site controlling employer is not required to complete an OSHA Form 301 for injuries or illnesses experienced by ''subcontractor employees''. Note: The employer of the ''subcontractor employee'' is not relieved of the responsibility of completing the OSHA Form 301 or equivalent as required by § 1904.5(a).

(e) The site controlling employer is not required to prepare a year-end summary for injuries and illnesses experienced by ''subcontractor employees''. Note: The employer of the ''subcontractor employee'' is not relieved of the responsibility of completing the year-end summary as required by § 1904.6(a).)

(f) The site controlling employer is not required to update the injury and illness records for ''subcontractor employees''. Note: The employer of the ''subcontractor employee'' is not relieved of the responsibilities to update the injury and illness records as required by § 1904.9(a).

Appendix A to Part 1904—Work-Relatedness (Mandatory)

If an event or exposure in the work environment either caused or contributed to an injury or illness, or aggravated a pre-existing condition, then the case is considered work-related. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring at the employer's establishment. Injuries or illnesses occurring away from the establishment are considered work-related only if the worker is engaged in a work activity or is present as a condition of his or her employment.

A. *Work-Related Injuries and Illnesses—Special Situations:* Injuries or illnesses are considered to be work-related if they occur in the following situations:

1. While the employee is engaged in work activity or apprenticeship/vocational training required by the employer.

2. While the employee is on break, in the rest room or in storage areas when located on the employer's premises.

3. While the employee is performing work for pay or compensation at home, if the injury or illness is directly related to the performance of work rather than the general home environment or setting.

4. While the employee is traveling on business, including to and from customer contacts.

5. While the employee is engaged in work activity where a vehicle is considered the work environment (e.g. truck, taxi, etc.).

B. *Non Work-Related Injuries and Illnesses.* The following injuries and illnesses are not considered work-related. Only the following may be used to rebut the presumption of work-relatedness that applies to injuries and illnesses occurring at the employers' establishment:

1. Injuries or illnesses will not be considered work-related if they occur to individuals present at their employer's establishment as a member of the general public rather than as a worker.

2. Injuries or illnesses will not be considered work-related if they involve symptoms that surface at work but solely result from a non-work-related event or exposure outside of the work environment.

3. Injuries or illnesses will not be considered work-related if they result solely from voluntary participation in wellness programs, medical, fitness and recreational activities (e.g. exercise classes, blood donations, physicals, flu shots, racquetball, baseball, etc.).

4. Injuries or illnesses will not be considered work-related if they solely result from a worker eating, drinking or preparing his or her own food when unrelated to occupational factors.

5. Injuries or illnesses will not be considered work-related if they are solely the result of workers doing personal tasks (unrelated to their employment) at the establishment outside of normal working hours.

6. Cases will not be considered work-related if they result solely from acts of violence committed by one's family or ex-spouse when unrelated to the worker's employment, including intentionally self-inflicted injuries.

7. Injuries or illnesses will not be considered work-related if they occur on company parking lots and access roads while employees are arriving at or leaving work.

8. An injury or illness will not be considered work-related if the worker was never engaged in any duty at work that could have placed stress on the affected body part or was never exposed to any chemical or physical agent at work that could be associated with the observed injury or illness.

9. An injury or illness will not be considered work-related if the case results solely from activity in voluntary community or civic projects away from the employer's establishment.

10. An injury or illness will not be considered work-related if the case results solely from normal body movements, i.e. walking unencumbered, talking, tying a shoe, sneezing, coughing, provided the activity does not involve a job-related motion and the work environment does not contribute to the injury or illness.

11. Mental illness will not be considered work-related, except mental illnesses associated with post-traumatic stress.

C. *Travel Status.*

1. Employees in travel status (i.e. traveling on company business) should be considered engaged in work-related activities during all of their time spent in the ''interest of their company''. This includes, but is not limited to, travel to and from customer contacts, conducting job tasks, and entertaining or being entertained for the purpose of transacting, discussing, or promoting business.

2. When traveling employees check into a hotel, motel or other lodging, they establish a ''home away from home''. Thereafter, their activities are evaluated in the same manner as for non-traveling employees. For example, injuries sustained when commuting from a hotel to a temporary work site are not work-related, just as injuries sustained during an employee's normal commute from a permanent residence to an office would not be considered work-related.

3. While an employee is in travel status, the following situations are not considered work-related:

i. Normal commuting between the employee's temporary residence and his or her job; and

ii. Situations where the employee departs from a reasonably direct route of work-related travel for personal reasons (e.g., a side trip for a vacation).

D. *Employees who work in their own home.* An injury or illness will be considered work-related if it occurs while the employee is performing work for pay or compensation in the home, if the injury or illness is directly related to the performance of work rather than the general home environment or setting.

E. *Employees who live at the employer's establishment.*

1. Some workplaces provide living quarters for employees. Off-shore oil rigs, ships and construction sites at remote locations commonly provide their employees with living accommodations.

2. In these workplaces, injuries or illnesses are presumed to be work-related if the employee is on-duty or engaged in a work activity. The injury or illness is also considered work-related if the employee was harmed as a result of a serious workplace accident such as a chemical release, fire, explosion, shipwreck, steam release, or building collapse.

3. All other injuries and illnesses occurring during off-duty hours are considered non-work-related.

Appendix B to Part 1904—Recording of Specific Conditions (Mandatory)

The purpose of this appendix is to provide information for the recording of specific conditions which may not be captured by the other recordability criteria. For purposes of OSHA-mandated recordkeeping, the conditions listed in this appendix are considered Recordable Injuries and Illnesses when the condition listed is work-related. The employer shall evaluate, for OSHA injury and illness recordkeeping purposes, all information received as a result of medical surveillance required by an OSHA standard.

Conditions not included in this Appendix that otherwise meet the criteria in the § 1904.4.(c) must be recorded.

TABLE OF SPECIFIC CONDITIONS

System	Condition	Recording criteria
Multi-system	Carbon monoxide poisoning.	Elevated carboxyhemoglobin levels and/or diagnosis by a health care provider.
	Mercury	15 micrograms or greater per liter (μg/L) of whole blood or 35 micrograms or greater per gram (μg/g) creatinine in urine and/or diagnosis of mercury poisoning by a health care provider.
	Lead	40 micrograms or greater per 100 grams (μg/100g) of whole blood and/or diagnosis of lead poisoning by a health care provider.
	Cadmium	—3 micrograms or greater per gram (μg/g) creatinine in urine; or —B2-microglobulin 300 micrograms or greater per gram (μg/g) creatinine in urine; or —5 micrograms of cadmium or greater per liter (μg/L) of whole blood.
	Benzene	Phenol level of 75 milligrams or greater per liter (mg/L) of urine or abnormal blood counts.
Musculo-skeletal system	Fractures of the bones or teeth.	Positive X-ray and/or diagnosis by a health care provider.
	Musculoskeletal disorders.	Diagnosis by a health care provider and/or objective finding(s) (e.g. positive Tinel's, Phalen's or Finkelstein's test; or swelling, redness indicative of inflammation, deformity, loss of motion, etc.) Musculoskeletal disorders may occur in the neck, back, shoulder, arm, hand, fingers, leg and/or foot. Examples of musculoskeletal disorders include but are not limited to carpal tunnel syndrome, tendinitis, epicondylitis, synovitis, thoracic root lesions, Raynaud's syndrome, and tarsal tunnel syndrome. For musculoskeletal disorders only, medical treatment shall include two or more applications of hot/cold therapy as directed by a health care provider.
Sensory organs	UV burning of the cornea or retina.	Recognition/diagnosis of welder's flash or flashburn.
	Hearing loss	An average shift of 15 decibels (dB) or more at 2000, 3000, and 4000 hertz in one or both ears. The change in hearing may be adjusted for presbycusis (age related hearing loss). The record of the injury or illness may be deleted if a retest performed with 30 days disproves the original shift. Once a 15 dB shift has occurred, the baseline (for recordkeeping purposes) should be adjusted to reflect this result. A subsequent test revealing an additional 15 dB shift from this new or revised baseline value is a new injury or illness. Work-relationship is presumed if an employee is exposed to an 8 hour time weighted average sound level of noise equaling or exceeding 85 dB(A).
Skin	Burns (heat, chemical and radiation burns).	Third degree burns (and first and second degree burns requiring medical treatment beyond first aid, restricted work activity, days away from work, loss of consciousness or death).
	Skin disorders	Lasting beyond 48 hours, including but not limited to allergic or irritant contact dermatitis.
	Lacerations	Requiring closure including but not limited to the use of sutures, adhesive closures and staples.
Respiratory system	Asthma and other obstructive airway diseases.	—Initial episode, regardless of duration, diagnosed by a health care provider. Or —Any recurrent episode, regardless of duration, that results in the administration of prescription drugs and/or diagnosis by a health care provider. Note: Obstructive airway diseases include but are not limited to reactive airways dysfunction syndrome (RADS), chronic obstructive pulmonary disease (COPD), and chronic obstructive bronchitis.
	Pneumoconiosis (e.g. asbestosis, silicosis, coal worker's pneumoconiosis, beryllium disease, etc.).	Diagnosis by a health care provider, radiography profusion category of 1/1 or greater by the International Labor Organization (ILO) classification system.
	Mesothelioma	Diagnosis by a health care provider, pleural plaques and/or pleural thickening.
	Byssinosis	Diminished pulmonary function (an FEV1 of less than 80% of the predicted value)and/or diagnosis by a health care provider when worker has been exposed to dust from cotton or flax which has not undergone wet treatments.
	Tuberculosis infection or disease.	First positive tuberculin skin test reaction indicative of new infection, except pre-placement; Or Diagnosis of active tuberculosis by a health care provider. A case of tuberculosis disease or tuberculosis infection is presumed to be work-related in the following industries: correctional facilities; health care facilities; homeless shelters; long-term care facilities for the elderly; and drug treatment centers. The employer may rebut this presumption of work relationship by providing evidence that the employee is known to have had a non-work exposure to active TB. Examples include situations in which (1) An employee is living in a household with a person diagnosed with active TB or (2) the Public Health Department lists the employee as a contact to a case of active TB. For all other industries a case would be considered work-related under the following circumstance: An employee tests positive for tuberculosis infection after being exposed to a person within the work environment known to have tuberculosis disease. The case of the person with TB disease, however, would not be presumed work-related if there was no known exposure within the work environment.

TABLE OF SPECIFIC CONDITIONS—Continued

System	Condition	Recording criteria
Respiratory system	Hypersensitivity pneumonitis (non-asthmatic allergic breathing disorders caused by organic dust and other antigenic aerosols).	Diagnosis by a health care provider of woodworker's lung, farmer's lung, malt worker's lung, mushroom worker's lung, cheese washer's lung, miller's lung, etc. when the worker has been exposed to the relevant substance.
	Toxic inhalation injury—breathing disorders (such as Metal Fume Fever)due to inhaling chemicals.	Diagnosis by a health care provider and/or respiratory distress requiring overnight hospitalization.
Miscellaneous	Bloodborne pathogen diseases.	Any workplace bloodborne pathogen exposure incident (as defined in 1910.1030(b)) that results in a positive blood test or diagnosis by a health care provider indicating AIDS, HIV seroconversion, hepatitis B or hepatitis C; Or Any laceration or puncture wound that involves contact with another person's blood or other potentially infectious materials. Note: to protect employee confidentiality, employers shall record occupationally acquired bloodborne pathogen diseases, such as hepatitis B, simply as the initial bloodborne exposure incident and note the exposure type (e.g. needlestick). Seroconversion and specific type of bloodborne disease shall not be recorded.
	Hepatitis (toxic or infectious).	Positive blood test and/or diagnosis by a health care provider.

Work-related injuries and illnesses are recorded if they result in death, loss of consciousness, days away from work, restricted work activity, medical treatment beyond first aid, or the criteria in this table.

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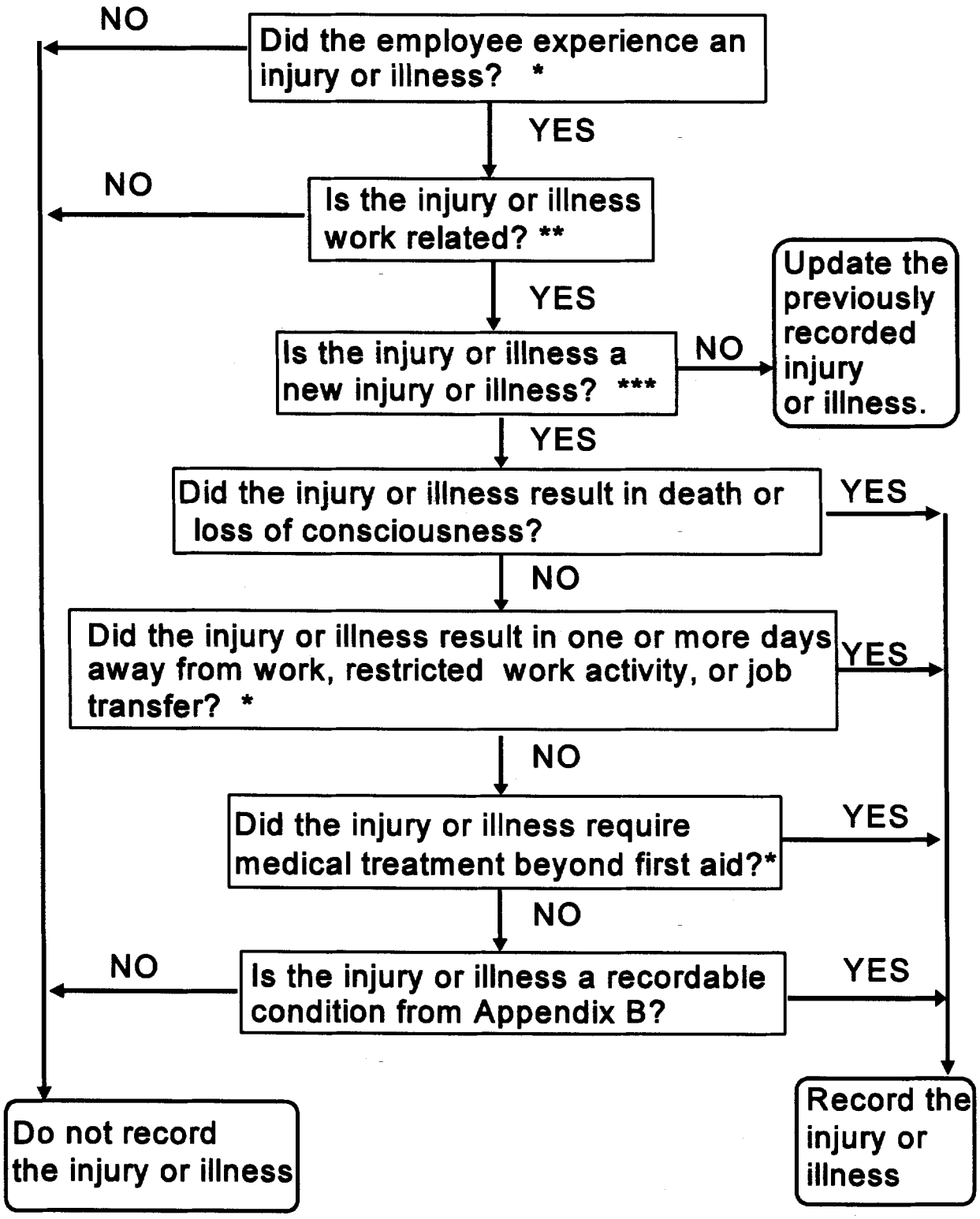
Appendix C to Part 1904—Decision Tree for Recording Occupational Injuries and Illnesses



* See Definitions ** See Definitions and Appendix A *** See 1904.4(c)

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PART 1952—[AMENDED]

2. The authority citation for Part 1952 continues to read as follows:

Authority: 29 U.S.C. 667; 29 CFR Part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

3. Section 1952.4 would be revised to read as follows:

§ 1952.4 Injury and illness recordkeeping and reporting requirements.

(a) Injury and illness recordkeeping and reporting requirements promulgated by State plans are required to be substantially identical to 29 CFR Part 1904. State plans shall promulgate recordkeeping and reporting requirements that are identical to the Federal requirements for determining the types of injuries and illnesses that will be entered into the records and the manner in which they are entered. All other recordkeeping and reporting requirements that are promulgated by State plans shall be at least as effective as the Federal requirements.

(b) A State is not prohibited from requiring supplementary reporting or recordkeeping data, but such additional data must be approved by the Occupational Safety and Health Administration to insure that there will be no interference with the uniform reporting objectives.

(c) Variances to State injury and illness recordkeeping and reporting requirements under an approved plan must be obtained from the Occupational Safety and Health Administration of the U.S. Department of Labor. Therefore, a State may not grant a variance to recordkeeping and reporting requirements under their own procedures.

(d) In order to insure the uniformity of the injury and illness statistics, a State must recognize all variances granted by the Occupational Safety and Health Administration.

[FR Doc. 96–1942 Filed 2–1–96; 8:45 am]

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federal register

Friday
February 2, 1996

Part IV

Office of Personnel Management

Report on Winter 1995 Surveys Used to Determine Cost-of-Living Allowances in Alaska; Notice

OFFICE OF PERSONNEL MANAGEMENT

Report on Winter 1995 Surveys Used to Determine Cost-of-Living Allowances in Alaska

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This notice publishes the ''Report To OPM On Living Costs In Anchorage, Fairbanks, Juneau, The Rest Of The State Of Alaska, And In The Washington, DC, Area, November 6, 1995,'' prepared by Jack Faucett Associates under Government contract OPM–94–BP–3816.

DATES: Comments must be received on or before April 2, 1996.

ADDRESSES: Send or deliver comments to Allan G. Hearne, Salary Systems Division, Office of Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX to (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Allan G. Hearne, (202) 606–2838.

SUPPLEMENTARY INFORMATION: Sections 591.205(d) and 591.206(c) of title 5, Code of Federal Regulations, require that nonforeign area cost-of-living allowance (COLA) survey summaries and calculations be published in the Federal Register. Accordingly, OPM is publishing the complete ''Report To OPM On Living Costs In Anchorage, Fairbanks, Juneau, The Rest Of The State Of Alaska, And In The Washington, DC, Area, November 6, 1995,'' produced by Jack Faucett Associates under contract with OPM. This report explains in detail the methodologies, calculations, and findings of the winter 1995 living-cost surveys.

Survey Results. Jack Faucett Associates computed index values of relative living costs in the allowance areas using an index scale where the living costs in the Washington, DC, area equal 100. (See the Executive Summary of the report.) OPM notes that the winter survey indices showed that the COLA rate for the Rest of the State of Alaska is currently set at the proper level but that the rates authorized for all of the other Alaska allowance areas are above levels warranted by the indices. However, the Treasury, Postal Service and General Government Appropriations Act, 1992 (Pub. L. 102–141), as amended, prohibits reductions in COLA rates through December 31, 1998. Therefore, OPM is *not* proposing any adjustments in the COLA rates in these allowance areas at this time.

Office of Personnel Management.

James B. King,

Director.

Table of Contents

Executive Summary
1. Introduction
1.1 Report Objections
1.2 Changes in This Year's Survey
1.2.1 Three-Year CES Moving Average
1.2.2 New Living Communities
1.2.3 Historical Housing Data
1.3 Pricing Period
2. The COLA Model
2.1 Measurement of Living-Cost Differences
2.2 Step 1: Identifying the Target Population
2.2.1 Federal Salaries
2.2.2 Federal Employment Weights
2.3 Step 2: Estimating How People Spend Their Money
2.3.1 Consumer Expenditure Survey (CES)
2.3.2 Expenditure Categories and Components
2.4 Step 3: Selecting Items and Outlets
2.4.1 Item Selections—The Market Basket
2.4.2 Geographic Coverage and Outlet Selection
2.4.2.1 Geographic Areas
2.4.2.2 Similarity of Outlets
2.4.2.3 Catelog Pricing
2.5 Step 4: Surveying Prices
2.5.1 In-House Research Staff
2.5.2 Field Researchers—''Research Associates''
2.5.3 Data Collection Materials
2.5.4 Inclusion of Sales and Excise Taxes
2.5.5 JFA's Onsite Visits
2.5.6 Special Considerations in Selection Areas
2.5.6.1 Surveying the Washington, DC Area
2.6 Step 5: Analyzing Data and Computing Indexes
2.6.1 General Formulae
2.6.1.1 Indexes
2.6.1.2 Item Weights
2.6.1.3 Category and Component Weights
2.6.2 Computing the Overall Index
3. Consumption Goods and Services
3.1 Categories and Category Weights
3.2 Goods and Services Data Collection—Special Considerations
3.2.1 Restaurant Pricing
3.3 Goods and Services Survey Results
4. Housing
4.1 Component Overview
4.2 Housing Model
4.2.1 Expenditure Research
4.2.2 House Profiles
4.2.3 Living Community Selection
4.2.4 Housing-Related Expenses
4.2.4.1 Utilities
4.2.4.2 Real Estate Taxes
4.2.4.3 Owners/Renters Insurance
4.2.4.4 Home Maintenance
4.2.4.5 Telephone
4.3 Housing Data Collection Procedures
4.3.1 Homeowner Data Collection
4.3.2 Renter Data Collection
4.4 Housing Analysis
4.4.1 Homeowner Data Analysis
4.4.2 Rental Data Analysis
4.5 Housing Survey Results
5. Transportation
5.1 Component Overview
5.2 Private Transportation Methodology
5.2.1 Vehicle Selection and Pricing
5.2.2 Vehicle Trade Cycle
5.2.3 Fuel Performance and Type
5.2.3.1 Impact of Temperature upon Fuel Performance
5.2.3.2 Impact of Road Surface upon Fuel Performance
5.2.3.3 Impact of Gradient Upon Fuel Performance
5.2.3.4 Overall Impact upon Fuel Performance
5.2.4 Vehicle Maintenance
5.2.5 Tires
5.2.6 License and Registration Fees, and Miscellaneous Tax
5.2.7 Depreciation
5.2.8 Finance Expense
5.2.9 Vehicle Insurance
5.2.10 Overall Annual Costs
5.3 Other Transportation Costs—Air Fares
5.4 Transportation Component Analyses
6. Miscellaneous Expenses
6.1 Component Overview
6.2 Component Weights
6.3 Component Categories
6.3.1 Medical Expense Category
6.3.2 Contributions Category
6.3.3 Personal Insurance and Retirement Category
6.4 Miscellaneous Expense Analyses
7. Final Results
7.1 Total Comparative Cost Indexes

List of Appendices

Appendix 1: Publication in the Federal Register of Results of Nonforeign Area Living-Cost Surveys: 1990—1994
Appendix 2: Federal Employment Weights
Appendix 3: Consumer Expenditure Surveys (CES) Item Weights
Appendix 4: CES Category and Component Weights
Appendix 5: Item Descriptions
Appendix 6: Pricing Changes
Appendix 7: OMB-Approved Survey Materials
Appendix 8: Consumption Goods and Services Analysis
Appendix 9: OPM Living Community List
Appendix 10: Historical Home Market Values and Interest Rates
Appendix 11: Historical Housing Data
Appendix 12: Rental Data Analyses
Appendix 13: Housing Cost Analysis
Appendix 14: Housing Analysis
Appendix 15: Private Transportation Cost Analysis
Appendix 16: Air Fares and Other Transportation Expenses Cost Analysis
Appendix 17: Transportation Analysis
Appendix 18: Miscellaneous Expense Analysis
Appendix 19: Final Indexes

Executive Summary

This report provides the results of the winter 1995 living-cost surveys and compares living costs in Alaska nonforeign cost-of-living allowance

(COLA) areas relative to the Washington, DC area.

The surveys and analyses were conducted by Jack Faucett Associates (JFA), an economics consulting firm located in Bethesda, Maryland, and its subcontractor, Runzheimer International, a Wisconsin-based firm, specializing in the collection and analysis of cost-of-living information. The study was conducted for the Office of Personnel Management (OPM) under contract OPM–94–BP–3816. The contract requires JFA to:

(1) Survey living costs in four allowance areas and in the Washington, DC area, and

(2) Compare living costs between the allowance areas and the DC area.

For this study, JFA and Runzheimer researched more than 1,000 outlets and gathered more than 5,500 prices on more than 200 items representing typical consumer purchases. These prices were then combined using consumer expenditure information developed by the Bureau of Labor Statistics. The final result of the study is a series of living-cost indexes, shown in the table below, which show the living-costs in each of the allowance areas relative to the Washington, DC area. The index for the DC area (not shown) is 100.00 because it is, by definition, the reference area.

TABLE E–1.—FINAL COST COMPARISON INDEXES

Allowance area	Index
Anchorage, Alaska	105.14
Fairbanks, Alaska	108.64
Juneau, Alaska	108.33
The rest of the State of Alaska	126.19

OPM implemented a number of improvements for the winter 1995 survey. These improvements included:

—Using a moving average to introduce new weights based on the results of the Bureau of Labor Statistics' Consumer Expenditure Surveys;
—Using new representative income levels based on the 1994 distribution of salaries of Federal employess in the allowance areas;
—Selecting new living communities based on the results of the 1992 Federal Employee Housing and Living Patterns Survey;
—Incorporating historical housing data to reflect both newly purchased and previously purchased homes;
—Using the median home value in place of trimming and trend analyses used in previous surveys; and
—Using the Goods and Services index to reflect relative expenditures for cash contributions.

These changes as well as the data collection and analysis procedures already employed in the survey are discussed in the various sections of this report.

1. Introduction

1.1 Report Objectives

This comprehensive report culminates data collection and research work undertaken in winter 1995 as required by Tasks 1 and 2 of contract OPM–94–BP–3816 between the Office of Personnel Management (OPM) and Jack Faucett Associates (JFA). This report only provides the results of the winter 1995 surveys. A listing of earlier reports that provided the results of previous surveys is shown in Appendix 1.

The analyses show the comparative living-cost differences between the Washington, DC area and the following allowance areas:

1. City of Anchorage, Alaska
2. City of Fairbanks, Alaska
3. City of Juneau, Alaska
4. The rest of the State of Alaska

By law, Washington, DC is the base of ''reference'' area for the nonforeign area cost-of-living allowance (COLA) program.

1.2 Changes in This Year's Survey

One of the obvious changes this year was OPM's selection of a new contractor for living-cost surveys and analyses: JFA. JFA subcontracted a substantial portion of the work to Runzheimer International, OPM's previous contractor for the COLA program.

OPM directed JFA to make several changes to the survey and analyses. Some of the key changes this year included:

—Using a moving average to introduce new weights based on the results of the Bureau of Labor Statistics' Consumer Expenditure Surveys (CES);
—Using new representative incomes based on the 1994 distribution of salaries of Federal employees in the allowance areas;
—Selecting new living communities based on the results of the 1992 Federal Employee Housing and Living Patterns Survey;
—Incorporating historical housing data to reflect both newly purchased and previously purchased units;
—Using the median home value in place of trimming and trend analyses used in previous surveys; and
—Using the Goods and Services index to reflect relative expenditures for cash contributions.

Three of these changes are discussed further below. The other changes are discussed where applicable in the report.

1.2.1 Three-Year CES Moving Average

One change was the introduction of a three-year moving average of CES data in calculating the weights used to combine price indexes. In prior years, expenditure weights were based on the 1988 CES, and OPM wanted to use more current CES information.

Rather than simply replacing the 1988 CES data with the most recent (1992) CES data, OPM implemented a system that would allow the gradual introduction of new CES data over time, thereby reducing the impact that short-term changes in CES might have on the living-cost indexes. In future surveys, OPM plans to include current CES information and drop the oldest CES data to maintain a three-year moving average. Appendices 3 and 4 show the CES data used in this study.

1.2.2 New Living Communities

Another change was the selection of new living communities based on the results of the 1992 Federal Employee Housing and Living Patterns Survey. In that survey, employees were asked to provide their residential zip codes. OPM used this information to refine community selection.

Two types of changes were made. In areas with relatively large concentrations of Federal employees and sufficient housing data, OPM selected communities to reflect the areas where Federal employees typically lived.

The updated list of communities is provided in Appendix 9. These are the communities in which house sales and rental rates were collected. The communities were also used to determine the normal shopping radius and the outlets at which price were collected.

1.2.3 Historical Housing Data

A third change was the incorporation of historical housing data to reflect not only the prices paid for recent home purchases but also for homes purchased in prior years. Appendix 10 shows the home market values, interest rates, and annual principal and interest payments for each area by year and income level. Appendix 11 shows how the principal and interest payments were combined using weights based on the percent of Federal employees presumed to have purchased their homes in each given year. The weights were derived from the results of the 1992 Federal Employee Housing and Living Patterns Survey.

1.3 Pricing Period

The prices were collected in the allowance areas and in the Washington, DC area in February 1995. As with the previous surveys, the prices of some items—those dependent upon the pricing of other items—were collected slightly later (i.e., in March and April 1995) In addition, individual item prices not meeting OPM's quality control procedures were resurveyed in April and used to verify or replace the original prices.

As done in previous surveys, JFA included some catalog sales in its survey. Only catalogs that sell merchandise in both the allowance areas and the Washington, D.C. area, were used. To ensure consistent seasonal catalog pricing, JFA used winter catalogs for the catalog items surveyed.

2. The COLA Model

2.1 Measurement of Living-Cost Differences

A common and widely accepted way to measure living-cost differences between and among locations is to select representative items that people purchase in these locations and to calculate the respective cost differences, combining them according to their importance to each other (as measured by relative percentage of expenditures). The COLA model applies this methodology to compare the living costs in each of the allowance areas with the living costs in Washington, DC area.

Moving from this basic concept to computing comparative living costs between each allowance area and the Washington, DC area involves five main steps:

Step 1: Identify the segment of the population for which the analysis is targeted (i.e., the target population).

Step 2: Estimate how these people spend their money.

Step 3: Select items to represent the types of expenditures people usually make and outlets at which people typically make purchases.

Step 4: Conduct pricing surveys of the selected items in each area.

Step 5: Analyze cost ratios for the selected items and aggregate them according to the relative importance of each item.

2.2 Step 1: Identifying the Target Population

The study estimates living-cost differences for nonmilitary Federal employees who have annual base salaries between approximately $12,000 and $87,000, the range of the General Schedule. Because living costs may vary depending on an employee's income level, living costs are analyzed at three income levels.

2.2.1 Federal Salaries

To determine the appropriate income levels, OPM analyzed the 1994 distribution of salaries for all General Schedule employees in all of the allowance areas combined. OPM divided this distribution into three groups of equal size and identified the median salary in each of the groups. These values were then rounded to the nearest $100 to produce the three representative income levels of $20,800, $31,500, and $48,300.

The study analyzes living costs at each of these three income levels. The results are three sets of estimated expenditures for each allowance area and for the Washington, DC area. To combine these estimated expenditures into a single overall index for the area, JFA used employment weights provided by OPM.

2.2.2 Federal Employment Weights

As with the income levels, the OPM employment weights were derived from the distribution of General Schedule employees by salary level. Using the salary parameters identified in the income analysis described above, OPM determined the number of General Schedule employees in each salary group in each allowance area. Using a moving average similar to that used with the CES data (see section 1.2.1), OPM combined these data with the same type of information for the previous two years and calculated the percent of the General Schedule workforce in each income group in each area. These percentages were the weights that JFA used. Appendix 2 shows the General Schedule employment distribution and how the percentage weights were derived.

2.3 Step 2: Estimating How People Spend Their Money

2.3.1. Consumer Expenditure Survey (CES)

Expenditure patterns for employees for all areas, including the Washington, D.C. area, are based on national data from the CES. OPM obtained from the Bureau of Labor Statistics ''prepublished'' CES results for 1988, 1991, 1992. As discussed in section 1.2.1, these three years of CES data were combined using a moving average.

CES data are used in two ways: to identify appropriate items for the survey and to derive item, category, and component weights. The item weights are not income-sensitive. However, aggregated CES data are analyzed by income level to derive category and component weights. These weights are income-sensitive. The CES data used in this study are shown in Appendix 3 and 4.

The Bureau of Labor Statistics has advised OPM that ''prepublished'' CES data may not be statistically significant. To OPM's knowledge, however, it is the only source of comprehensive consumer expenditure information by income level. Therefore, it is used in the model.

2.3.2 Expenditure Categories and Components

The CES groupings expenses into small, logical families of items. For example, the report divided money spent by families on beef into four groups: ground beef, roast, steak and other beef. The steak and roast groupings were further separated into smaller clusters of items (e.g., sirloin and round steak, chuck and round roast).

Using the CES data, the items were sorted into the four main cost components specified in OPM regulations: Consumption Goods and Services, Transportation, Housing, and Miscellaneous Expenses. To develop weighting patterns for the three income levels, JFA performed linear regression analyses on the CES data shown in Appendix 3.[1] These analyses produced estimated expenditures at the three income levels identified in section 2.2.1 above. JFA converted these expenditures to percentages of total expenditures for the four components to produce the values shown in the table below. The values were the weights JFA used to combine the expenditures for each of the components into an overall value for each income level in each allowance area and the Washington, DC area.

[1] The midpoint of the moving average of CES data was 1991. Therefore, for the purposes of these regressions, OPM provided adjusted Federal salaries to reflect 1991 pay rates. OPM used the pay increases for 1992 (4.2%), 1993 (3.7%), and 1994 (0.0%) to deflate the 1994 salaries. This produced adjusted Federal salaries of $19,250, $29,150, and $44,700 for use in the regression equations.

TABLE 2–1.—COMPONENT EXPENSES EXPRESSED AS A PERCENTAGE OF TOTAL EXPENSES

Income level 1994	Income level 1991 adjusted	Goods and services (percent)	Housing (percent)	Transpor-tation (percent)	Misc. (percent)	Total (percent)
$20,800	$19,250	40.10	25.01	18.93	15.96	100.00
31,500	29,150	39.47	23.98	18.66	17.88	100.00
48,300	44,700	38.87	23.01	18.41	19.71	100.00

(Values may not total because of rounding.)

Goods and services items were further sorted into ten categories and linear regression techniques were used to estimate expenditures on these ten categories by income level. The weights for these categories are shown in section 3.1. The same technique was also used to compute category weights for the Transportation and Miscellaneous Components and to produce ratios of renters to homeowners at each income level.

2.4 Step 3: Selecting Items and Outlets

2.4.1 Item Selections—The Market Basket

As noted above, CES items were grouped into ''clusters'' of expenses to determine which items to survey. These clusters were chosen so that no market basket item would have overwhelmingly large or insignificantly small item weight.

For each of these clusters, a set of items to price was identified. Collectively, these items are called a ''market basket.'' Because it would have been impractical to survey all of the thousands of items consumers might buy, the market basket contains representative items, such as cheddar cheese, that represents itself and the many other related items that consumers purchase (e.g., Edam, Gouda, Jack, Swiss, et cetera). JFA's market basket had more than 200 items ranging from table salt to new cars to home purchases.

The items selected were representative of other similar items, commonly purchased, and readily available in all areas. For example, a 10.5-ounce can of Campbell's vegetable soup was selected for the survey because it is representative of canned and packaged soups, is a commonly-purchased brand, and is found in all areas. Whenever practical, the item description included the exact brand, model, type, and size, so that exactly the same items could be priced in all areas if possible. Appendix 5 provides a list of the items surveyed and their descriptions.

Changes to the item list and descriptions are an important aspect of the COLA survey. These changes are necessary to improve the survey and keep the items' descriptions current. For this survey, JFA changed several of the items or descriptions. The changes and the reasons for each are listed in Appendix 6.

2.4.2 Geographic Coverage and Outlet Selection

Just as it was important to select commonly-purchased items and survey the same items in all areas, it was important to select outlets frequented by consumers and find equivalent outlets in all areas. This involved deciding which geographic areas to survey and which outlets to survey within these geographic areas.

2.4.2.1 Geographic Areas

For some areas, the choice of which area(s) to survey was obvious. In Nome, for example, the whole city is surveyed because Nome is a relatively small city and Federal employees live throughout the city.

For other areas, specific communities had to be identified. To do this, OPM used the results of the 1992 Federal Employee Housing and Living Patterns Survey. Among other things, that survey obtained information on where Federal employees lived. OPM used this information to select the communities in which housing costs would be priced. JFA then identified outlets within a normal shopping radius of these housing communities.

2.4.2.2 Similarity of Outlets

Whenever possible, JFA selected popular outlets that were comparable to outlets in all areas. For example, JFA surveyed the price of grocery items at supermarkets in all areas because most people purchase their groceries at such stories and because supermarkets are found in all areas.[2] The selection of comparable outlets was particularly important because comparing the prices of items purchased at dissimilar outlets would be inappropriate (e.g., comparing the price of a box of cereal at a supermarket with one sold at a convenience store).

Although major supermarkets, department stores, and discount stores represented a sizable portions of the survey, JFA also selected outlets to represent the diversity of consumer shopping. For example, JFA could have used department stores for pricing all clothing items surveyed. This would not have reflected, however, the range of consumer choices. Therefore, JFA also priced some clothing items in men's and women's clothing stores, other clothing items in department stores, others in shoe stores, and still others in discount stores. For each item, the same type of outlet (e.g., clothing store, discount store, department store) was selected in each area whenever possible.

2.4.2.3 Catalog Pricing

A limited amount of catalog pricing was included in the survey to reflect this common purchasing option. Eight item prices were surveyed by catalog. OPM selected these items based on comments it received from Federal employees. Catalog pricing also allowed the comparison of comparable items that would have been difficult to price otherwise. Of course, all catalog prices included any charges for shipping and handling and all applicable taxes.

2.5 Step 4: Surveying Prices

As noted earlier, JFA obtained approximately 5,500 prices on more than 200 items from 1,000 outlets. In each survey area, JFA attempted to get at least three price quotes for each item, with certain exceptions. For example, essentially all of the available home sales and rental data meeting the specifications were obtained. For other items, such as utilities and real estate tax rates, only one quote was obtained in each area because these items have uniform rates within an area. Because the Washington, DC area has six survey communities, JFA attempted to get at least 18 price quotes for most items in this area.

[2] In the Washington, DC, area, JFA surveyed groceries at two kinds of supermarkets (i.e., full-service supermarkets and ''warehouse-type'' supermarkets) because both types of grocery stores are common in this area. JFA did not survey ''warehouse-type'' grocery stores in any other area because they are relatively uncommon and not frequented by most Federal employees.

To accomplish this, JFA used various information-gathering approaches. These are described below.

2.5.1 In-House Research Staff

JFA's research personnel, and those of Runzheimer, its subcontractor, played a major role in all data-collection activities. These professionals:

—Contacted manufacturers, trade associations, governmental agencies, and retail establishments to ensure that suitable items were selected and priced at common types of outlets;
—Contacted real estate professionals in each survey area to obtain general information as well as specific rental rates and home market values;
—Conducted pricing surveys, onsite and by telephone;
—Served as a liaison for field researchers who collected price information onsite;
—Performed hundreds of quality control checks, often verifying survey data through telephone calls and comparing current data-gathering results with those from earlier surveys; and
—Analyzed and computed the item, category, component, and total comparative cost indexes.

2.5.2 Field Researchers—''Research Associates''

Most of the price data were collected onsite by Research Associates (RA's). The RA's were independent contractors, hired by JFA to visit retail outlets in each area and collect prices. All of these RA's were residents of the area. To avoid any real or perceived conflicts of interest, JFA refrained from hiring research associates who were either employees of the Federal government or who had immediate family who were employees of the Federal government.

2.5.3 Data Collection Materials

The living-cost surveys conform with the provisions of the Paperwork Reduction Act and are approved by the Office of Management and Budget (OMB). The OMB-approved survey collection materials are found in Appendix 7. All JFA-developed worksheets or other survey materials conformed with those approved by OMB.

2.5.4 Inclusion of Sales and Excise Taxes

For all items subject to sales and/or excise tax, the appropriate amount of tax was added prior to analysis. JFA gathered applicable information on taxes by contacting appropriate sources of information in the allowance areas and the Washington, DC area. JFA also used appropriate tax publications, such as the State of Maryland's *Sales and Use Tax Laws and Regulations* and the ''Uniform Sales Tax'' (Ordinance Section 69.05) of the City and Borough of Juneau.

2.5.5 JFA's Onsite Visits

Full-time JFA research professionals traveled to each allowance area to supervise data collection activities and perform various quality control checks as necessary. These visits all occurred during the pricing period so that these professionals could answer any of the RA's data collection questions or provide additional training and instruction if necessary.

The researchers visited living communities within the allowance areas to look at housing and to talk with local real estate professionals. They also visited numerous retail outlets to verify that comparable items were being priced at comparable outlets. In addition, they obtained general information about the local economy.

2.5.6 Special Considerations in Selected Areas

2.5.6.1 Surveying the Washington, DC Area

As noted earlier, JFA attempted to get more price quotes in the DC area than in the allowance areas because of the size and diversity of the Washington metropolitan area. For the purposes of the COLA surveys, the DC area was divided into six survey areas: two in the District of Columbia, two in Maryland, and two in Virginia. The specific areas surveyed were within a normal shopping radius of the housing communities identified in Appendix 9. Survey data from each of the six DC survey areas were combined using equal weights.

2.6 Step 5: Analyzing Data and Computing Indexes

2.6.1 General Formulae

2.6.1.1 Indexes

Nonforeign area COLAs are derived from the living-cost indexes. These indexes are mathematical comparisons of living costs in the allowance areas compared with living costs in the Washington, DC area.

At the most fundamental level, an index is a way to state the difference between two prices (or sets of prices). For example, if a can of green beans costs $1.00 in the allowance area and 80 cents in the DC area, green beans are 25 percent more expensive in the allowance area than in DC. That difference can also be stated as a price index of 125.

2.6.1.2 Item Weights

JFA computed indexes for hundreds of items. To combine these indexes, JFA used weights derived from the CES. These weights reflected the relative amount consumers normally spend on different items. For example, the price of a can of green beans has a lower weight than the price of a pound of apples because, according to the CES, people generally spend less on green beans than on apples.

The COLA model uses a fixed-weight indexing methodology. This means that the same expenditure weights are used in the reference area (i.e., the DC area) and in the allowance areas. The weights used are based on the expenditure patterns of consumers nationwide as reported by the CES. This is the only source, of which OPM is aware, that provides expenditure information by income level.

2.6.1.3 Category and Component Weights

As described in section 2.3.2, JFA also computed income sensitive category and component weights. This allowed the combination of item prices in a manner that reflected the different spending patterns of people at different income levels. How this was accomplished, differed among the components.

For the Goods and Services and Miscellaneous Expense components, JFA simply combined indexes within each category using the CES weights to derive an overall index for the category. The category indexes were then combined into an overall component index using the income-sensitive category weights described above.

For the Transportation and Housing Components, JFA used the above approach in combination with a cost-build-up approach. For example, for each area the annual cost of owning and operating an automobile was computed by taking individual prices (e.g., automobile financing, insurance, gas and oil, and maintenance) and computing an overall dollar cost for each area. These costs were compared with those in the DC area to compute the Private Transportation Category index. This index was then combined with the Other Transportation Category index using income sensitive category weights to compute an overall Transportation Component index for each area.

2.6.2 Computing the Overall Index

The item, category, and component indexes were combined using the process prescribed in Section

591.205(c), title 5, Code of Federal Regulations. That is a five-step process that involves converting the indexes to dollar values and weighting these, combining them, and comparing them to compute a final weighted-average index. The process is described below.

First, JFA used the CES data and the income ranges described in section 2.2.1 to determine the quantity of money consumers typically spend on each component at each income level. These amounts appear in the table below and in Appendix 19. They were derived by taking the component weights shown in Table 2–1 times the representative income levels described in section 2.2.1.

TABLE 2–2.—TYPICAL CONSUMER EXPENDITURES BY INCOME LEVEL AND COMPONENT

Income level	Goods and services	Own/rent	Transpor-tation	Misc.	Total
Lower	$8,341	$5,202	$3,938	$3,320	$20,800
Middle	12,433	7,555	5,879	5,634	31,500
Upper	18,775	11,114	8,892	9,520	48,300

(Note: Values may not total because of rounding.)

Second, for each allowance area, JFA multiplied the dollar values above by the component indexes for the allowance area. Because the housing component consisted of two indexes (one for owners and another for renters), two sets of total relative costs were produced—one for owners and another for renters.

Third, for each allowance area and income level, JFA combined the total relative costs for owners and renters using as weights the proportion of owners and renters as identified in the CES. (See section 4.2.1.) This produced an overall expenditure dollar amount for each income level in each allowance area.

Fourth, JFA computed a single overall average expenditure for each allowance area by combining the income level expenditures and using the allowance area General Schedule employment distribution as weights. This produced a single overall dollar expenditure value for the allowance area. Using the same General Schedule employment weights, JFA also computed a single overall dollar expenditure value for the DC area.

The final step was to divide the overall average dollar expenditure for the allowance area by the overall average dollar expenditure for the DC area to compute a final index. These indexes are shown in the last section of this report and in Appendix 19.

3. Consumption Goods and Services

3.1 Categories and Category Weights

Based on the CES data, JFA identified ten categories of expenses within the Goods and Services Component. Using linear regression analyses and the CES data, JFA identified the portion of total Goods and Services expenditures that the typical consumer spends in each category at various income levels. The categories and the relative expenditures are shown in the table below:

TABLE 3–1.—CATEGORY WEIGHTS EXPRESSED AS A PERCENTAGE OF GOODS AND SERVICES EXPENDITURES BY INCOME LEVEL

Category	Income levels		
	Lower	Middle	Upper
Food at Home	26.40	23.49	20.65
Food Away from Home	14.42	14.73	15.04
Tobacco	3.15	2.59	2.05
Alcohol	2.77	2.73	2.69
Furnishings and Hsld. Op.	14.71	15.79	16.85
Clothing	13.97	14.65	15.30
Domestic Service	1.76	1.90	2.04
Professional Services	6.48	6.65	6.82
Personal Care	3.62	3.52	3.43
Recreation	12.72	13.94	15.14
Totals	100.00	100.00	100.00

(Note: Values may not total because of rounding.)

3.2 Goods and Services Data Collection—Special Considerations

3.2.1 Restaurant Pricing

To ensure comparison of prices at comparable restaurants among areas, OPM asked JFA to survey only three restaurant chains: Dennys, Sizzler, and Pizza Hut (or their equivalents). This allowed for the comparison of meal prices at a comparable mix of restaurants in all areas.

3.3 Goods and Services Survey Results

Section 2.6 of this report provides a detailed explanation of the economic model used to analyze the price data. As it applies to Goods and Services, the approach involved comparing the average prices of market basket items in each allowance area with those in the Washington, DC area. The resulting price ratios were aggregated into subcategory and then category indexes using the moving-average expenditure weights derived from the CES data.

Appendix 8 shows for each allowance area ten category indexes, the weights used at each of the three income levels, and the overall Goods and Services indexes. The Washington, DC area is not shown because it is, by definition, the reference area. Therefore, the DC indexes are 100.

4. Housing

4.1 Component Overview

The Housing component consists of expenses related to owning or renting a dwelling. These are—

—Mortgage or rent payments,
—Utilities,
—Real estate taxes,
—Homeowner's or renter's insurance,
—Home maintenance, and
—Telephone.

At each of the three income levels, JFA measured separately the annual housing costs for homeowners and renters. The results were then combined using as weights the percentages of owners and renters reported by the CES.

4.2 Housing Model

4.2.1 Expenditure Research

The CES was used to determine the national average ratio of families who own, as opposed to renting, their residences. Using the expense data by income range as input into a linear regression analysis, JFA calculated the owner and rent weights shown below. JFA excluded expenditure data for home owning families without a mortgage because they were not typical of homeowners in the base area or in the allowance areas.

TABLE 4–1.—OWNER/RENTER WEIGHTS

Category	Income levels		
	Lower (percent)	Middle (percent)	Upper (percent)
Homeowner with mortgage	38.41	47.46	61.67
Renter	61.59	52.54	38.33
Totals	100.00	100.00	100.00

The CES data were also used to identify which home-maintenance items to price and to establish the relative importance of those items.

4.2.2 Housing Profiles

To compare housing costs in all locations, six typical housing profiles are used and are assigned to the three income levels, as shown in the table below. OPM requested that at least one criterion for the owner profile be the square footage of the home and at least one criterion for the renter profile be the number of bedrooms in the rental unit.

TABLE 4–2.—HOUSING PROFILES

Income level	Renter profile	Owner profile
Lower	3 rooms, 1 BR, 1 bath, 600 sq. ft. apartment	4 rooms, 2 BR, 1 bath, 900 sq. ft. condo or detached house.
Middle	4 rooms, 2 BR, 1 bath, 900 sq. ft. apartment	5 rooms, 3 BR, 1 bath, 1,300 sq. ft. detached house (rowhouse in NE DC).
Upper	4 rooms, 2 BR, 2 baths, 1,100 sq. ft. townhouse or detached house.	7 rooms, 3 BR, 2 baths, 1,700 sq. ft. detached house.

The home sizes stated above are the representative sizes used for certain calculations in the model. They are not, however, the only size surveyed for each profile. For rentals, JFA obtained rental rates on any unit, regardless of its size, that otherwise met the profile characteristics. For home sales, JFA obtained the prices of homes within size range and otherwise meeting the profile specifications. The size ranges are shown below:

TABLE 4–3.—HOME SIZES SURVEYED

Income level	Range
Lower	600 to 1,200 sq. ft.
Middle	1,000 to 1,600 sq. ft.
Upper	1,400 to 2,300 sq. ft.

It should be noted that although the size ranges overlap, no home sale observation could be used at more than one income level. Application of the other criteria (i.e., number and type of rooms) ensured that each observation was assigned to the appropriate income level even though its size was common to two income levels.

4.2.3 Living Community Selection

As discussed briefly in sections 1.2.2 and 2.4.2.1, OPM identified the living communities to be surveyed based on the results of the 1992 Federal Employee Housing and Living Patterns Survey. This resulted in many survey community changes in both the allowance areas and in the Washington, DC area. The communities surveyed are identified in Appendix 9.

As with previous surveys, nine homeowner and nine renter communities were identified for the Washington, DC area—one for each income level in each of the three areas (DC, Maryland, and Virginia). In the allowance areas, up to three homeowner and three renter communities were identified—one for each income level.

The three-community owner/renter goal was not achievable in many of allowance areas due to the relatively few home sales and rental opportunities in these areas. In such areas, OPM directed JFA to collect prices for the entire survey area or allowance area rather than in specific communities. This was done in Fairbanks, Juneau, and Nome. In these areas, all home sales and/or rental rates meeting the housing profile characteristics for the particular income group were included in the analysis.

4.2.4 Housing-Related Expenses

Based on the CES data, housing-related expense items are categorized into one of five groups in the COLA model. These groups are—

—Utilities,
—Real estate taxes,
—Owners/renters insurance,
—Maintenance, and
—Telephone.

4.2.4.1 Utilities

Electricity, oil, gas, water, and sewer are the utilities used in the model. Most

utility companies are able to provide current charges per unit of consumption and average consumption patterns for all households. The companies were not, however, able to provide separate consumption patterns by the size or type of housing.

Because many utility costs vary by size of house, a factor is needed to derive the utility rates at each of the home profiles. The table below shows the standard square foot sizes and utility factors used for each home profile. The factors are calculated by assuming that utility use increases or decreases at half the rate that square footage increases or decreases.

TABLE 4–4.—UTILITY FACTORS

Income level	Renter profile		Owner profile	
	Sq. ft.	Factor	Sq. ft.	Factor
Lower	600	.73	900	.85
Middle	900	.85	1,300	1.00
Upper	1,100	.92	1,700	1.15

In each area, JFA obtained the price of each of the types of utilities noted above. JFA used average annual consumption per household information gathered from utility companies serving each area to compute average annual utility costs. The above factors were then used to adjust the total annual utility costs for each of the various housing profiles.

4.2.4.2 Real Estate Taxes

For this study, JFA contacted the city assessors in each allowance area and in the Washington, DC area to obtain real estate tax information on the living communities surveyed. Real estate tax formulas were obtained for all living communities and applied to the home values, for each income level, resulting from the homeowner data analysis discussed in section 4.4.1.

4.2.4.3 Owners/Renters Insurance

Homeowners' insurance rates are gathered for each of the survey areas for both renter and owner profiles. For renters, the following estimated content values were used: $20,000 at the lower and middle income levels and $30,000 at the upper income level.

For homeowners, the cost of insurance was dependent on the average home values calculated as part of this survey. In all areas, it was assumed that the structure was equal to 80 percent of the total home value.

Previous research, conducted by Runzheimer International for OPM, found that insurance coverage for disasters, such as floods and earthquakes, were not widely purchased in the allowance areas. Therefore, the COLA model does not include these additional riders. (See Report to OPM on Living Costs in Selected NonForeign Areas and in the Washington, DC Area, June 1992 at 57 FR 58556).

A comparison of homeowner insurance data previously collected for the Alaska areas with the premiums collected for this survey, showed several inconsistencies. For example, premiums for all income levels for Anchorage, Fairbanks and Nome were significantly lower, even in areas where the home market values had increased. In Juneau, the insurance data was significantly higher than premiums collected for the previous survey. Because of these inconsistencies and the refusal of most outlets contacted to participate in the survey, the insurance data collected in the Alaska allowance areas for the previous survey, adjusted for inflation, were used for the homeowner and renter insurance portion of the housing-related expenses analysis. The previously published data in 59 FR 45066 was adjusted by the annual rate of change in the Consumer Price Index for All Urban Consumers (CPI–U) for homeowner's insurance, 3.3%, and renter's insurance, 3.6%, as reported in the Bureau of Labor Statistics' *CPI Detailed Report Data for July 1995*.

4.2.4.4 Home Maintenance

Estimated home maintenance expense was computed for each of the homeowner profiles. Maintenance costs were not added in the three renter profiles because most, if not all, maintenance expenses are covered by the landlord.

As done in previous surveys, JFA priced both home maintenance services as well as home maintenance commodities, using the CES information to identify items to price and the weights associated with these items. The maintenance service items priced were interior painting, plumbing repair, electrical repair, and pest control. In the Nome area, however, pest control was not priced because local sources indicated it is not necessary. The maintenance commodities priced were bathroom caulking, a kitchen faucet set, an electrical outlet, latex interior paint, and a fire extinguisher.

To compute home maintenance cost differences between each allowance area and the Washington, DC area for the homeowner profiles, an index was computed for each maintenance item by comparing the allowance area price to the DC area price. As with the Goods and Services Component items, the CES data were used to weight these maintenance indexes into an overall home maintenance index for each area.

To combine the maintenance indexes with the other homeowner costs, which were expressed in dollar amounts, JFA converted the indexes to dollars by multiplying the index for each area by the average maintenance expense reported in the CES. This cost was assigned to the middle-income homeowner profile.

Logically, maintenance costs for larger homes would generally be greater than costs for middle-sized homes, while costs for smaller homes would generally be less. Therefore, the same homeowner multipliers used in the utilities model for the lower and upper income profiles (.85 and 1.15 respectively) are applied to recognize differences in maintenance costs due to house size.

4.2.4.5 Telephone

Telephone expense consisted of local service charges, additional charges for local calls (if applicable), and charges for long distance calls. To measure estimated expenses for local service and local calls, JFA surveyed the cost of touch-tone service with unlimited calling in each area.

To estimate long distance charges in all areas, JFA surveyed the cost of three, ten-minute direct dial calls per month to large U.S. mainland cities (i.e., Los Angeles, Chicago, and New York City). JFA measured the price of a call placed in the survey area at the time of day necessary to be received in the respective city at 8 p.m. local time. In many areas, this resulted in pricing a combination of daytime and evening-rate calls.

4.3 Housing Data Collection Procedures

As done in previous years, JFA collected housing information mainly from real estate professionals, various listing services, and advertisements. In addition, JFA personnel traveled to each of the surveyed communities to assess the compatibility of the housing community with the income level for which the data were used and to ensure that homes in these communities were comparable to those in the Washington, DC area.

4.3.1 Homeowner Data Collection

JFA obtained selling prices of homes that matched the housing profiles in each living community. JFA obtained as many of these selling prices as possible for sales that occurred during the 6-month period prior to the date of the survey.

The amount of data obtained depended on the number of home sales

in the community and the availability of square footage and other housing profile information. This in turn depended on the size of the community, economic conditions, quality and quantity of the realty data available, and the willingness and ability of local realty professionals and assessor offices to provide data.

If sales data obtained from the preliminary data sources did not meet specified contract minimums, JFA contacted additional data sources in the area to attempt to secure more sales data, if practical. In this manner, either all were or a sizeable portion of the home sales in each area was surveyed.

4.3.2 Renter Data Collection

Rental data also were obtained from a variety of sources, e.g., brokers, rental management firms, property managers, newspaper advertisements, and other listings. Analyses of these data revealed what appeared to be two separate rental markets: a broker market and a non-broker market. Rental rates and estimates provided by brokers generally exceeded those obtained from other sources. The methodology used to analyze these two data sets is discussed in section 4.4.2.

4.4 Housing Analysis

4.4.1 Homeowner Data Analysis

One of the most important factors relating to the price of a home is the number of square feet of living space. In the past, OPM directed the contractor to rank housing data high to low and trim equal numbers of observations from both ends of the data. The average of the remaining values was then used. This year, OPM changed the methodology and used the median home value rather than trimming and averaging. The median is the middle value in a rank-ordered set of observations. The purpose of either approach is to reduce the volatility of the housing data from one survey to the next because a relatively few extremely high or low home prices could significantly influence average housing costs.

For each income profile in each allowance area and the Washington, DC area, JFA computed the median price per square foot for the comparables. This value was then multiplied by the reference square footage for the profile to determine the average home value for the profile.

Another change that OPM made this year was to ask JFA to use historical housing data in addition to data collected this year. These data are found in Appendix 10 of this report. The historical data are from previous living-cost surveys that were published in the Federal Register beginning with the 1990 report. (See Appendix 1 for a listing of these publications). The data for the period prior to 1990 were published with the results of the 1991–1992 living cost surveys at 57 FR 58618. All housing values are based on the community selections and analytical methodologies used at the time of each respective survey.

The historical housing data used were estimated annual principal plus interest payments by income level in each area. To combine these data, OPM supplied JFA with weights that were derived from the 1992 Federal Employee Housing and Living Patterns Survey. These weights reflect the proportion of Federal employee homeowners by year of purchase or acquisition in all allowance areas and in the Washington, DC area. The historical housing weights and analyses are shown in Appendix 11.

4.4.2 Rental Data Analysis

JFA assigned each rental quote data point to a single income level, based on the following criteria:

—One bedroom apartments: Lower Income Level,

—Two bedroom apartments: Middle Income Level, and

—Townhouses and detached houses with a minimum of two bedrooms: Upper Income Level.

As discussed earlier, there were essentially two sources of rental information: broker and non-broker sources. In each area, the quantity of data obtained from either source-type varied significantly. Therefore, analyzing all of the rental data (both broker and non-broker) together for an area and income level was undesirable.

Instead, OPM instructed JFA to analyze broker and non-broker data separately by income level. As with the housing data analyses, OPM changed from the use of trimming and averaging to the use of the median. Therefore, for each income level, JFA separately ranked rental rates from low to high for broker and non-broker data. The median values for broker and non-broker data for each group were determined and then averaged to compute a single rental value for each income level. Because OPM has no information on how the Federal employees who rent generally secure their lodgings, OPM requested that JFA apply equal weights to the broker and non-broker data to compute an overall average rental rate for the area and income level. The broker and non-broker medians and final results are shown in Appendix 12.

4.5 Housing Survey Results

In the above sections, the processes used for determining the costs for maintenance, insurance, utilities, real estate taxes, rents, and homeowner mortgages were described. Appendix 13 shows the cost of each of these items for renters and homeowners in each allowance area and in the Washington, DC area.

Appendix 14 compares the total cost of these items by income level in each allowance area with the total cost of the same items by income level in the Washington, DC area. Again, there are separate comparisons for renters and homeowners.

The final housing-cost comparisons take the form of indexes that are used in Appendix 19 to derive the total, overall index for owners and renters. (Refer to Section 2.6 for a discussion of the general formulae and how the component indexes are combined.)

5. Transportation

5.1 Component Overview

The transportation component consists of two categories: Automobile Expense and Other Transportation Costs. The Automobile Expense Category reflects costs relating to owning and operating a car in each area. The Other Transportation Costs Category is represented by the cost of air travel from each location to a common point within the contiguous 48 states.

5.2 Private Transportation Methodology

As done in previous surveys, JFA analyzed automobile transportation costs for three commonly purchased vehicles: a domestic auto, an import auto, and a utility vehicle. New car costs were used for these analyses because it was believed that pricing used vehicles of equivalent quality in each area could introduce inconsistencies because of the value judgments that would be required.

5.2.1 Vehicle Selection and Pricing

The three vehicles selected for analysis were:

Domestic—Ford Taurus GL 4-door sedan 3.0L 6 cyl,

Import—Honda Civic DX 4-door sedan 1.5L 4 cyl, and

Utility—Chevrolet S10 Blazer 4X4 2 door 4.3L 6 cyl.

These are the same models that were surveyed in previous years and were selected based on their popularity in the United States as demonstrated by owner registration data.

For each model car, JFA collected new vehicle prices at dealerships in each area and from secondary sources,

such as the *Kelly Blue Book*. All prices were based on the manufacturers' suggested retail prices (MSRP) for 1995. (OPM did not believe it was feasible to collect information on the negotiated price for these vehicles.) All vehicles were equipped with standard options, such as automatic transmission, AM/FM stereo radio and air conditioning. In Alaska locations, special additional equipment was included in new-vehicle prices (e.g., snow tires, engine-block heaters, and heavy-duty batteries).

In addition to the MSRP, the price included additional charges such as shipping, dealer preparation, additional dealer markup, excise tax, sales tax, and any other one-time taxes or charges. In each Alaska allowance area, for example, documentation fees were also included as part of the new-vehicle costs.

Rustproofing was priced in all areas, including the Washington, DC area. In previous surveys, the contractor found that auto dealers in the DC area did not recommend vehicle rustproofing, although it was a commonly suggested option in the allowance areas. This year, the information collected suggested that rustproofing was a commonly offered option in all areas. Therefore, OPM directed JFA to include the cost of rustproofing in the DC area as well as the allowance areas.

5.2.2 Vehicle Trade Cycle

Calculating the cost of owning and operating a vehicle requires knowing the miles driven and how long the car is owned. In the automobile industry, these two factors are known collectively as a vehicle's ''trade cycle.'' The trade cycle is stated as a length of time (in months or years) and the total number of miles driven in that time period. This information is used in the model to compute annual costs related to fuel, oil, tires, maintenance, and depreciation.

As with the previous living-cost analyses, JFA used a four-year, 60,000-mile trade cycle in all areas. This was based upon the following information:

—The Internal Revenue Service uses this trade cycle to compute the allowable cents-per-mile reimbursement rate for persons who drive their personal vehicle for business purposes;

—The four-year time period coincides with the typical length of a vehicle loan; and

—U.S. Department of Energy statistics for 1988 show that the annual average for number of vehicle miles driven in the United States was 18,595 per household and 10,246 miles per vehicle.

5.2.3 Fuel Performance and Type

All vehicles included in this study used regular unleaded fuel. JFA surveyed self-service cash prices of unleaded regular gasoline at name-brand gas stations in the Washington, DC area. In consideration of the harsh climate in the Alaska allowance areas, full-service cash prices were surveyed.

To establish average fuel-performance ratings, the COLA model uses the ''city driving'' figures published by the U.S. Environmental Protection Agency (EPA). The ''city'' figures instead of ''highway'' figures are used because all locations contained considerable stop-and-go driving conditions.

As in previous COLA surveys, JFA included in its analysis the following fuel-performance factors: temperature, road surface, and gradient. These factors are based on research previously conducted for OPM. This research and the factors are discussed below.

5.2.3.1 Impact of Temperature upon Fuel Performance

Gas mileage is affected by temperature. The lower the temperature, the fewer miles-per-gallon achieved and vice versa. According to the EPA's *Passenger Car Fuel Economy: EPA and Road*, the temperature at which no adjustments to fuel performance occur is 77 °F; below that temperature, miles-per-gallon achieved drops, above 77 °F miles-per-gallon achieved improves. The model uses the average monthly temperatures for each allowance area and the Washington, D.C., area as reported in *The Weather Almanac*, published by Ruffner and Blair.

For each location and month, the model uses the appropriate factor from the EPA study based on the average monthly temperature for the area. These factors are then averaged to derive a single overall factor for each location. The results of these calculations are shown in Section 5.2.3.4.

5.2.3.2 Impact of Road Surfaces upon Fuel Performance

For the model, it is assumed that Federally controlled roadways are typically composed of concrete and/or high-load asphalt and that locally controlled roadways are typically composed of low-load asphalt. EPA's research indicates that cars are generally more fuel-efficient on the firmer, high-load surfaces than on the softer, low-load surfaces.

Although traffic patterns and road usage vary among areas, previous research conducted for OPM produced no relevant findings regarding this issue. Therefore, the model uses the assumption that Federally-controlled roadways generally support twice the traffic of, or are used at least twice as much as, locally controlled roadways.

In each allowance area, the total mileage falling into either the Federal or local categories are collected. For example, Alaska contains 5,512 miles of Federally controlled roads and 7,120 miles of locally controlled roadways. The usage consumption increased Federal road mileage by a factor of two.

The average low-load asphalt factor (which reflects dry, wet, and snowy conditions) is applied to the local mileage percentage, and the average concrete and/or high-load asphalt factor is applied to the Federal mileage percentage to produce a weighted average factor for each area. The weighted factor is 0.96 for the allowance areas. The Washington, DC area is assigned a factor of 1.00 on the premise that the vast majority of traffic in that area travels on dry, high-load surfaces. The application of these factors is described in Section 5.2.3.4.

5.2.3.3 Impact of Gradient Upon Fuel Performance

The effect of gradient on gas mileage is also estimated from EPA's *Passenger Car Fuel Economy: EPA and Road*. Local topography (i.e., gradient) affects fuel efficiency. EPA provides mileage factors based upon various gradients ranging from less than 0.5% (essentially flat) to greater than 6% (steep).

In research previously conducted for OPM, the contractor reviewed the topographic features of each area and found a wide range of road conditions. However, the contractor was unable to find relevant information on the types of terrain drivers typically encounter in each area or the number of miles drivers travel in each type of terrain. Lacking such information, the contractor assumed that drivers in the allowance areas generally traveled roads having approximately the same gradients that are found on average in the United States.

Applying the information from EPA's research, a fuel-performance factor of 0.98 was computed for this type of driving. This factor was assigned to each allowance area. For the Washington, DC area, a factor of 1.00 was used on the premise that the vast majority of traffic in that area travels on major freeways and highways that are relatively flat. The application of these factors is described in the next section.

5.2.3.4 Overall Impact Upon Fuel Performance

JFA applied the factors described above to make adjustments to the

average gas mileage ratings for each type of automobile surveyed for each allowance area and for the Washington, DC area. The adjustment factors compound—that is, the total adjustment is the result of multiplying the three individual factors together for each area.

In the table below, the factor 1.00 means that no adjustment to EPA fuel performance is appropriate. A factor of less than 1.00 means that the estimated gasoline mileage in the area is less than the EPA average. For example, the total adjustment factor for Juneau is 0.84. This means that the estimated gasoline mileage in Juneau is 84% of the EPA estimated average. Note that the adjustment factor for the DC area (0.94) indicates that average gasoline mileage in that area is also below the EPA estimate.

TABLE 5–1.—SUMMARY OF FUEL-PERFORMANCE ADJUSTMENTS

Location	Temperature	Road surface	Gradient	Total
Anchorage	0.88	0.96	0.98	0.83
Fairbanks	0.85	0.96	0.98	0.80
Juneau	0.89	0.96	0.98	0.84
Nome	0.85	0.96	0.98	0.80
Washington, DC	0.94	1.00	1.00	0.94

5.2.4 Vehicle Maintenance

As done in the previous surveys, JFA surveyed the cost of five common maintenance services and repairs performed on the vehicles surveyed. The services and repairs were—

—Tuneup,
—Oil change,
—Automatic transmission fluid change,
—Flush/fill coolant, and
—Muffler/exhaust pipe replacement.

Where appropriate, the automobile manufacturers' recommended maintenance schedules were used to determine the frequency of performing each of these maintenance jobs. Maintenance schedules vary, depending on the driving conditions typically encountered. Consistent with the assumptions used for fuel economy and tire mileage, it was assumed that driving conditions in the allowance areas are generally severe, and the maintenance schedules used reflected that kind of driving. For the DC area, it was assumed that driving conditions were normal, and the maintenance schedules used for that area reflected that kind of driving.

The recommended frequency of performing each of these jobs was combined with the prices charged by local dealers and service stations to compute an estimated annual maintenance expense. Unlike previous surveys, JFA collected the cost of the complete maintenance service or repair job for each vehicle. For example, the cost of a complete oil change was collected for each vehicle including the total charge for parts and the total charge for labor.

In the Alaska and Washington, DC areas, constant velocity joint (CVJ) boots replacement was also included in the cost of vehicle maintenance. Previous research conducted for OPM revealed varying replacement cycles between the Alaska allowance areas and between the Alaska areas and the Washington, DC area: Anchorage and Juneau—every 45,000 miles (3 years), Nome—every 30,000 miles (2 years), Fairbanks—every 15,000 miles (1 year), and Washington, DC—every 60,000 miles (4 years). The cost of replacement for all three vehicle types was factored into the indexes based upon the life cycle of the replacement. In Fairbanks, for example, 100% of the cost was included because previous research indicated annual replacement was the norm.

5.2.5 Tires

Research previously conducted for OPM revealed that various factors (e.g., road quality/state of repair, road composition) appeared to reduce tread life (i.e., the average number of miles a tire is expected to last) in the allowance areas compared with the Washington, DC area. Based on this research, the model uses tire expense based on a 40,000-mile tread life in allowance areas and a 55,000-mile tread life in the DC area.

JFA priced the cost of a new set of tires, including mounting and balancing and all applicable taxes, in each area. This cost was converted into an annual cost by dividing the estimated number of annual miles driven by the expected tread life and multiplying this by the new tire price.

Current research indicated that four extra studded snow tires would be required for all three vehicles in the Alaska allowance areas. JFA surveyed the cost of extra wheels, extra tires, and installing studs for all vehicles in Anchorage, Fairbanks, Juneau and Nome.

5.2.6 License and Registration Fees, and Miscellaneous Tax

JFA obtained information regarding license registration fees and personal property tax (where applicable). License and registration fees were included as part of the annual cost of owning an automobile. Personal-property tax was computed for each year of the vehicle's four-year trade cycle using the vehicle's estimated used-car value for each year. The resulting four personal property tax values were then averaged, and that average was included as part of the annual cost of owning an automobile.

As stated in section 5.2.1, sales and excise taxes were included in the purchase price of the vehicle and were accounted for under the annual vehicle purchase and finance costs.

5.2.7 Depreciation

The single largest annual expense related to owning and operating a new car is depreciation—the lost value of the vehicle as it ages and is driven. Total depreciation is calculated by subtracting from the purchase the estimated residual value (used car value) four years later. This value is then divided by 4 to produce an annual depreciation amount.

As described earlier, the new car price is the manufacturer's suggested retail price plus any additional charges such as shipping, dealer prep, additional dealer markup, excise tax, and sales tax. As done in previous surveys, the used car value was based on information from the *Black Book Official Finance/Lease Guide for 1994.* Although this source only tracks prices or vehicles sold in the contiguous 48 states, research performed by the previous OPM contractor did not indicate that used cars in allowance areas were (on average) worth more or less than used cars in the DC area, except for Fairbanks and Nome. For Fairbanks and NOME, 90% of the *Black Book* projected residual values were used to reflect the more severe conditions.

It should be noted that identical residual values did not result in identical depreciation amounts. Depreciation amounts were higher in

the allowance areas than in the Washington, DC area because new car prices are higher in the allowance areas.

5.2.8 Finance Expense

For the model, it is assumed that new car purchases are financed. Therefore, JFA surveyed banks in all areas to obtain their auto-loan interest rates for a 48-month loan with 80 percent financing. The financing cost for each vehicle in each area was computed and included in the annual cost of owning and operating an automobile.

5.2.9 Vehicle Insurance

JFA surveyed the cost of car insurance in each location. Consistent with the previous year's survey, JFA used the following coverages, limits, and deductibles:

Bodily Injury	$100,000/$300,000.
Property Damage	$50,000.
Medical	$5,000.
Uninsured Motorist	$100,000/300,000.
Comprehensive	$100 Deductible.
Collision	$250 Deductible.

In each survey area, JFA identified the common automobile insurance companies and attempted to obtain three insurance price quotes for each type of car surveyed. These quotes were averaged by type of car to produce estimated insurance costs for each area.

5.2.10 Overall Annual Costs

As described above, JFA measured the annual costs for fuel, maintenance and oil, tires, licensing, taxes, depreciation, finance, and insurance for three types of automobiles in each allowance area and in the Washington, DC area. These costs were then summed to determine the overall annual costs by area for owning and operating each type of automobile. Appendix 15 shows these costs for each area by type of vehicle.

5.3 Other Transportation Costs—Air Fares

Air fare is the only item priced for the Other Transportation Costs Category. For this item, JFA priced the lowest available round-trip air fare from each allowance area and the Washington, DC area to Los Angeles, California. Los Angeles was selected because it is a common point approximately equidistant from most of the allowance areas and the Washington, DC area. The cost of the trip from each allowance area to Los Angeles was compared with the cost of the trip from the DC area to Los Angeles to compute the category indexes. These fares are shown in Appendix 16.

5.4 Transportation Component Analyses

JFA compared the total cost of private auto transportation for each vehicle in each allowance area with the total cost for the same vehicle in the DC area. These comparisons are expressed as indexes and are shown in Appendix 17. The indexes were then averaged to produce a single Automobile Expense Category index for each allowance area.

Likewise, JFA compared the cost of air fares for each area with those for the DC area and computed a cost index. These indexes are also shown in Appendix 17. That appendix also shows how the auto and air transportation indexes are combined using expenditure weights derived from the CES data to produce final transportation indexes.

JFA used national average expenditure data to derive weights that reflected how much consumers typically spend to own and operate an automobile versus other transportation expenses. These weights were used to combine the Automobile Expense Category index with the Other Transportation Cost index by area to derive the overall Transportation Component index for the area. The weights, computations, and final indexes are also shown in Appendix 17. The Transportation Component indexes are used in Appendix 19 to derive the total overall index.

6. Miscellaneous Expenses

6.1 Component Overview

The Miscellaneous Expense component consists of three categories of expenses:

—Medical care,

—Contributions (including gifts to non-family members),

—Personal insurance and retirement contributions/investments.

JFA used an approach similar to that used for the Goods and Services Component to derive the indexes for each of these categories and the Miscellaneous Component overall.

6.2 Component Weights

JFA used CES data to determine the appropriate weights for each of the items and categories in the Miscellaneous Component. The following table shows the category weights. Item weights are shown in Appendix 18.

TABLE 6–1.—MISCELLANEOUS EXPENSE CATEGORIES AND WEIGHTS

Categories	Income level		
	Lower (percent)	Middle (percent)	Upper (percent)
Medical Care	41.50	31.33	23.51
Contributions	15.80	16.85	17.65
Personal Insurance and Retirement Contributions	42.70	51.82	58.83
Totals	100.00	100.00	100.00

NOTE: Values may not total because of rounding.

6.3 Component Categories

6.3.1 Medical Expense Category

JFA surveyed the price of medical care items using essentially the same approach it used for the Goods and Services Component items. The following medical-care items were priced in each allowance area and in the Washington, DC area. (See Appendix 5 for item descriptions).

—Nonprescription pain reliever

—Prescription drugs

—Vision check

—Dental service

—Doctor visit

—Hospital room

—Health insurance

JFA surveyed the cost of these items in both the allowance areas and in the Washington, DC area and compared the prices to produce an index for each item in each area. JFA combined these indexes using CES weights to produce a single Medical Care Category index for each area.

It should be noted that for the model, it is assumed that the cost of health

insurance is constant among areas because the choice of Federal health coverage is to a large extent a matter of personal preference. Therefore, the index for this item is 100.00.

6.3.2 Contributions Category

The index for the Contributions Category is the Goods and Services Component index for the area. The Goods and Services index is used based on the assumption that the relative level of contribution is roughly equivalent to that reflected by the Goods and Services index.

6.3.3 Personal Insurance and Retirement Category

The index for personal insurance and retirement contributions and investments is assumed to be constant among areas. The cost of Federal Employees Group Life Insurance is a matter of personal preference and is constant in all areas for the same age, salary, and benefit option combinations. Likewise, retirement contributions are a matter of personal preference and the minimum contribution requirements are constant among areas for equivalent salary levels.

6.4 Miscellaneous Expense Analyses

As with the Goods and Services Component, the indexes for each of the Miscellaneous Component categories are combined using CES weights to produce a single component index for each area. These indexes are shown in Appendix 18.

Section 2.5 describes how the miscellaneous expense component indexes are combined with the other component indexes to derive the final index for each area.

7. Final Results

7.1 Total Comparative Cost Indexes

The total comparative cost indexes appear below. Appendix 19 shows how each index was derived from the component indexes.

TABLE 7–1.—FINAL COST COMPARISON INDEXES

Allowance area	Index
Anchorage, Alaska	105.14
Fairbanks, Alaska	108.64
Juneau, Alaska	108.33
The rest of Alaska	126.19

APPENDIX 1.—PUBLICATION IN THE FEDERAL REGISTER OF RESULTS OF NONFOREIGN AREA LIVING-COST SURVEYS: 1990–1995

Citation	Title	Contents
56 FR 7902	Office of Personnel Management: Cost-of-Living Allowances and Post Differentials (Nonforeign Areas).	Results of summer 1990 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
57 FR 58556	Office of Personnel Management: Report on 1991/1992 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas.	Results of summer 1991 and winter 1992 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
58 FR 45558	Office of Personnel Management: Report on 1992/1993 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas.	Results of summer 1992 and winter 1993 living-cost surveys conducted in Alaska, Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
58 FR 27316	Office of Personnel Management: Report on Summer 1993 Surveys Used to Determine Cost-of-Living Allowances in Nonforeign Areas.	Results of summer 1993 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.
59 FR 45066	Office of Personnel Management: Report on Winter 1994 Surveys Used to Determine Cost-of-Living Allowances in Alaska.	Results of winter 1994 living-cost surveys conducted in Alaska.
60 FR 61332	Office of Personnel Management: Report on Summer 1994 Surveys Used to Determine Cost-of-Living Allowances in Selected Nonforeign Areas.	Results of summer 1994 living-cost surveys conducted in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands.

APPENDIX 2.—MULTIPLE INCOME LEVELS: WINTER 1995 SURVEY

[Federal Employment Weights Within a Single Allowance Area]

Location and income level	1992	1993	1994	Average	Weights
Anchorage, AK:					
Low	$1,708	$1,638	$1,609	$1,652	27.09
Middle	2,048	2,090	1,971	2,036	33.39
Upper	2,247	2,400	2,583	2,410	39.52
Total	$6,003	$6,128	$6,163	$6,098	100.00
Fairbanks, AK:					
Low	$406	$400	$444	$417	34.98
Middle	415	467	442	441	37.00
Upper	292	318	392	334	28.02
Total	$1,113	$1,185	$1,278	$1,192	100.00
Juneau, AK:					
Low	$139	$139	$145	$141	19.91
Middle	230	245	220	232	32.77
Upper	310	334	360	335	47.32
Total	$679	$718	$725	$708	100.00

APPENDIX 2.—MULTIPLE INCOME LEVELS: WINTER 1995 SURVEY—Continued

[Federal Employment Weights Within a Single Allowance Area]

Location and income level	1992	1993	1994	Average	Weights
Rest of Alaska:					
Low	$460	$444	$414	$439	28.07
Middle	710	759	722	730	46.67
Upper	348	391	445	395	25.26
Total	$1,518	$1,594	$1,581	$1,564	100.00

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Average Before Tax income	$28,540.00	$33,901.00	$33,854.00	$32,098.33
Average annual expenditures	26,389.07	30,487.29	30,527.49	29,134.62
Food	3,804.39	4,366.88	4,358.56	4,176.61
Food at home	2,176.94	2,724.89	2,684.35	2,528.73
Cereals and bakery products*	317.03	413.81	418.15	383.00
Cereals and cereal products*	111.15	149.01	144.15	134.77
Flour*	4.83	6.61	7.21	6.22
Prepared flour mixes*	9.88	14.67	13.62	12.72
Ready-to-eat and cooked cereals*	73.49	90.13	88.39	84.00
Rice*	7.98	14.49	12.67	11.71
Pasta, cornmeal and other cereal products*	14.97	23.11	22.27	20.12
Bakery products*	205.88	264.80	274.00	248.23
Bread*	65.72	76.98	77.58	73.43
White bread*	35.48	38.93	38.04	37.48
Bread, other than white*	30.24	38.04	39.54	35.94
Crackers and cookies*	51.76	65.09	67.10	61.32
Cookies*	32.19	41.15	40.75	38.03
Crackers*	19.57	23.94	26.34	23.28
Frozen and refrigerated bakery products*	13.55	19.33	21.06	17.98
Other bakery products*	74.84	103.40	108.27	95.50
Biscuits and rolls*	26.62	34.12	35.55	32.10
Cakes and cupcakes*	20.31	29.49	31.67	27.16
Bread and cracker products*	2.82	4.14	4.70	3.89
Sweetrolls, coffee cakes, doughnuts*	19.60	24.05	24.93	22.86
Pies, tarts, turnovers*	5.48	11.61	11.41	9.50
Meats, poultry, fish, and eggs*	560.01	725.06	687.17	657.41
Beef*	183.66	238.59	210.36	210.87
Ground beef*	79.09	89.66	87.67	85.47
Roast*	33.40	42.62	37.74	37.92
Chuck roast*	13.23	16.81	13.48	14.51
Round roast*	9.13	12.63	12.96	11.57
Other roast*	11.04	13.18	11.30	11.84
Steak*	59.01	87.83	69.00	71.95
Round steak*	11.62	16.56	14.63	14.27
Sirloin steak*	12.96	23.58	17.72	18.09
Other steak*	34.42	47.68	36.65	39.58
Other beef*	12.17	18.47	15.95	15.53
Pork*	114.19	146.62	155.56	138.79
Bacon*	20.23	21.28	20.47	20.66
Pork chops*	27.10	35.26	34.88	32.41
Ham*	27.43	38.92	42.73	36.36
Ham, not canned*	24.47	35.84	38.98	33.10
Canned ham*	2.96	3.08	3.75	3.26
Sausage*	16.60	21.01	23.29	20.30
Other pork*	22.83	30.15	34.19	29.06
Other meats*	83.61	102.91	94.58	93.70
Frankfurters*	17.37	23.87	21.19	20.81
Lunch meats (cold cuts)*	58.88	70.13	63.56	64.19
Bologna, liverwurst, salami*	19.11	23.75	22.91	21.92
Other lunchmeats*	39.78	46.39	40.65	42.27
Lamb, organ, meats and others*	7.36	8.91	9.84	8.70
Lamb and organ meats*	6.17	7.89	8.74	7.60
Mutton, goat and game*	1.19	1.02	1.10	1.10
Poultry*	85.49	123.67	123.39	110.85
Fresh and frozen chickens*	66.41	92.17	91.28	83.29
Fresh whole chicken*	17.24	24.27	19.61	20.37

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Fresh and frozen chicken parts*	49.17	67.90	71.67	62.91
Other poultry, incl. whole frozen chickens*	19.08	31.50	32.10	27.56
Fish and seafood*	65.24	81.51	74.99	73.91
Canned fish and seafood*	17.95	18.40	17.46	17.94
Fresh and frozen shellfish*	14.98	25.27	21.36	20.54
Fresh and frozen finfish*	32.31	37.83	36.17	35.44
Eggs*	27.83	31.77	28.30	29.30
Dairy products*	277.91	306.57	307.10	297.19
Fresh milk and cream*	134.41	134.72	136.59	135.24
Whole milk*	52.12	49.88	47.69	49.90
Other milk and cream*	82.29	84.84	88.90	85.34
Other dairy products*	143.50	171.85	170.52	161.96
Butter*	8.89	10.62	9.71	9.74
Cheese*	79.01	90.15	87.72	85.63
Ice cream and related products*	41.68	50.47	51.93	48.03
Miscellaneous dairy products*	13.93	20.61	21.16	18.57
Fruits and vegetables*	376.38	437.70	435.20	416.43
Fresh fruits*	120.98	132.65	129.17	127.60
Apples*	21.57	26.69	26.64	24.97
Bananas*	20.65	27.62	26.48	24.92
Oranges*	10.98	12.28	13.23	12.16
Other fresh fruits*	67.78	66.06	62.82	65.55
Fresh vegetables*	110.67	131.09	127.84	123.20
Potatoes*	16.61	25.25	24.56	22.14
Lettuce*	13.73	15.51	16.33	15.19
Tomatoes*	14.87	21.64	19.85	18.79
Other fresh vegetables*	65.47	68.69	67.10	67.09
Processed fruits*	86.81	99.35	102.67	96.28
Frozen fruits and fruit juices*	19.59	22.09	21.35	21.01
Frozen orange juice*	14.43	14.09	13.34	13.95
Other frozen fruits and juices*	5.16	7.99	8.01	7.05
Canned and dried fruits*	21.22	24.23	23.48	22.98
Fresh, canned or bottled fruit juice*	46.00	53.03	57.83	52.29
Processed vegetables*	57.92	74.61	75.53	69.35
Frozen vegetables*	21.30	26.45	25.46	24.40
Canned and dried vegetables and juices*	36.62	48.16	50.07	44.95
Canned beans*	6.64	9.26	10.09	8.66
Canned corn*	4.21	6.29	7.40	5.97
Other canned and dried veg. and juices*	25.77	32.61	32.59	30.32
Other food at home*	645.61	841.75	836.73	774.70
Sugar and other sweets*	80.66	104.62	106.24	97.17
Candy and chewing gum*	45.41	59.10	62.86	55.79
Sugar*	17.07	20.80	18.12	18.66
Artificial sweetners*	2.36	3.23	3.24	2.94
Jams, preserves, other sweets*	15.82	21.48	22.02	19.77
Fats and oils*	56.65	73.12	73.79	67.85
Margarine*	11.96	14.31	14.56	13.61
Other fats, oils, and salad dressing*	31.66	39.96	40.94	37.52
Nondairy cream and imitation milk*	4.49	6.56	6.75	5.93
Peanut butter*	8.54	12.30	11.53	10.79
Miscellaneous foods*	272.98	387.81	393.26	351.35
Frozen prepared foods*	46.13	71.21	73.99	63.78
Frozen meats*	16.75	25.00	22.99	21.58
Other frozen prepared foods*	29.39	46.21	51.01	42.20
Canned and packaged soups*	21.41	26.23	25.44	24.36
Potato chips, nuts and other snacks*	59.78	78.66	78.63	72.36
Potato chips and other snacks*	46.79	62.03	62.34	57.05
Nuts*	12.99	16.63	16.29	15.30
Condiments and seasonings*	61.52	87.93	90.44	79.96
Salt, spices, other seasonings*	12.31	19.15	20.79	17.42
Olives, pickles, relishes*	7.62	11.05	10.82	9.83
Sauces and gravies*	31.62	42.03	43.55	39.07
Baking needs and misc. products*	9.97	15.71	15.29	13.66
Other canned and packaged prepared foods*	84.14	123.78	124.75	110.89
Salads and desserts*	13.23	17.87	20.42	17.17
Baby foods*	16.25	23.56	24.11	21.31
Miscellaneous prepared foods*	54.66	82.35	80.22	72.41
Nonalcoholic beverages*	204.37	233.06	219.33	218.92
Cola*	92.19	92.26	86.71	90.39

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Other carbonated drinks*	32.62	39.32	40.41	37.45
Coffee*	40.93	42.59	40.13	41.22
Roasted coffee*	25.27	25.35	24.56	25.06
Instant and freeze dried coffee*	15.66	17.24	15.57	16.16
Noncarbornated fruit flavored drinks*	16.30	25.74	20.15	20.73
Tea*	11.18	14.66	14.26	13.37
Nonalacoholic beer*	NA	NA	NA	NA
Other nonalcoholic beverages*	11.15	18.51	17.68	15.78
Food prepared by consumer unit on out-of-town trips	30.94	43.13	44.12	39.40
Food away from home	1,627.45	1,641.99	1,674.21	1,647.88
Meals at restaurants, carry-outs and other*	1,275.77	1,300.05	1,344.40	1,306.74
Lunch*	499.88	463.89	476.89	480.22
Dinner*	459.30	601.50	619.67	590.16
Snacks and nonalcoholic beverages*	142.56	133.59	141.35	139.17
Breakfast and brunch*	84.04	101.08	106.49	97.20
Board (including at school)	43.62	43.00	46.92	44.51
Catered affairs	41.27	46.07	40.77	42.70
Food on out-of-town trips	195.31	178.84	167.14	180.43
School lunches	42.24	46.89	47.40	45.51
Meals as pay	29.24	27.13	27.58	27.98
Alcoholic beverages	281.70	313.94	321.12	305.59
At home*	148.36	166.77	177.01	164.05
Beer and ale*	89.05	87.98	99.54	92.19
Whiskey*	12.73	17.07	14.23	14.68
Wine*	32.15	45.33	43.11	40.20
Other alcholic beverages*	14.43	16.38	20.13	16.98
Away from home	133.34	147.17	144.11	141.54
Beer and ale*	37.50	46.76	48.77	44.34
Wine*	18.54	25.57	22.95	22.35
Other alcoholic beverages*	58.12	46.66	47.06	50.61
Alcoholic beverages purchased on trips	19.17	28.19	25.34	24.23
Housing	8,069.13	9,325.13	9,528.41	8,974.22
Shelter	4,470.25	5,208.28	5,431.78	5,036.77
Owned dwellings	2,554.04	3,279.50	3,307.24	3,046.93
Mortgage interest and charges	1.560.48	1,951.95	1,984.40	1,832.28
Mortgage interest	1,560.38	1,880.31	1,856.78	1,765.82
Interest paid, home equity loan	NA	33.34	63.99	48.67
Interest paid, home equity line of credit	NA	37.94	63.32	50.63
Prepayment penalty charges	0.10	0.36	0.31	0.26
Property taxes	496.08	767.69	760.97	674.91
Maintenance, repairs, insurance, other expenses	497.48	559.86	561.86	539.73
Homeowners and related insurance	151.74	164.20	176.37	164.10
Fire and extended coverage	4.98	3.84	5.02	4.61
Homeowners insurance	146.76	160.36	171.35	159.49
Ground rent	26.88	33.78	33.40	31.35
Maintenance and repair services	252.68	278.55	268.09	266.44
Painting and papering	52.01	39.24	37.27	42.84
Plumbing and water heating	23.06	31.48	34.02	29.52
Heat, a/c, electrical work	42.03	45.96	53.14	47.04
Roofing and gutters	46.96	54.11	40.98	47.35
Other repair and maintenance services	78.78	99.93	91.16	89.96
Repair and replacement of hard surface flooring	8.14	6.47	10.16	8.26
Repair of built-in appliances	1.68	1.36	1.36	1.47
Maintenance and repair commodities	65.41	69.18	63.89	66.16
Paints, wallpaper and supplies	17.47	16.27	16.50	16.75
Tools and equipment for painting and wallpapering	1.88	1.75	1.77	1.80
Plumbing supplies and equipment	5.65	7.65	5.96	6.42
Electrical supplies, heating and cooling equipment	3.76	3.44	7.13	4.78
Materials for hard surface flooring, repair and replac	1.85	2.17	3.13	2.38
Materials and equipment for roof and gutters	5.18	6.61	6.20	6.00
Materials for plaster., panel., siding, wind., doors, screens, awn	11.08	10.86	7.29	9.74
Materials for patio, walk, fence, drive., mason., brick, stucco work	2.12	0.55	0.67	1.11
Materials for landscaping maintenance	2.52	1.77	1.15	1.81
Miscellaneous supplies and equipment	13.89	18.11	14.08	15.36
Material for insulation, other maint. and repair	7.87	12.55	7.84	9.42
Materials to finish base., remodel rooms or build patios, walks, etc	6.02	5.56	6.24	5.94

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide *]

	Total complete reporting			
	1988	1991	1992	Average
Property management and security	0.74	13.44	20.12	11.43
Property management	0.64	8.61	13.24	7.50
Management and upkeep services for security	0.10	4.84	6.88	3.94
Parking	0.04	0.70	NA	0.37
Rented dwellings	1,469.41	1,609.43	1,787.19	1,622.01
Rent	1,428.30	1,538.23	1,714.30	1,560.28
Rent as pay	17.34	44.87	37.09	33.10
Maintenance, insurance and other expenses	23.76	26.33	35.80	28.63
Tenant's insurance	8.68	9.76	9.16	9.20
Maintenance and repair services	9.01	9.96	11.88	10.28
Repair or maintenance services	8.62	9.49	11.52	9.88
Repair and replacement of hard surface flooring	0.36	0.38	0.29	0.34
Repair of built-in appliances	0.03	0.08	0.07	0.06
Maintenance and repair commodities	6.07	6.61	14.76	9.15
Paint, wallpaper, and supplies	1.19	2.07	1.70	1.65
Tools and equipment for painting and wallpapering	0.13	0.22	0.18	0.18
Materials for plastering, panels, roofing, gutters, etc	0.68	0.43	2.86	1.32
Materials for patio, walk, fence, drive., masonry, brick and stucco work	0.02	0.02	0.04	0.03
Plumbing supplies and equipment	0.38	0.25	0.55	0.39
Electrical supplies, heating and cooling equipment	0.92	0.34	0.26	0.51
Miscellaneous supplies and equipment	1.84	2.17	7.71	3.91
Material for insulation, other maintenance and repair	0.58	0.82	1.51	0.97
Termite and pest control (capital improvement)	0.00	NA	NA	0.00
Materials for additions, finishing base., remodeling rooms	1.08	1.34	5.90	2.77
Construction materials for jobs not started	0.18	0.01	0.30	0.16
Material for hard surface flooring	0.14	0.59	0.90	0.54
Material for landscape maintenance	0.76	0.53	0.55	0.61
Other lodging	446.79	319.35	337.35	367.83
Owned vacation homes	78.26	92.13	115.29	95.23
Mortgage interest and charges	NA	39.20	54.55	46.88
Mortgage interest	48.65	38.93	50.60	46.06
Interest paid, home equity loan	NA	0.02	1.06	0.54
Interest paid, home equity line of credit	NA	0.26	2.88	1.57
Prepayment penalty charge	0.00	NA	NA	0.00
Property taxes	16.90	37.77	42.04	32.24
Maintenance, insurance, and other expenses	12.71	15.17	18.70	15.53
Homeowners and related insurance	3.07	3.79	4.10	3.65
Homeowners insurance	3.04	3.65	3.86	3.52
Fine and extended coverage	0.03	0.14	0.24	0.14
Ground rent	3.33	2.32	1.75	2.47
Maintenance and repair services	5.52	5.25	7.53	6.10
Repair and remodeling services	5.52	5.14	7.39	6.02
Repair and replaement of hard surface flooring	0.00	0.11	0.15	0.09
Maintenance and repair commodities	0.39	0.53	1.97	0.96
Paints, wallpaper, supplies	0.08	0.15	1.31	0.51
Tools and equipment for painting and wallpapering	0.01	0.02	0.14	0.06
Materials for plaster., panel., roof., gutters, downspouts, sid., wind., door	0.05	0.05	0.07	0.06
Material for patio, walk, fence, drive, masonry, brick, stucco	0.00	0.00	0.01	0.00
Plumbing supplies and equipment	0.02	0.05	0.32	0.13
Eletrical supplies, heating and cooling equipment	0.01	0.09	0.03	0.04
Miscellaneous supplies and equipment	0.01	0.12	0.09	0.07
Material for insulation, other maintenance and repair	0.01	0.04	0.09	0.05
Material for finishing basements and remodeling rooms	0.00	0.08	NA	0.04
Materials for hard surface flooring	0.20	NA	NA	0.20
Materials for landscaping maintenance	0.00	0.06	NA	0.03
Property management and security	0.40	3.19	3.35	2.31
Property management	0.40	1.96	2.25	1.54
Management and upkeep services for security	0.00	1.23	1.10	0.78
Parking	0.00	0.09	NA	0.05
Housing while attending school	35.48	59.66	54.71	49.95
Lodging on out-of-town trips	178.58	167.56	167.34	171.16
Utilities, fuels, and public services	1,726.29	1,961.13	1,962.49	1.883.30
Natural gas	232.22	240.89	246.97	240.03
Utility—natural gas (renter)	50.85	59.96	55.98	52.60
Utility—natural gas (owned home)	180.07	189.11	189.86	186.35
Utility—natural gas (owned vacation)	1.22	0.82	1.07	1.04
Utility—natural gas (rented vacation)	0.08	NA	0.06	0.07

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide *]

	Total complete reporting			
	1988	1991	1992	Average
Electricity	700.08	791.57	770.65	754.10
Electricity (renter)	169.94	189.36	201.59	186.96
Electricity (owned home)	524.87	595.84	562.26	560.99
Electricity (owned vacation)	5.03	6.00	6.59	5.87
Electricity (rented vacation)	0.25	0.37	0.20	0.27
Fuel oil and other fuels	94.02	103.30	93.93	97.08
Fuel oil	55.60	62.83	55.61	58.01
Fuel oil (renter)	5.21	5.61	7.00	5.94
Fuel oil (owned home)	49.96	56.67	48.25	51.63
Fuel oil (owned vacation)	0.38	0.51	0.36	0.42
Fuel oil (rented vacation)	0.06	0.04	NA	0.05
Coal	3.50	4.66	2.50	3.55
Coal (renter)	0.55	0.26	0.05	0.29
Coal (owned home)	2.95	4.38	2.44	3.26
Coal (owned vacation)	0.00	0.02	0.02	0.01
Coal (rented vacation)	0.00	NA	NA	0.00
Bottled gas	24.48	27.47	27.18	26.38
Gas, btld/tank (renter)	3.78	4.19	4.79	4.25
Gas, btld/tank (owned home)	18.58	21.14	20.75	20.16
Gas, btld/tank (owned vacation)	2.12	2.11	1.64	1.96
Gas, btld/tank (rented vacation)	0.00	0.02	NA	0.01
Wood and other fuels	10.43	8.35	8.64	9.14
Wood/other fuels (renter)	1.31	1.37	1.59	1.42
Wood/other fuels (owned home)	9.05	6.92	6.71	7.56
Wood/other fuels (owned vacation)	0.06	0.05	0.34	0.15
Wood/other fuels (rented vacation)	0.00	NA	NA	0.00
Telephone services	528.79	608.50	619.87	585.72
Telephone (old)	NA	48.22	0.00	24.11
Telephone services in home city, excluding mobile car phones	NA	560.28	619.87	590.08
Telephone services for mobile car phones	NA	NA	NA	NA
Water and other public services	171.19	216.87	231.08	206.38
Water and sewerage maintenance	131.02	159.33	160.22	150.19
Water/sewer maint. (renter)	18.53	22.04	24.38	21.65
Water/sewer maint. (owned home)	111.57	136.19	133.69	127.15
Water/sewer maint. (owned vacation)	0.83	1.09	2.10	1.34
Water/sewer maint. (rented vacation)	0.09	0.01	0.05	0.05
Trash and garbage collection	38.67	55.90	69.38	54.65
Trash/garb. coll. (renter)	5.28	7.26	7.37	6.64
Trash/garb. coll. (owned home)	33.31	47.64	59.92	46.96
Trash/garb. coll. (owned vacation)	0.08	1.00	2.09	1.06
Trash/garb. coll. (rented vacation)	0.00	NA	0.01	0.01
Septic tank cleaning	1.50	1.65	1.47	1.54
Septic tank clean. (renter)	0.01	0.07	0.11	0.06
Septic tank clean. (owned home)	1.48	1.57	1.29	1.45
Septic tank clean. (owned vacation)	0.00	0.01	0.07	0.03
Septic tank clean. (rented vacation)	0.00	NA	NA	0.00
Household operations	387.45	451.97	487.20	442.21
Personal services	176.53	224.86	253.05	218.15
Babysitting	74.62	83.78	85.92	81.44
Care for elderly, invalids, handicapped, etc	11.66	26.56	43.92	27.38
Day-care centers, nursery, and preschools	90.25	114.51	123.21	109.32
Other household expenses	210.92	227.11	234.15	224.06
Household services	67.76	77.46	71.70	72.31
Gardening, lawn care services	49.60	60.85	64.99	58.48
Water softening service	2.81	2.72	3.28	2.94
Household laundry, dry cleaning, sent out (nonclothing) not coin operated	1.63	2.21	2.32	2.05
Coin-operated household and dry cleaning (nonclothing)	4.78	4.91	5.58	5.09
Other home services	17.86	16.79	18.38	17.68
Termite/pest control products	0.20	0.22	0.29	0.24
Moving, storage, freight express	26.46	22.73	24.37	24.52
Appliance repair, including service center	16.44	16.96	15.88	16.43
Reupholstering, furniture repair	13.85	11.51	18.56	14.64
Repair/rental of lawn/garden equip., hand/power tools, other house. equip	5.92	5.78	3.74	5.15
Appliance rental	2.08	1.28	1.86	1.74
Rental of office equipment for nonbusiness use	0.17	0.17	0.13	0.16
Repair of miscellaneous household equipment and furnishings *	0.48	2.34	1.89	1.57
Repair of computer systems for nonbusiness use	0.88	1.19	1.19	1.09

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Rental/installation of dishwashers, range hoods, and garbage disposals	0.00	NA	NA	0.00
Housekeeping supplies*	382.82	451.34	462.61	432.26
Laundry and cleaning supplies*	106.44	123.66	123.97	118.02
Soaps and detergents*	62.10	73.49	70.41	68.67
Other laundry cleaning products*	44.33	50.17	53.56	49.35
Other household products*	157.48	197.81	211.79	189.03
Cleansing and toilet tissue, paper towels and napkins*	52.12	62.60	60.52	58.41
Miscellaneous household products*	67.89	91.22	94.75	84.62
Lawn and garden supplies*	37.47	44.00	56.52	46.00
Postage and stationery*	118.89	129.87	126.85	125.20
Stationery, stationery supplies, giftwraps*	54.40	66.09	62.59	61.03
Postage*	64.49	63.78	64.26	64.18
Household furnishings and equipment	1,102.32	1,252.41	1,184.33	1,179.69
Household textiles	97.11	107.35	94.56	99.67
Bathroom linens*	13.69	24.61	15.62	17.97
Bedroom linens*	38.11	39.34	43.17	40.21
Kitchen and dining room linens*	5.74	4.76	7.84	6.11
Curtains and draperies	26.56	18.09	19.11	21.25
Slipcovers, decorative pillows	1.64	1.36	1.42	1.47
Sewing material for slipcovers, curtains, other sewing matter, for the home	10.32	18.17	6.54	11.68
Other linens	1.05	1.04	0.86	0.98
Furniture	319.44	297.24	316.15	310.94
Mattress and springs	41.86	35.82	38.97	38.88
Other bedroom furniture	39.75	46.24	57.57	47.85
Sofas	65.44	65.48	70.67	67.20
Living room chairs	35.91	34.99	30.70	33.87
Living room tables	20.16	14.24	17.63	17.34
Kitchen, dining room furniture	58.64	46.11	42.37	49.04
Infants' furniture	7.01	7.58	6.74	7.11
Outdoor furniture	12.57	13.59	11.02	12.39
Occasional furniture	38.12	33.18	40.48	37.26
Floor coverings	70.23	128.97	61.08	86.76
Wall-to-wall carpeting (renter)	2.41	2.02	2.57	2.33
Wall-to-wall carpet, installed (renter)	1.73	1.56	2.05	1.78
Wall-to-wall carpet, not installed carpet squares (renter)	0.68	0.46	0.52	0.55
Wall-to-wall carpet (replacement) (owned home)	42.57	34.99	29.06	35.54
Wall-to-wall carpet, not installed (replace.), carpet squares (owned home)	3.04	2.91	1.89	2.61
Wall-to-wall carpet, installed (replacement) (owned home)	39.53	32.08	27.17	32.93
Room size rugs and other floor covering, nonpermanent	25.25	91.96	29.45	48.89
Major appliances	172.90	131.98	144.89	149.92
Dishwashers (built-in), garbage disposals, range hood, (renter)	0.24	0.98	0.16	0.46
Dishwashers (built-in), garbage disposals, range hoods (owned home)	10.05	9.54	7.21	8.93
Refrigerators, freezers (renter)	11.18	7.51	8.38	9.02
Refrigerators, freezers (owned home)	39.29	25.85	33.30	32.81
Washing machines (renter)	6.56	4.28	6.28	5.71
Washing machines (owned home)	17.96	17.22	15.85	17.01
Clothes dryers (renter)	4.18	2.34	3.35	3.29
Clothes dryers (owned home)	10.35	7.05	9.78	9.06
Cooking stoves, ovens (renter)	2.87	2.18	3.11	2.72
Cooking stoves, ovens (owned home)	19.55	13.20	14.81	15.85
Microwave ovens (renter)	4.47	2.09	3.09	3.22
Microwave ovens (owned home)	9.81	4.85	4.74	6.47
Portable dishwasher (renter)	0.31	0.14	0.11	0.19
Portable dishwasher (owned home)	1.33	0.24	1.15	0.91
Window air conditioners (renter)	2.43	1.12	1.18	1.58
Window air conditioners (owned home)	8.23	7.61	3.31	6.38
Electric floor cleaning equipment	14.62	15.03	13.63	14.43
Sewing machines	6.08	5.19	5.15	5.47
Miscellaneous household appliances*	3.39	5.56	10.29	6.41
Small appliances, miscellaneous housewares	60.51	83.38	86.46	76.78
Housewares	39.14	57.82	62.47	53.14
Plastic dinnerware	1.83	1.79	1.61	1.74
China and other dinnerware	10.31	11.56	11.60	11.16
Flatware	3.44	4.07	3.97	3.83
Glassware*	9.79	7.08	13.59	10.15

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Silver serving pieces*	0.27	3.83	1.35	1.82
Other serving pieces	1.36	1.78	1.59	1.58
Nonelectric cookware*	12.14	11.67	11.66	11.82
Tableware, nonelectric kitchenware*	NA	16.02	17.08	16.55
Small appliances	21.37	25.56	23.99	23.64
Small electric kitchen appliances	14.17	18.05	18.75	16.99
Portable heating and cooling equipment	7.20	7.52	5.23	6.65
Miscellaneous household equipment	382.11	503.48	481.19	455.59
Window coverings	13.72	12.79	17.37	14.63
Infants' equipment*	3.77	10.62	5.52	6.64
Laundry and cleaning equip*	8.52	9.19	10.99	9.57
Outdoor equipment	4.73	6.20	4.83	5.25
Clocks	5.46	4.45	3.38	4.43
Lamps and lighting fixtures*	28.40	22.80	26.10	25.77
Other household decorative items*	80.30	107.69	111.16	99.72
Telephones and accessories*	7.25	62.21	20.55	30.00
Lawn and garden equipment	49.12	39.58	43.15	43.95
Power tools	14.39	13.25	16.15	14.60
Small miscellaneous furnishings*	3.39	5.23	1.15	3.26
Hand tools*	13.67	11.71	14.07	13.15
Indoor plants, fresh flowers*	41.42	57.80	53.49	50.90
Closet and storage items*	4.62	6.99	12.21	7.94
Rental of furniture	3.20	3.36	3.67	3.35
Luggage	8.72	7.49	7.04	7.75
Computers and computer hardware nonbusiness use	39.66	63.64	63.66	55.72
Computer software and accessories for nonbusiness use	7.36	8.69	9.48	8.51
Telephone answering devices	4.23	5.00	4.64	4.62
Calculators	1.99	2.56	1.57	2.04
Business equipment for home use	6.20	5.02	4.23	5.15
Other hardware*	6.95	11.83	13.74	10.84
Smoke alarms (owned home)	0.54	0.38	0.47	0.46
Smoke alarms (renter)	0.15	0.09	0.06	0.10
Smoke alarms (owned vacation)	0.00	NA	NA	0.00
Other household appliances (owned home)	4.25	4.63	4.40	4.43
Other household appliances (renter)	1.35	0.87	0.99	1.07
Miscellaneous household equipment and parts*	18.73	19.42	27.08	21.74
Apparel and services	1,537.27	1,801.23	1,732.90	1,690.47
Men and boys	400.67	448.88	436.86	428.80
Men, 16 and over	318.80	357.81	353.05	343.22
Men's suits	41.20	39.20	43.98	41.46
Men's sportcoats, tailored jackets	15.57	13.84	12.04	13.82
Men's coats and jackets*	29.30	30.48	26.12	28.63
Men's underwear*	9.72	12.26	14.13	12.04
Men's hosiery*	10.34	12.60	13.73	12.22
Men's nightwear*	2.89	6.24	5.84	4.99
Men's accessories*	22.88	34.42	33.64	30.31
Men's sweaters and vests	17.65	13.47	13.11	14.74
Men's active sportswear	12.10	12.15	11.96	12.07
Men's shirts*	74.17	87.10	87.25	82.84
Men's pants*	70.76	77.09	70.18	72.68
Men's shorts, shorts sets*	8.29	13.53	16.40	12.74
Men's uniforms	3.16	5.00	3.70	3.95
Men's costumes	0.77	0.42	0.98	0.72
Boys 2 to 15	81.86	91.07	83.82	85.58
Boys' coats and jackets*	9.48	4.36	5.73	6.52
Boys' sweaters	3.73	3.09	2.70	3.17
Boys' shirts*	20.55	21.80	19.50	20.62
Boys' underwear*	1.55	4.96	4.89	3.80
Boys' nightwear*	2.79	2.21	2.83	2.61
Boys' hosiery*	3.99	4.97	4.26	4.41
Boys' accessories*	2.77	4.58	5.19	4.18
Boys' suits, sportcoats, vests*	3.00	0.51	2.13	1.88
Boys' pants*	24.70	24.72	19.41	22.94
Boys' shorts, shorts sets*	3.91	11.51	9.03	8.15
Boys' uniforms, active sportswear	5.10	7.43	7.30	6.61
Boys' costumes	0.29	0.93	0.85	0.69
Women and girls	608.90	724.73	703.40	679.01
Women, 16 and over	509.83	624.19	607.23	580.42
Women's coats and jackets*	33.49	40.55	58.80	44.28

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Women's dresses*	83.27	118.10	89.96	97.11
Women's sportcoats, tailored jackets*	0.84	6.02	3.90	3.59
Women's vests and sweaters*	36.74	46.00	40.43	41.06
Women's shirts, tops, blouses*	85.55	114.03	106.20	101.93
Women's skirts*	29.28	28.63	21.52	26.48
Women's pants*	66.85	69.35	79.18	71.79
Women's shorts, shorts sets*	14.23	20.40	23.33	19.32
Women's active sportwear*	23.13	28.54	32.91	28.19
Women's sleepwear*	22.57	20.98	25.33	22.96
Women's undergarments*	24.38	27.53	33.13	28.35
Women's hoisery	25.85	27.13	25.01	26.00
Women's suits	28.04	33.54	30.71	30.76
Women's accessories*	34.46	38.59	33.98	35.68
Women's uniforms*	1.15	1.47	1.82	1.48
Women's costumes	0.00	3.34	1.01	1.45
Girls, 2 to 15	99.08	100.53	96.17	98.59
Girls' coats and jackets	7.95	6.71	7.66	7.44
Girls' dresses, suits	12.02	13.87	13.23	13.04
Girls' shirts, blouses, sweaters*	30.19	23.20	22.42	25.27
Girls' shirts and pants	16.37	15.56	14.87	15.60
Girls' shorts, shorts sets	6.41	8.41	9.83	8.22
Girls' active sportwear*	9.32	10.66	8.41	9.46
Girls' underwear and sleepwear	5.92	6.16	6.26	6.11
Girls' hoisery*	4.88	6.09	5.05	5.34
Girls' accessories*	4.08	5.49	4.50	4.69
Girls' uniforms	1.46	2.26	1.86	1.86
Girls' costumes	NA	2.12	2.08	2.10
Children under 2	63.60	85.67	80.39	76.55
Infant coat, jacket, snowsuit	3.17	2.99	3.25	3.14
Infant dresses, outerwear	14.98	17.87	20.75	17.87
Infant underwear*	36.68	51.00	46.85	44.84
Infant nightwear, loungewear	3.19	3.11	4.26	3.52
Infant accessories	3.06	5.15	5.28	4.50
Infant hoisery	0.41	0.10	NA	0.10
Footwear*	204.13	258.04	243.05	235.07
Men's footwear*	62.95	72.47	73.53	69.65
Boys' footwear*	18.19	29.42	31.65	26.42
Women's footwear*	104.54	128.82	115.47	116.28
Girls' footwear*	18.46	27.33	22.41	22.73
Other apparel products and services	259.97	283.91	269.19	271.02
Material for making clothes	8.12	9.10	8.58	8.60
Sewing patterns and notions	2.15	3.00	2.56	2.57
Watches	21.65	20.45	20.47	20.86
Jewelry	110.35	121.45	108.73	113.51
Shoe repair and other shoe service	3.46	4.27	3.47	3.73
Coin-operated apparel laundry and dry cleaning	34.25	37.63	38.61	36.83
Apparel alteration and repair	6.05	6.23	6.02	6.10
Clothing rental	4.77	4.02	3.56	4.12
Watch and jewelry repair	5.72	6.94	5.54	6.07
Apparel laundry and dry cleaning not coin operated	62.72	69.99	70.94	67.88
Clothing storage	0.75	0.83	0.71	0.76
Transportation	5,140.21	5,235.41	5,232.14	5,202.59
Vehicle purchases (net outlay)	2,388.19	2,154.04	2,167.03	2,236.42
Cars and trucks, new	1,391.73	1,072.55	1,095.97	1,186.75
New cars	991.60	749.65	749.56	830.27
New trucks	400.13	322.90	346.42	356.48
Car and trucks, used	971.12	1,060.67	1,033.39	1,021.73
Used cars	754.27	742.29	737.98	744.85
Used trucks	216.85	318.39	295.42	276.89
Other vehicles	25.34	20.82	37.66	27.94
New motorcycles	5.21	2.87	18.06	8.71
New aircraft	0.00	NA	NA	0.00
Used motorcycles	15.86	17.95	9.04	14.28
Used aircraft	4.27	NA	10.57	7.42
Gasoline and motor oil	933.90	998.10	972.68	968.23
Gasoline	812.03	884.83	868.13	855.00
Diesel fuel	12.01	9.23	9.86	10.37
Gasoline on out-of-town trips	96.47	91.98	82.43	90.29
Gasahol*	0.00	NA	NA	0.00

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Motor oil	12.55	11.31	11.44	11.77
Motor oil on out-of-town trips	0.85	0.74	0.83	0.81
Other vehicle expenses	1,552.56	1,775.67	1,805.62	1,711.28
Vehicle finance charges	284.70	280.20	258.96	274.62
Automobile finance charges	196.25	190.05	169.13	185.14
Truck finance charges	71.94	75.90	71.72	73.19
Motorcycle and plane finance charges	1.67	0.50	1.93	1.37
Other vehicle finance charges	14.85	13.76	16.18	14.93
Maintenance and repairs	568.66	641.71	627.51	612.63
Coolant, additives, brake, transmission fluids	7.15	6.94	6.77	6.95
Tires—purchased, replaced, installed	86.22	85.76	92.70	88.23
Parts, equipment, and accessories*	86.80	100.00	75.63	87.48
Vehicle products*	3.92	3.19	3.14	3.42
Misc. auto repair, servicing*	17.18	22.31	20.13	19.87
Body work and painting	34.71	30.35	32.21	32.42
Clutch, transmission repair	34.54	35.98	34.71	35.08
Drive shaft and rear-end repair	7.58	6.97	7.96	7.50
Brake work	33.05	42.57	43.87	39.83
Repair to steering or front-end	11.64	12.69	15.62	13.32
Repair to engine cooling system	22.87	24.02	24.59	23.83
Motor tune-up	40.07	46.97	46.95	44.66
Lube, oil change, and oil filters	24.67	33.01	35.54	31.07
Front-end alignment, wheel balance	9.30	11.64	12.40	11.11
Shock absorber replacement	6.01	9.13	8.25	7.80
Brake adjustment	4.75	6.83	5.13	5.57
Gas tank repair, replacement*	0.09	1.18	1.60	0.96
Repair tires and other repair work	29.23	33.15	33.63	32.00
Exhaust system repair	14.55	18.36	18.29	17.07
Electrical system repair	20.35	26.00	28.19	24.85
Motor repair, replacement	63.53	79.50	73.60	72.21
Auto repair service policy	8.54	5.18	6.60	6.77
Vehicle insurance	515.06	619.68	638.83	591.19
Vehicle rental, leases, licenses, other charges	184.14	234.08	280.31	232.84
Leased and rented vehicles	68.54	95.89	125.45	96.63
Rented vehicles	NA	33.77	32.93	33.35
Auto rental	44.36	12.42	8.36	21.71
Auto rental, out-of-town trips	6.78	15.41	16.16	12.78
Truck rental	12.51	2.10	2.71	5.77
Truck rental, our-of-town trips	3.99	2.49	5.20	3.89
Motorcycle rental	0.00	NA	NA	0.00
Aircraft rental	0.47	0.27	0.24	0.33
Motorcycle rental, out-of-town trips	0.04	0.50	0.07	0.20
Aircraft rental, out-of-town trips	0.40	0.58	0.20	0.39
Leased vehicles	NA	62.11	92.52	77.32
Car lease payments	NA	47.74	69.08	58.41
Cash downpayment (car lease)	NA	2.12	8.22	5.17
Termination fee (car lease)	NA	0.16	0.14	0.15
Truck lease payments	NA	11.01	12.47	11.74
Cash downpayment (truck lease)	NA	1.09	1.52	1.31
Termination fee (truck lease)	NA	NA	1.08	1.08
State and local registration	67.04	75.17	87.09	76.43
Driver's license	6.59	7.27	7.41	7.09
Vehicle inspection	6.33	8.31	9.03	7.89
Parking fees	20.50	23.86	23.01	22.46
Parking fees (old)	NA	1.34	0.00	0.67
Parking fees in home city, excluding residence	NA	19.97	20.52	20.25
Parking fees, out-of-town trips	NA	2.54	2.49	2.52
Tolls*	5.96	8.71	10.98	8.55
Tolls on out-of-town trips	4.12	4.51	4.18	4.27
Towing charges	5.05	4.89	5.02	4.99
Automobile service clubs	NA	5.48	8.14	6.81
Public transportation	265.56	307.60	286.82	286.66
Airline fares	176.01	183.39	173.89	177.76
Intercity bus fares	14.30	7.84	10.90	11.01
Intracity mass transit fares	41.07	54.01	48.57	47.88
Local trans. on out-of-town trips	0.54	3.34	8.74	4.21
Taxi fares on trips	4.86	17.17	5.14	9.06
Taxi fares	5.89	6.78	6.46	6.38
Intercity train fares	9.04	14.66	17.38	13.69

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Ship fares	13.00	19.63	14.54	15.72
School bus	0.86	0.77	1.21	0.95
Health care	1,282.43	1,563.01	1,653.66	1,499.70
Health insurance	473.36	652.12	727.65	617.71
Commercial health insurance	165.28	213.85	232.16	203.76
Blue Cross, Blue Shield	116.52	148.51	173.35	146.13
Health maintenance plans (HMO's)	48.48	95.76	90.57	78.27
Medicare payments	78.60	101.70	111.33	97.21
Commercial medicare supplements	64.48	92.29	120.24	92.34
Medical services	512.73	561.20	546.03	539.99
Physician's services	149.19	179.39	170.75	166.44
Dental services	150.89	179.38	174.32	168.20
Eyecare services	22.70	25.60	29.20	25.83
Nursing, therapy, and misc. medical services (old)	4.21	0.44	NA	2.33
Service by professionals other than physician	22.62	29.39	32.66	28.22
Lab tests, x-rays	26.78	25.91	31.35	28.01
Hospital room	54.96	36.47	37.42	42.95
Hospital service other than room	26.61	53.30	44.63	41.51
Medical care in retirement community	NA	NA	NA	NA
Care in convalescent or nursing home	40.86	21.05	13.48	25.13
Repair of medical equipment*	0.05	NA	NA	0.05
Other medical care services	13.86	8.07	12.24	11.39
Drugs	225.28	258.20	284.99	256.16
Nonprescription drugs*	65.79	73.86	80.16	73.27
Prescription drugs	159.49	184.34	204.83	182.89
Medical supplies	71.06	91.49	94.98	85.84
Eyeglasses and contact lenses	45.18	59.02	57.35	53.85
Hearing aids*	.0..	3.50	7.13	3.54
Topicals and dressings*	14.40	21.63	24.32	20.12
Medical equipment for general use	5.29	2.32	2.25	3.29
Supportive and convalescent medical equipment	5.70	3.48	2.85	4.01
Rental of medical equipment	0.50	0.35	0.35	.040
Rental of supportive, convalescent medical equipment	NA	1.19	0.74	0.97
Entertainment	1,348.90	1,523.49	1,525.52	1,465.97
Fees and admissions	351.99	384.49	375.11	370.53
Recreation expenses, out-of-town trips	17.85	16.61	15.32	16.59
Club membership dues and fees (old)	76.68	24.30	NA	50.49
Social, recreation, civic club membership	NA	59.85	85.24	72.55
Fees for participation sports	46.90	69.06	61.15	59.04
Participation sports, out-of-town trips	18.96	20.12	21.17	20.08
Movie, theater, opera, ballet	61.08	66.54	64.92	64.18
Movie, other admissions, out-of-town trips	25.91	19.72	27.20	24.28
Admission to sporting events	19.63	20.69	22.94	21.09
Admission to sports events, out-of-town trips	25.91	17.42	9.08	17.47
Fees for recreational lessons	41.23	53.57	52.76	49.19
Other entertainment services, out-of-town trips	17.85	16.61	15.32	16.59
Television, radios, sound equipment	422.50	476.38	493.86	464.25
Televisions	295.95	328.75	331.31	318.67
Community antenna or cable tv	137.94	180.20	188.40	168.85
Black and white tv*	2.84	1.81	3.06	2.57
Color tv—console	23.60	18.13	21.37	21.03
Color tv—portable, table model	43.50	44.32	41.51	43.11
VCR's and video disc players	47.70	40.40	31.41	39.84
Video cassettes, tapes, and discs	13.44	17.60	18.88	16.64
Video game hardware and software	14.88	15.04	16.25	15.39
Repair of tv, radio, and sound equipment	10.43	10.23	9.60	10.09
Rental of televisions	1.61	1.03	0.81	1.15
Radios, sound equipment	126.55	147.62	162.55	145.57
Radios*	4.84	10.24	10.71	8.60
Phonographs*	0.53	0.60	0.87	0.67
Tape recorders and players*	10.50	5.75	5.32	7.19
Sound components and component systems	28.64	30.53	35.56	31.58
Miscellaneous sound equipment	0.16	0.34	1.68	0.73
Sound equipment accessories*	4.29	3.22	4.28	3.93
Compact disc, tape, record and video mail order clubs	4.17	8.04	8.97	7.06
Records, CDs, audio tapes, needles	25.86	29.54	31.01	28.80
Rental of VCR, radio, and sound equipment	1.59	0.70	0.79	1.03
Musical instruments and accessories	20.58	16.03	20.45	19.02
Rental and repair of musical instruments	2.12	2.42	2.11	2.22

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Rental of video cassettes, tapes, films, and discs	23.27	40.22	40.79	34.76
Pets, toys, and playground equipment	242.26	286.11	281.46	269.94
Pets	136.31	168.99	167.12	157.47
Pet food*	66.61	85.02	84.94	78.86
Pet purchase, supplies, medicine	25.23	23.73	24.72	24.56
Pet services	10.64	16.52	13.87	13.68
Vet services	33.84	43.72	43.58	40.38
Toys, games, hobbies, and tricycles	102.96	112.46	112.38	109.27
Playground equipment	2.98	4.66	1.96	3.20
Other entertainment supplies, equipment, and services	332.16	376.51	375.10	361.26
Unmotored recreational vehicles	24.02	41.05	33.20	23.76
Boat without motor and boat trailers	18.32	3.85	14.72	12.30
Trailer and other attachable campers	5.70	10.20	18.48	11.46
Motorized recreational vehicles	137.44	154.19	142.45	144.69
Motorized camper coaches and other vehicles	38.79	75.13	77.70	63.87
Purchase of boat with motor	98.65	79.05	64.75	80.82
Rental of recreational vehicles	2.33	3.71	1.90	2.65
Rental noncamper trailer	0.06	0.03	0.05	0.05
Boat and trailer, out-of-town trips	0.94	2.13	0.47	1.18
Rental of campers and other vehicles on out-of-town trips (old)	0.58	NA	NA	0.58
Rental of campers on out-of-town trips	NA	0.17	0.54	0.36
Rental of other vehicles on out-of-town trips	NA	1.09	0.40	0.75
Rental of boat	0.23	0.02	0.05	0.10
Rental of campers, other r.v.'s	0.52	0.27	0.39	0.39
Outboard motors	1.28	1.91	2.17	1.79
Docking and landing fees	5.33	4.50	5.77	5.20
Sports, recreation and exercise equipment	86.67	111.11	102.67	100.15
Athletic gear, game tables, and exercise equipment	34.85	45.33	45.98	42.05
Bicycles	12.28	19.23	16.46	15.99
Camping equipment	3.26	4.50	3.77	3.84
Hunting and fishing equipment	15.91	20.54	16.92	17.79
Winter sports equipment	4.86	5.30	3.19	4.45
Water and miscellaneous sports equipment	13.20	14.50	14.68	14.13
Rental and repair of misc. sports equipment	2.31	1.70	1.68	1.90
Photographic equipment and supplies	69.61	81.69	81.66	77.65
Film	19.96	21.01	20.32	20.43
Other photographic supplies*	0.64	1.43	0.17	0.75
Film processing	25.21	28.58	27.09	26.96
Repair and rental of photographic equipment	0.24	0.55	0.39	0.39
Photographic equipment	15.43	14.65	13.47	14.52
Photographic fees*	8.12	15.47	20.23	14.61
Fireworks*	0.51	1.08	0.63	0.74
Souvenirs*	0.44	0.45	1.21	0.70
Visual goods*	0.76	1.09	0.57	0.81
Pinball, electronic video games*	3.78	2.72	2.88	3.13
Personal care products and services	345.68	418.96	408.21	390.95
Personal care products	179.05	228.19	223.41	210.22
Hair care products*	40.57	45.03	42.44	42.68
Nonelectric articles for the hair*	4.26	6.41	5.35	5.34
Wigs and hairpieces	1.07	1.77	1.23	1.36
Oral hygiene products, articles*	18.16	27.93	28.07	24.72
Shaving needs*	8.49	10.65	9.46	9.53
Cosmetics, perfume, bath preparation*	77.63	98.28	103.29	93.07
Deodorants, feminine hygiene, misc. personal care*	23.52	32.28	28.78	28.19
Electric personal care appliances	5.35	5.85	4.80	5.33
Personal care services	166.63	190.77	184.80	180.73
Personal care service for females*	89.35	103.69	98.60	97.21
Personal care service for males	77.12	86.99	86.08	83.40
Repair of personal care appliances	0.16	0.09	0.12	0.12
Reading	152.49	168.07	165.57	162.04
Newspapers	63.99	70.41	70.60	68.33
Magazines	38.92	39.74	38.78	39.15
Newsletters*	0.04	0.27	0.67	0.33
Books thru book clubs	10.63	12.22	10.56	11.14
Books not thru book clubs	35.24	40.22	41.38	38.95
Encyclopedia and other sets of reference books	3.67	5.21	3.58	4.15
Education	324.43	433.88	423.79	394.03
College tuition	176.75	230.54	237.86	215.05
Elementary and high school tuition	53.20	65.77	69.99	62.99

APPENDIX 3.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide*]

	Total complete reporting			
	1988	1991	1992	Average
Other school tuition	15.29	39.08	16.39	23.59
Other school expenses including rentals	15.78	17.66	18.40	17.28
School books, supplies, equipment for college	26.56	37.22	36.94	33.57
School books, supplies, equipment for elementary high school	6.23	6.41	6.89	6.51
School books, supplies, equipment for day care, nursery, other	2.52	3.11	3.64	3.09
School supplies, etc.—unspecified*	28.10	34.10	33.67	31.96
Tobacco products and smoking supplies	242.33	277.79	278.59	266.24
Cigarettes	224.61	255.97	256.67	245.75
Other tobacco products	15.28	18.68	19.51	17.82
Smoking accessories*	2.44	3.14	2.41	2.66
Miscellaneous	597.58	877.79	794.63	756.67
Miscellaneous fees, pari-mutuel losses*	38.61	48.28	60.93	49.27
Legal fees	104.50	80.65	88.62	91.26
Funeral expenses	49.32	54.07	51.73	51.71
Safe deposit box rental	5.69	6.18	5.88	5.92
Checking accounts, other bank service charges	25.19	25.63	26.45	25.76
Cemetary lots, vaults, maintenance fees	17.66	15.42	16.64	16.57
Accounting fees	39.87	46.16	47.58	44.54
Miscellaneous personal services*	23.02	32.25	41.90	32.39
Finance charges excluding mortgage and vehicle	203.45	253.58	227.00	228.01
Occupational expenses	90.26	99.47	109.07	99.60
Expenses for other properties	NA	207.48	110.86	159.17
Interest paid, home equity line of credit (other property)	NA	1.77	0.80	1.29
Credit card memberships	NA	6.86	7.17	7.02
Cash contributions	730.19	1,040.14	1,020.99	930.44
Cash contributions to non-CU memo., incl. stud., alim., and child sup	179.06	277.71	240.72	232.50
Gifts of cash, stocks and bonds to non-CU members	149.99	219.98	249.31	206.43
Contributions to charity	69.16	97.36	105.65	90.72
Contributions to church	295.54	407.43	378.37	360.45
Contributions to educational organizations	17.97	21.71	31.50	23.73
Contributions to political organizations	7.29	7.64	7.22	7.38
Other contributions	11.18	8.31	8.21	9.23
Personal insurance and pensions	2,532.36	3,141.56	3,083.40	2,919.11
Life and other personal insurance	324.17	353.85	354.24	344.09
Life, endowment, annuity, other personal insurance	312.04	340.55	342.74	331.78
Other nonhealth insurance	12.13	13.30	11.50	12.31
Pensions and Social Security	2,208.19	2,787.71	2,729.16	2,575.02
Deductions for government retirement	65.36	80.17	77.00	74.18
Deductions for railroad retirement	6.23	4.55	3.03	4.60
Deductions for private pensions	156.10	268.34	264.82	229.75
Non-payroll deposit to retirement plans	297.28	334.61	337.62	323.17
Deductions for Social Security	1,683.21	2,100.03	2,046.70	1,943.31

*Data may not be statistically significant.
Source: Bureau of Labor Statistics.

APPENDIX 4.—CONSUMER EXPENDITURE SURVEYS

[Pre-published Data for All Consumer Units Nationwide*]

	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Average Income Before Taxes:						
1988	$12,320	$17,373	$24,591	$34,375	$44,331	$74,234
1991	12,430	17,301	24,816	34,402	44,548	79,902
1992	12,437	17,420	24,560	34,439	44,442	81,602
Average	12,396	17,365	24,656	34,405	44,440	78,579
Goods and Services:						
1988	6,597.54	7,756.96	9,611.82	12,243.04	14,412.54	19,712.67
1991	7,262.65	8,319.82	9,715.90	13,134.61	14,944.06	21,598.60
1992	6,735.63	8,878.05	10,200.76	12,021.89	15,600.83	20,967.28
Average	6,865.27	8,318.28	9,842.83	12,466.51	14,985.81	20,759.52
Food at Home:						
1988	1,809.23	1,954.49	2,174.01	2,556.74	2,906.55	3,109.86
1991	2,267.82	2,379.01	2,517.57	2,959.22	3,321.94	3,841.29
1992	2,060.61	2,473.08	2,558.40	2,785.24	3,265.99	3,799.25
Average	2,045.89	2,268.86	2,416.66	2,767.07	3,164.83	3,583.47

APPENDIX 4.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide *]

	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Food Away from Home:						
1988	968.10	1,240.03	1,591.02	2,030.75	2,375.06	3,186.24
1991	945.30	1,084.27	1,316.78	1,803.69	2,316.13	3,113.47
1992	841.79	1,201.22	1,405.80	1,771.87	2,354.17	3,131.93
Average	918.40	1,175.17	1,437.87	1,868.77	2,348.45	3,143.88
Alcohol:						
1988	182.87	235.22	290.56	343.77	352.96	506.47
1991	140.42	248.53	270.50	389.51	404.39	563.87
1992	200.85	223.45	324.37	313.65	374.96	590.09
Average	174.71	235.73	295.14	348.98	377.44	553.48
Domestic Services:						
1988	82.78	119.28	166.06	275.08	311.41	321.27
1991	170.38	109.83	174.63	229.79	273.86	469.21
1992	151.62	129.29	147.99	222.40	398.61	559.53
Average	134.93	119.47	161.89	242.42	327.96	450.00
Furnishings & Household Operations:						
1988	956.43	1,145.52	1,509.87	2,010.78	2,306.76	3,895.22
1991	1,009.62	1,125.48	1,466.95	2,104.83	2,361.30	3,924.40
1992	970.65	1,370.53	1,587.26	1,932.32	2,427.52	3,651.88
Average	978.90	1,213.84	1,521.36	2,015.98	2,365.19	3,823.83
Clothing:						
1988	886.12	1,085.66	1,406.15	1,847.24	2,396.00	3,154.03
1991	1,093.80	1,178.28	1,325.86	1,951.82	2,186.30	3,520.50
1992	889.14	1,093.68	1,563.66	1,603.41	2,267.24	3,394.31
Average	956.35	1,119.21	1,431.89	1,800.82	2,283.18	3,356.28
Recreation:						
1988	895.72	969.87	1,333.56	1,695.89	2,224.56	3,435.75
1991	723.92	980.12	1,270.25	1,908.30	2,058.64	3,485.92
1992	755.24	1,146.23	1,302.99	1,726.85	2,558.20	3,374.39
Average	791.63	1,032.07	1,302.23	1,777.01	2,280.47	3,432.02
Personal Care:						
1988	249.04	282.21	324.70	420.30	478.79	651.43
1991	288.37	304.89	364.44	450.76	527.30	722.72
1992	229.68	340.56	376.85	405.19	528.27	702.54
Average	255.70	309.22	355.33	425.42	511.45	692.23
Tobacco:						
1988	221.48	250.05	262.82	292.87	249.43	270.28
1991	257.39	306.61	291.80	323.27	355.15	293.08
1992	242.99	287.66	296.57	321.75	321.76	300.33
Average	240.62	281.44	283.73	312.63	308.78	287.90
Professional Services:						
1988	345.77	474.63	553.17	769.62	811.02	1,182.12
1991	365.63	602.80	720.12	1,013.42	1,139.05	1,664.14
1992	393.06	612.35	636.87	939.21	1,104.11	1,463.01
Average	368.15	563.26	636.72	907.42	1,018.06	1,436.42
Housing:						
1988	4,455.88	4,682.00	5,835.92	6,974.54	7,990.62	11,502.63
1991	4,700.82	5,318.86	6,091.15	7,384.48	8,488.72	12,253.50
1992	5,063.74	5,566.03	6,434.77	7,383.31	9,071.67	12,721.51
Average	4,740.15	5,188.96	6,120.61	7,247.44	8,517.00	12,159.21
Transportation:						
1988	3,127.01	3,840.91	5,302.92	6,704.50	7,779.21	9,714.71
1991	3,130.14	3,362.28	4,700.00	5,872.44	7,226.89	9,442.91
1992	2,853.92	3,398.88	4,905.01	5,824.45	7,113.95	9,664.47
Average	3,037.02	3,534.02	4,969.31	6,133.80	7,373.35	9,607.36
Private Transportation:						
1988	2,949.99	3,657.04	5,020.99	6,314.44	7,333.94	8,884.42
1991	2,952.36	3,118.89	4,434.71	5,473.96	6,809.12	8,535.49
1992	2,704.31	3,171.96	4,570.31	5,504.80	6,638.47	8,663.84
Average	2,868.89	3,315.96	4,675.34	5,764.40	6,927.18	8,694.58
Air Fares and Other Transportation Expenses:						
1988	177.02	183.87	281.93	390.06	445.27	830.29
1991	177.78	243.39	265.29	398.48	417.77	907.42
1992	149.61	226.92	334.70	319.65	475.46	1,000.63
Average	168.14	218.06	293.97	369.40	446.17	912.78
Miscellaneous:						

APPENDIX 4.—CONSUMER EXPENDITURE SURVEYS—Continued

[Pre-published Data for All Consumer Units Nationwide *]

	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
1988	2,421.18	3,159.62	3,955.36	5,414.71	7,030.39	10,554.42
1991	2,831.11	3,165.50	4,318.05	5,771.11	7,086.75	12,656.03
1992	2,530.29	3,280.40	4,349.33	5,801.25	7,754.49	12,924.24
Average	2,594.19	3,201.84	4,207.58	5,662.36	7,290.54	12,044.90
Health Care:						
1988	1,385.50	1,299.71	1,328.49	1,367.25	1,531.77	1,568.44
1991	1,350.11	1,422.83	1,559.13	1,612.87	1,690.72	2,137.27
1992	1,409.04	1,652.24	1,647.83	1,711.96	1,953.77	2,262.82
Average	1,381.55	1,458.26	1,511.82	1,564.03	1,725.42	1,989.51
Cash Contributions:						
1988	352.83	486.72	529.28	781.16	956.30	2,102.92
1991	764.72	647.89	728.00	863.26	986.19	2,418.40
1992	509.71	515.63	688.17	834.21	1,424.12	2,515.30
Average	542.42	550.08	648.48	826.21	1,220.20	2,345.54
Personal Insurance:						
1988	682.85	1,373.19	2,097.59	3,266.30	4,542.32	6,883.06
1991	716.28	1,094.78	2,030.92	3,294.98	4,409.84	8,100.36
1992	611.54	1,112.53	2,013.33	3,255.08	4,376.60	8,146.12
Average	670.22	1,193.50	2,047.28	3,272.12	4,442.92	7,709.85

* Data may not be statistically significant.
Source: Bureau of Labor Statistics.

APPENDIX 5.—ITEM DESCRIPTIONS

Food at Home:	
Ground Beef	Price per lb. of regular ground beef. Average size package. Loose, prepackaged. Do not price lean, ground chuck, or ground round.
Round Steak, boneless	Price per lb. Average size package. 1st choice: Boneless top round steak. 2nd choice: Boneless bottom round steak.
Round Roast, boneless	Price per lb. Average size package. 1st choice: Boneless top round roast. 2nd choice: Boneless rolled rump roast.
Pork Chops, bone in	Price per lb. Average size package. 1st choice: Center cut, rib chops with bone. 2nd choice: Loin chops with bone.
Bacon, sliced	Price for 16 oz. (1 lb.) package *Oscar Mayer* regular sliced bacon.
Chicken, whole	Price per lb. of 1 whole fryer chicken. If whole fryer not available, price a whole fryer chicken, cut up.
Fish Filet, frozen	Price per lb of frozen ocean whitefish filet. 1st choice: Cod. 2nd choice: Haddock.
Tuna, canned	Price for 6.13 oz. can chunk light, packed in water. (Not fancy style.) 1st choice: *Star Kist.* 2nd choice: *Chicken of the Sea.*
Lunch Meat	Price for 8 oz. pkg., *Oscar Mayer.* 1st. choice: Bologna. 2nd choice: Cotto salami or all-beef bologna.
Ham, canned	Price for 3 lb. tin of canned ham. 1st choice: *Hormel.* 2nd choice: *Dubuque.* Do not price *Hormel's* Supreme Cut ham.
Frankfurters	Price for 16 oz. (1 lb.) package, *Oscar Mayer* all beef frankfurters.
Eggs, large	Price for one dozen.
Fish, fresh	Price per lb. of a salmon steak.
Milk, 2%	Price for one gallon (128 fluid oz.), 2% store brand.
Cheddar Cheese	Price for 10 oz. package. 1st choice: *Kraft Cracker Barrel* mild cheddar cheese. 2nd choice: *Kraft Cracker Barrel* sharp yellow cheddar cheese.
Ice Cream	Price for ½ gallon of the store brand vanilla ice cream. Do not price ice milk.
Bread, white	Price for 16 oz. loaf of sliced, white bread. Do not price store brand. 1st choice: Wonder. 2nd choice: A regional brand.
Spaghetti, dry	Price for 16 oz. box or bag of spaghetti. 1st choice: *Creamettes.* 2nd choice: *Muehler's.* 3rd choice: *Golden Grain.* 4th choice: *American Beauty.*

APPENDIX 5.—ITEM DESCRIPTIONS—Continued

Cereal	Price for 20 oz. box of Raisin Bran. 1st choice: *Post Raisin Bran.* 2nd choice: *Kelloggs Raisin Bran.* 3rd choice: *Cheerios.* Do not price a size significantly different from 20 oz.
Cookies	Price for 20 oz. package of *Nabisco Oreo Cookies.*
Frozen Waffles	Price *Kellog's Eggo Waffles,* price 12 waffle package. Do not price a smaller size if a substitute brand is available of the equivalent size.
Hamburger Buns	Price for 12 ox. (340 grams) package of 8 sliced regional brand enriched white hamburger buns. Do not Price store brand. 1st choice: Wonder. 2nd choice: A regional brand.
Donuts	Price for box of 10 donuts weighing approximately 14 oz. Do not price fresh donuts from in-store bakery. 1st choice: *Hostess* chocolate-covered donuts. 2nd choice: Some other type of *Hostess* boxed donuts.
Apples, fresh	Price per lb. of apples, loose (not in bag). If only bagged apples are available, report the weight of the bag. 1st choice: Red delicious apples. 2nd choice: Golden delicious.
Bananas, fresh	Price per lb. If bananas are priced by the bunch, report the price and weight of the bunch-use the store's scale if necessary.
Tomatoes, fresh	Price per lb. Price medium-size tomatoes if possible. Do not price organic or 'hydro' fresh tomatoes.
Potatoes	Price of 10 lb. bag of Russet baking potatoes. Do not price loose potatoes. If 10 lb. bag is not available, substitute nearest size bag.
Frozen Orange Juice	Price for 12 fluid oz. (makes 48 fluid oz.) can of *Minute Maid* frozen orange juice concentrate.
Tomatoes Juice	Price for 46 fluid oz. can of tomato juice. 1st choice: *Campbell's.* 2nd choice: *Libby's.*
Peaches, canned	Price for 16 oz. can of sliced yellow cling peaches. 1st choice: *Del Monte.* 2nd choice: *Libby's.*
Peas, frozen	Price for 16 oz. pkg. of *Green Giant* frozen peas. Do not price peas with sauce. 1st choice: *Green Giant.* 2nd choice: *Hanover.*
Green Beans, canned	Price for 16 oz. can of cut green beans. 1st choice: *Del Monte.* 2nd choice: *Green Giant.*
Oranges, fresh	Price per lb. of loose navel oranges. If only bagged oranges are available, report the weight of the bag. 1st choice: California navel oranges. 2nd choice: Florida navel oranges.
Lettuce, fresh	Price per lb. of iceberg lettuce. If lettuce is sold by the head, report the *price* and the *weight* of an average head and try to find equivalent size heads at each store.
Celery, fresh	Price per lb. for celery. Do not price celery hearts. If celery is only sold by the bunch, report the *price* and *weight* of an average bunch, and try to find equivalent size bunches at each store.
Fruit Drink	Price for 46 fluid oz. can. 1st choice: *Hawaiian Punch.* 2nd choice: *HI-C,* regular.
Soft Drink	Price of 2 L (liter) plastic bottle. 1st choice: *Coca-Cola.* 2nd choice: *Pepsi.*
Coffee, ground	Price for 13 oz. can of ground coffee. 1st choice: *Folger's Drip Grind.* 2nd choice: *Maxwell House.*
Canned Soup	Price for one can *Campbell's soup.* 1st choice: Vegetable 10½ oz. 2nd choice: Chicken Noodle 10¾ oz.
Snack Food	Price for 6 oz. bag or box of potato chips. 1st choice: *Ruffles.* 2nd choice: *Lays Dip Chips.*
Salt	Price for 26 oz. box of iodized salt. 1st choice: Morton. 2nd choice: Ivory. 3rd choice: Private Label.
Ketchup	Price for 28 oz. plastic squeeze bottle of ketchup. 1st choice: Heinz. 2nd choice: Del Monte.
Cooking Oil	Price for 48 fluid oz. bottle. 1st choice: Crisco. 2nd choice: Wesson.
Margarine	Price for 1 lb., four sticks. 1st choice: Blue Bonnet.

APPENDIX 5.—ITEM DESCRIPTIONS—Continued

	2nd choice: Parkay.
Frozen Dinner	Price for 11.5 oz. (326 grams) Swanson-Turkey, whipped potatoes, peas, and fruit compote, frozen dinner.
Jello Gelatin	Price for 3 oz. box of Jello Gelatin dessert.
Baby Food	Price for one 4.0 oz. jar of Gerber Second Foods strained vegetable or fruit.
Candy Bar	Price for one regular size candy bar. Do not price king-size or multipack candy bars.
	1st choice: 2.07 oz. Snickers.
	2nd choice: 1.55 oz. Hersheys.
Sugar, granulated	Price for 5 lb. bag of granulated cane or beet sugar. Do not price generic sugar.
	1st choice: Nonstore brand.
	2nd choice: Store brand.
Bottled Water	Price for one gallon (store brand) (128 fluid oz.) bottled spring water. Do not price sparkling or distilled water.
Food Away from Home:	
Breakfast	Price for breakfast consisting of 2 strips of bacon or 2 sausages, 2 eggs, toast, and coffee or juice. Report percentages added for tax, tip and service charge.
Lunch	Price for lunch consisting of a cheeseburger platter with fries and small soft drink. Report percentages added for tax, tip and service charge.
	One personal-size cheese pizza (or one slice of cheese pizza). Do not price salad or drink. Include gratuity.
Dinner	Price for a dinner consisting of a New York strip, small side dish (e.g., rice or potato), side salad or salad bar, and coffee. Meal should not include dessert. Report percentages added for tax, tip and service charge.
	One medium cheese pizza with regular crust (not thin or extra thick) and no extra toppings. Do not price salad or drink. Include gratuity.
Fast Food Lunch/Diner	Price of a meal at a fast food establishment. Price for a Big Mac or Whopper, medium french fries and medium coke. Price a combo meal, if a suitable one is offered.
Ice Cream Cone	Price for regular (one scoop) vanilla ice cream cone.
Tobacco:	
Cigarettes, king size	Price for 1 carton (200 cigarettes) of Winston filter kings soft pack. Do not include sales tax.
Alcohol:	
Beer at Home	Price for a six-pack of 12 oz. cans of Budweiser (Puerto Rico—10 oz). Do not price refrigerated beer.
Wine at Home	Price for 750 ml. of Gallo white Chablis blanc.
Beer Away	Price for glass of *Budweiser/Miller Lite* beer. List percent for tax.
Wine Away	Price of house white wine. List percent for tax.
Furnishings, Households Operations:	
Appliance Repair	Price to replace digital clock and heating probe for *Maytag* oven Model #CRE9400ACL, Serial #1000100HB, Series #10. Include hourly rate, trip charge and parts cost.
Housekeeping Services	Price per hour for biweekly cleaning. House approximately 2,000 sq. ft. Family size four. Please complete items in the Comment Section. Services include the following:
	Bathroom(s)—Sanitize walls, floor, counter tops, bathtub, stool
	Kitchen—Sanitize walls, floor, counter tops, cabinets, appliances
	Living Room & Dining Room—Dust, polish furniture and vacuum
	Bedrooms—Dust, polish furniture and vacuum.
	If other services are included, please note.
Moving	Price per hour for a within-city move, two men with enclosed van. Include any van rental fees.
Toilet Tissue	Price for a 4 roll pack.
	1st choice: *Cottonelle*.
	2nd choice: *Northern*.
Pen	Price for 10 pack *Bic* round stick medium pen.
Postage	Price for First Class postage for a letter.
Laundry Soap	Price for 100 fluid oz. of liquid household laundry detergent.
	1st choice: *Tide*.
	2nd choice: *Cheer*.
Plant Food	Price for 8 oz. container of indoor plant food.
	1st choice: *Miracle Grow*.
	2nd choice: *Peters*.
Bed Sheet Set	Price for one set queen-size no-iron cotton & polyester percale sheets (180 thread count). One set consists of one fitted sheet, one flat sheet and two pillowcases. Do not price designer sheet sets. Price sheet sets with minimum design.
Bath Towel	Price for a 2750 inch *Cannon* Portofino bath towel made of 100% cotton.
Living Room Chair	Use catalog descriptions and stock numbers. Note that shipping is to be included.
Bedroom Group	Use catalog descriptions and stock numbers. Note that shipping is to be included.
Dining Room Table	Use catalog descriptions and stock numbers. Note that shipping is to be included.
Washing Machine	Price for large capacity washing machine with 4 water temperatures, 8 wash cycles, 4 water levels, white porcelain tub, self-clean lint filter, fabric softener dispenser and 2 speed combinations.
	1st choice: *Maytag* Model #LAT9604.
	2nd choice: *General Electric* Model #WWA8600.
	3rd choice: *Whirlpool* Model #LLR6233B.
Kitchen Range	Price for 30-inch electric range with upswept cooktop, removable coil elements, electronic clock with timer, oven light, delay-start cook control, storage drawer, self-cleaning oven with two oven racks and a porcelain enamel broiler pan.
	1st choice: *Maytag* Model #CRE9400.

APPENDIX 5.—ITEM DESCRIPTIONS—Continued

	2nd choice: *General Electric* Model #JBP55GS. 3rd choice: *Whirlpool* Model #RF385PXYW.
Refrigerator	Price for no-frost top-mount 21 cubit ft. refrigerator with reversible doors and energy saver switch, 4 split glass shelves, sealed/moisture controlled crisper drawers, and double wall meat drawer. Door contains covered compartments and adjustable bins. Freezer has adjustable wire shelves, door bins and ice trays. Do not price models with ice cube makers, chilled water dispensers, or other extras. 1st choice: *Maytag* Model #RTD2100CAE. 2nd choice: *General Electric* Model #TBX22PAS. 3rd choice: *Whirlpool* Model #ET22PKXB.
Vacuum	Price for upright vacuum cleaner with 6.5 amps, 120 volts, six above-the-floor attachments, height adjustment, regular bag and 20-foot cord. 1st choice: *Ereka* Model #9334AT. 2nd choice: *Hoover* model #U4671–930.
Two-Slice Toaster	Price for two-slice toaster, chrome body, wide slot with pastry defrost setting. 1st choice: *Proctor-Silex* Model #T620B. 2nd choice: *Black Decker* Model #T200.
Casserole Dish Set	Price for *Corning-Ware* trio casserole set with 1 qt., 1.5 qt., and 2 qt. dishes and 3 covers (two plastic covers and one glass).
China	Price for the *Corelle Impressions* line *Abundance* pattern tableware set. Set consists of 20 pieces: 4 dinner plates, 4 luncheon plates, 4 bowls, 4 cups, and 4 saucers. The pattern is beige with a fruit and flower motif.
Electric Drill	Price for 6.0 volt reversible cordless electric drill with overnight recharge. 1st choice: *Black & Decker* Model #CD2000. 2nd choice: *Skil* Model #2305
Red Roses, fresh cut	Price for one dozen long stemmed, fresh cut red roses.
Hammer	Price for *Stanley* curved claw hammer with a 16 oz. head, wood handle, high carbon steel head, black finish. Overall length 13 ¼''. Do not price hammers with nonwooden handle or hammers typically used by carpenters or cabinet makes. 1st choice: Model #51616. 2nd choice: Model #51416.
Window Shade	Use catalog descriptions and stock numbers. Note that shipping is to be included, if charged.
Toilet Lid Cover	Price for *Cannon* Portofino standard toilet lid cove made of 100% nylon.
Snow Blower	Price for a *Honda* Model H5825 (or this year's equivalent) 8 HP two-stage gas snow thrower with rubber tracks and hydrostatic transmission.
Clothing:	
Man's Suit	Use catalog descriptions and stock numbers. Note that shipping is to be included, if charged.
Man's Jeans	Price of straight leg regular fit jeans. Do not price bleached jeans. 1st choice: *Levi's* #505. 2nd choice: *Lee* regular fit.
Man's Dress Shirt	Price for white or solid color, long sleeve, button cuff, plain collar dress shirt, approximately 35% cotton, 65% polyester. A dress shirt will have exact collar and sleeve sizes. Example: 15½ collar, 34 sleeve. Possible brands: *Arrow, Van Heusen.*
Man's Parka	Use catalog descriptions and stock numbers. Note that shipping is to be included, if charged.
Boy's Jeans	Price of loose fit jeans (size 8–14). 1st choice: *Levi's* #560. 2nd choice: *Lee* loose fit.
Boy's Shirt	Price for screen-printed T-shirt commonly worn by boys age 8 through 10 years (size 7–14). Pullover with crew neck, short sleeves and polyester/cotton blend. Possible brand: *Ocean Pacific.*
Man's Insulated Underwear	Price for white light weight, crew neck thermal underwear top of cotton and polyester. Possible brands: *J. E. Morgan, Hanes.*
Woman's Dress	Price for misses mid-sleeve shirt waist dress appropriate for office attire. Exclude any unusual ornamentation. The dress should be unlined and 100% rayon. Possible brands: *Stewart Allen, Lesley Fay.*
Woman's Blouse	Price of 100% polyester, white, long sleeve, button front, blouse with minimum trim. Possible brands: *Wrapper, Girls, Girls, Girls.*
Woman's Slacks	Price for misses unlined slacks appropriate for office attire. The slacks should be a blend of cotton and polyester without a belt. Possible brands: *Donnkenny, Alfred Dunner.*
Woman's Sweater	Use catalog descriptions and stock numbers. Note that shipping is to be included, if charged.
Woman's Coat	Use catalog descriptions and stock numbers. Note that shipping is to be included, if charged.
Woman's Accessories	Price for split-grain, cowhide leather, checkbook clutch wallet. Possible brands: *Michael Stevens, Mundi.*
Girl's Dress	Price of cotton blend long-sleeve appropriate for school. Exclude extra ornamentation. For girls ages 8 through 10 (size 7–14). Possible brand: *Carter's.*
Girl's Jeans	Price of *Levi's* #550 jean. For girls ages 8 through 10 years (size 7–14).
Girl's Blouse	Price of cotton blend, white or solid color, long sleeve, button front blouse. For girls ages 8 through 10 years, (size 7–14). Possible brand: *This Side Up.*
Infant's Sleeper	Price for one-piece sleeping garment with legs, covering the body including the feet.

APPENDIX 5.—ITEM DESCRIPTIONS—Continued

	Possible brands: *Gerber, Playskool.*
Disposable Diaper	Price for 40 count package *Pampers,* (child 12–18 lbs.). Do not price larger size diapers.
Man's Boots	Price for 8 inch waterproof, insulated leather boot with cambrelle lining. Possible brands: *Timberland, Hermam.*
Woman's Boots	Price for calf height boot with pile or fleece lining, urethane upper, side zipper, broad-based one-inch heel, and non-skid traction sole. Possible brand: *Naturalizer.*
Jewelry	Price for one pair 6mm 14K gold ball earrings for pierced ears.
Coin Laundry	Price for one load of laundry using a regular size, top loading commercial washing machine. Do not include cost of drying.
Dry Clean Man's Suit	Price to dry clean a man's 2-piece business suit of typical fabric.
Domestic Service:	
Day-Care	Price for one *month* of day-care for a three-year-old child (5 days a week, about 8 hours per day). If monthly rate is not available, price per week.
Babysitter, per hour	Average hourly rate for one child, age four years, evening, before midnight. (Teenager in your home.) Do not price babysitting service. Special Instructions: If typical for your area, you may wish to obtain quotes from friends/acquaintances in your area who use teenage babysitters.
Professional Services:	
Legal Services	Hourly rate for general counsel.
Accounting Services.	Hourly rate for individual tax work (not business). Price rate for Federal 1040 tax form service with typical itemized deductions.
Personal Care:	
Woman's Cut and Styled Blow Dry	''Regular service'' price for a woman's cut and styled blow dry. Include wash. No curling iron if extra charge.
Man's Haircut	Price of a man's typical haircut. Do *not* include wash.
Lipstick	Price for one tube of *Revlon* lipstick. 1st choice: *Super Lustrous.* 2nd choice: *Moondrops.*
Shampoo	Price for 15 fluid oz. bottle of *Revlon Flex* shampoo for normal hair.
Recreation:	
Bowling	Price for 1 game of open (or nonleague) bowling on Saturday night. Exclude cost of shoe rental.
Movie Theater	Typical adult price for regular length, *currently release*, evening film. Report weekend evening price if different from weekday.
Health Club	Price for regular individual membership for 1 year for existing member. Do not include any initial fees assessed only to new members. If yearly rate is not available, price per month.
Piano Lessons	Price for private lessons for a beginner one-half hour in length.
Downhill Skiing	Price for one lift ticket on Saturday.
Roller Skating	Price for one session of open skating on Saturday night. Include the cost of skate rental.
Video Rental	Price to rent one video tape of recently released movie, Saturday night (1 day) rate. Nonmember fee.
Video Recorder	Price for VCR with 4 video heads, double azimuth, unified TV/VCR remote, one-year eight event timer, auto tracking, LED display, and HI-FI stereo. 1st choice: *Zenith* Model #VRM4120 2nd choice: *Sony* Model #SLV720HF
Compact Disc	Regular price for a current best-selling CD. Not sale price. Do not price double CD. Please record title in comment section. Example: *VS,* by Pearl Jam, *Purple* by Stone Temple Pilots.
Compact Disc Player	Price 5 disc CD player with rotary changer system, 10 key access, 32 track programming, 8 times oversampling, and a remote. 1st choice: *Sony* Model #CDPC545 2nd choice: *Panasonic-Technics* Model #SLPD867
Color Television	Price for 20'' table model color TV with a remote, auto channel search, closed captions, sleep timer, on-screen channel/time and menus, channel flashback, and 181 channel tuning. 1st choice: *Zenith* Model #SM52049. 2nd choice: *Sony* Model #KV20TS29.
Basic Cable Service	Price for one month of basic cable channel TV. Record the number of channels offered. If basic service provides 12 or fewer channels, price the next level of service. Do not include hookup charges or premium (e.g., ''movie'') channels.
Veterinary Services	Typical fee for general office visit for a heartworm test for a small dog. Include the cost of the office visit.
Pet Food	Price for 5.5 oz. can of cat food. 1st choice: *Purina.* 2nd choice: *9 Lives.*
Film Developing	Price to process and print 35 millimeter, 24 exposure, 100 ASA color. Single prints only please.
Camera Film	Price for 35 millimeter, 24 exposure, 100 ASA *Kodak* camera film.
Tennis Balls	Price for can of three heavy-duty felt, yellow, tennis balls. 1st choice: *Wilson.* 2nd choice: *Penn.*
Board Game	Price for Monopoly board game by *Parker Brothers.* Do not price deluxe edition.
All-Terrain Vehicle	Price for Honda 300EX, 2-wheel drive all-terrain vehicle.
Book	Price for top ten best selling paperback book.
Magazine	Price for a single copy of *Time* magazine.

APPENDIX 5.—ITEM DESCRIPTIONS—Continued

Local Newspaper	Price for one year of the most common daily paper (including Sunday edition) distributed in the area. Report the name of the newspaper in the comment section.
Miscellaneous Expense Component:	
Pain Reliever	Price for 60 tablets of extra-strength *Tylenol.* Do not price caplets or gelcaps.
Tetracycline, prescription	Price of 40 capsules of generic tetracycline, 250 milligram strength.
Optometrist, office visit	Typical fee for visual analysis including tonometry, refraction and glaucoma screening.
Dentist, clean and check teeth	Charge for x-rays, exam and prophylaxis (light scaling and polishing) or ''cleaning of teeth'' without special treatment of gums or teeth. Do not price initial visit.
Doctor, office visit	Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is needed. Do *not* include the charge for a regular physical examination, injections, medication or lab tests (routine brief visit). Price general practitioner, do not price specialist.
Hospital Room	Daily charge for a private room. Include food and routine care. *Exclude* cost of operating room, surgery, medicine and lab fees.
Housing-Related Component:	
Bathroom Caulking	Price a 5.5 ounce plastic tube of latex white bathroom caulking. Do not price caulking gun cartridge. 1st choice: *DAP Kwik Seal Tube & Tile.* 2nd choice: An equivalent size and quality caulk.
Computation of Electric Bill	Average monthly consumption: Customer service charge (single phase service): Cost for first KWH: Cost for over first KWH: Other items included on bill: Comments:
Computation of Gas Bill	Average monthly consumption: Customer service charge: Cost for first Cu. Ft.: Cost for over first Cu. Ft.: Other items included on bill: Comments:
Computation of Water Bill	Average monthly consumption: Customer service charge: Cost for first _____ Gallons: Cost for over _____ Gallons: Other items included on bill: Comments:
Electrical Outlet	Price of a 2-plug grounded electrical outlet. Price blister pack or cardboard mounted (individually packaged). Do not price loose electric outlet. 1st choice: *GE.* 2nd choice: *Levitron.*
Electrical Work	Price of labor to add circuit breaker for dishwasher. Cut ¾-inch hole in wooden floor cable. Connect dishwasher directly to power box (power box is easy to reach). Exclude cost of materials.
Fire Extinguisher	Please price a fire extinguisher with a UL rating of 10BC, 2.5 pound size. 1st choice: *Kidde.* 2nd choice: An equivalent size and quality 10BC fire extinguisher.
Interior Painting	Price of labor to paint 12′ 14′ living room with 8′ ceilings. Walls are plaster or drywall in good repair. Two standard sized sash windows, one picture window, one standard wood door. Rooms have simple wood baseboards and trim. Existing paint is latex, flat white, smooth finish, about three years old. Trim paint is latex, white, gloss enamel, about three years old. Walls and trim require no surface preparation. Obtain labor rate per hour, flat charge if any, and estimated time to complete job. Assume job takes 8 hours. Exclude cost of materials.
Latex Interior Paint	Please price one gallon white, interior flat latex paint. Price a national brand with one coat coverage. 1st choice: *Dutch Boy.* 2nd choice: *Glidden.*
Pest Control	Price for basic pest control maintenance (one visit to control crawling insects, not wood eating), based on the inside of a 1,200 sq. ft. single story home. Price followup maintenance only, *not* the initial application.
Unclog Drain	Price of labor to unclog kitchen sink drain by mechanical means (snake, auger, etc.). Only include pipe removal to access trap if necessary. Assume clog is in the plumbing inside the house, not in the yard. Exclude cost of material, if any.
Kitchen Faucet	Price a *Peerless* single control chrome-plated faucet *with* spray. Faucet is solid brass and stainless steel quality construction with copper waterways, washerless design and triple chrome plating. Warrantied for as long as the home is owned.
Real Estate Taxes	Call the local tax assessor office and/or local tax collector/treasurer for each living community in the report. Request the current real property tax rate, any special charges that are added to the tax bill and any homestead credits that might be deducted from the bill. Ask when properties were last assessed and what base year tax rate should be applied to. Request information as to what month rates are certified and when bills are mailed. Verify any significant increases or decreases from previous records.
Long Distance Telephone	Price the cost of a 10-minute call using AT&T, received on a weekday, at each location at 8:00 p.m. (local time); direct dial from the location being surveyed to each of the following cities: New York, Chicago and Los Angeles. Include any federal, state, local or excise tax that is applicable.
Telephone Service	Obtain monthly cost for unmeasured service, for touchtone service, and for tax.

APPENDIX 5.—ITEM DESCRIPTIONS—Continued

Homeowner Insurance	For each community surveyed, secure the annual *renewal* premium for HO–2 type coverage. If the company does not refer to the coverage as HO–2, obtain the cost of a comprehensive coverage that covers ''all risk for dwelling and named peril for contents'' with contents at replacement value.
Renter Insurance	For each living community surveyed, provide renter housing profile and insurance cost (semiannual or other). Assume HO–4-type coverage.
Homeowners:	
The profiles for each of the home sizes costed are as follows:	
Low	900 (Sq. Ft.)
Mid	1,300 (Sq. Ft.)
High	1,700 (Sq. Ft.)
The worksheet components for data collection are as follows:	
(1) Address	
(2) Selling Price	
(3) Sale Date	
(4) Age	
(5) Room Count (broken down into bedrooms and baths)	
(6) Square Footage	
(7) Price Per Square Foot	
Information was collected through various sources—Real Estate Professionals, Appraisers, MLS data, assessors' offices and private sources.	
Data Collection for Aged Mortgages:	
The worksheet components for data collection for aged mortgages are as follows:	
(1) Address	
(2) Selling Price	
(3) Sale Date	
(4) Age	
(5) Room Count (broken down into bedrooms and baths)	
(6) Square Footage	
(7) Price Per Square Foot	
Transportation Component:	
Vehicles	1995 Honda Civic DX four door sedan, 1.5 Liter 4 Cylinder. 1995 Ford Taurus GL four door sedan, 3.0 Liter 6 Cylinder. 1995 Chevrolet S10 Blazer Two Door, four wheel drive, 4.3 Liter 6 Cylinder.
Base Price	Obtain the base price (Manufacturer's Suggested Retail Price) for each vehicle.
Options	For each vehicle, price the following options: air conditioning, AM/FM stereo radio, power steering, tinted glass, power disc brakes, rustproofing, heavy duty battery (Alaska only), and engine block heater (Alaska only).
Fees	For each vehicle, price the following options: destination charge, shipping charge, dealer markup, documentation fees and other one-time fees.
Taxes	For each vehicle, price the following taxes: excise tax, import/customs tax, use tax, sales tax and other one-time taxes.
Specifications	For each vehicle, obtain the following information: length, wheelbase, tires, curb weight, horsepower, fuel type and fuel performance (mpg).
Depreciation	For each vehicle, compute the residual value after 12, 24, 36 and 48 months respectively.
Gasoline	For each station name/brand, price regular unleaded self-service in the Washington, DC area surveys and full service in the Alaska area surveys.
Tuneup	For each vehicle, price a basic tuneup. Include parts and labor for the following: replace spark plugs, PCV valve, fuel filter, air filter, and breather filter. Check distributor cap, rotor, timing, and idle.
Oil Change	For each vehicle, price an oil change. Include parts and labor for the following: drain old oil, replace oil filter and refill with five quarts of 10W30 SG grade oil. If SG grade is unavailable, price SF grade oil.
Change Automatic Transmission Fluid.	For each vehicle, price to change automatic transmission fluid. Include parts and labor for the following: remove transmission pan, drain transmission fluid, replace transmission filter, replace transmission pan gasket, replace transmission fluid, and test vehicle.
Coolant Flush and Fill	For each vehicle, price to flush and fill engine coolant. Include parts and labor for the following: remove old coolant, flush contaminants, and replace with new coolant.
Muffler System	For each vehicle, price a complete muffler system for a 3-year-old vehicle. Include parts and labor for the following: install all parts after the catalytic converter. These parts include mid pipes, clamps, muffler, and tail pipes.
CVJ Boot Replacement	For each vehicle, price the replacement of all four constant velocity joint (CVJ) boots on the front of the vehicle, for a 3-year-old vehicle.
Miscellaneous Tax	For each vehicle, price miscellaneous tax. Tell how rate is determined, give formula for new vehicle purchase, give formula for subsequent year (2 to 5) and explain billing.

APPENDIX 5.—ITEM DESCRIPTIONS—Continued

Regular Tires	Price for a Black Side Wall (BSW) P175/70R13 tire for the Honda Civic, a BSW P205/65R15 for the Ford Taurus L, and a BSW P205/75R15 for the Chevrolet S10 Blazer in DC area. In Alaska, same tire sizes, but Goodyear brand not always available due to limited outlet selection. If suggested brand tires are not available, price comparable brand tire. Tire retailer should provide comparable tire, given the suggested tire brands and models. Suggested brands: *Goodyear Invictia GL* (Honda, Ford), *Goodyear Wrangler AT* (Chevrolet). Comparable brands: *Michelin LX1* (Honda), *Michelin XW4* (Ford), *Michelin XCHF* (Chevrolet), *B.F. Goodrich Touring TA* (Honda, Ford), *B.F. Goodrich Radial TA* (Chevrolet).
Studded Snow Tires	Price for a studded snow tire. Price for a P175/70R13 tire for the Honda Civic (Anchorage, Fairbanks, and Juneau); a P205/65R15 for the Ford Taurus L (Anchorage, Fairbanks, and Juneau); and a P205/75R15 for the Chevrolet S10 Blazer (Anchorage, Fairbanks, Juneau and Nome). If suggested brand tires are not available, price comparable brand tire. Tire retailer should provide comparable tire, given the suggested tire brands and models. Suggested brands: *Goodyear Ultra Grip.*
License and Registration	For each vehicle, price title fee, passenger vehicle registration fees, plate fees, inspection fees, administration/clerical/other fees and local added fees. Specify if one-time or annual. List any exceptions if the Blazer is not registered as a passenger vehicle.
Automobile Finance	Obtain the rate for a four-year loan based on a down payment of 20 percent. Assume the loan applicant is a current bank customer who will make payments by cash/check and not by automatic deduction from the account.
Automobile Insurance	For each vehicle, price insurance coverage identified below. Assume the vehicles are used in commuting 15 miles/day, 12,000 miles/year and that the driver is a 35-year-old married male with no accidents or violations in the last five years. When there is a geographic difference, obtain rates for two different living communities. Include related expense fees taxes. Bodily Injury: $100,000/$300,000 Property Damage: $25,000 Medical $15,000 or Personal Injury Protection: $50,000 Uninsured Motorist: $100/$300,000 Comprehensive: $100 Deductible Collision: $250 Deductible
Round-Trip Airfare	Price for lowest cost round trip ticket to Los Angeles, CA. Disregard restrictions.

APPENDIX 6.—PRICING CHANGES

[Goods and Services/Miscellaneous Expense/Housing Related]

Previous	Current	Reason
1. Cheddar Cheese:		
Per pound	10 oz. package	New packaging.
2. Ice Cream:		
Half gallon of Sealtest vanilla ice cream	Half gallon of store brand vanilla ice cream.	Specific brand not available in all areas.
3. Cereal:		
18 oz. box of Kellogg's Corn Flakes	20 oz. box of Raisin Bran	Item change per OPM request.
4. Donuts:		
12 glazed	10 chocolate covered	Discontinued.
5. Potatoes:		
10 lb. bag of white potatoes	10 lb. bag of Russet baking potatoes	More specific item.
6. Pizza Lunch:		
Not surveyed	One personal-size cheese pizza (or one slice of cheese pizza).	New item per OPM request.
7. Pizza Dinner:		
Not surveyed	One medium cheese pizza with regular crust (not thin or extra thick) and no extra toppings.	New item per OPM request.
8. Appliance Repair:		
Price to replace oven thermostat control for *Maytag* Model #CRE9400. Include hourly rate, trip charge, and parts cost. Part Number #7430P010–60.	Price to replace digital clock and heating probe for *Maytag* Model #CRE9400 ACL, Serial #1000100HB, Series #10. Include hourly rate, trip charge and parts cost.	More comparable item.
9. Washing Machine:		
3 wash cycles	8 wash cycles	Better description.
Maytag #LAT7793	Maytag #LAT9604	New model number.
General Electric #WWA7600R	General Electric #WWA8600	New model number.
Whirlpool #LLR6233A	Whirlpool #LLR6233B	New model number.
10. Kitchen Range:		
General Electric #JBP5565	General Electric #JBP55GS	Model number clarification.
11. Refrigerator:		
Whirlpool #ET22RKXZ	Whirlpool #ET22PKXB	New model number.
12. Vacuum:		
Hoover #U4671–910	Hoover #U4671–930	New model number.

APPENDIX 6.—PRICING CHANGES—Continued

[Goods and Services/Miscellaneous Expense/Housing Related]

Previous	Current	Reason
13. Snow Blower:		
Price for 8 HP two-stage gas snow thrower with rubber tracks, 6 forward, 2 reverse speeds and adjustable snow chute.	Price for a Honda, Model H5825 (or its this year's equivalent) 8 HP two-stage gas snow thrower with rubber tracks and hydrostatic transmission.	More specific item.
14. Girl's Jeans:		
Price of Levi's #902 basic relaxed taper jean, two back pockets and two front pockets.	Price of Levi's #550	Discontinued.
15. Disposable Diapers:		
44 count	40 count	Product marketing change.
16. Video Recorder:		
Zenith #VRL4110	Zenith #VRM4120	New model number.
Sony #SLV700HF	Sony #SLV720HF	New model number.
17. Compact Disc:.		
''Janet'' by Janet Jackson	''VS.'' by Pearl Jam	Current bestselling titles.
''Unplugged'' by Rod Steward	''Purple'' by Stone Temple Pilots.	
18. Compact Disc Player:		
Sony #CDPC535	Sony #CDPC545	New model number.
Panasonic-Technics #SLPD847	Panasonic-Technics #SLPS867	New model number.
19. Color Television:		
Zenith #SLS2049	Zenith #SMS2049	New model number.
20. Bathroom Caulking:		
Price an 8 ounce tube of specific white bathroom caulking, most popular brand.	Price a 5.5 ounce plastic tube of latex white bathroom caulking. (*Not* a caulk gun cartridge.) Suggested brand: DAP KWIK SEAL Tub and Tile.	New size and more description.

Appendix 7.—Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures

Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

Purpose

The Federal Government pays cost-of-living allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing costs of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington DC area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program.

Data Collection

OPM, or its representative, conducts annual Price Surveys to determine living cost differences. Local governments, retail outlets, realty firms, and businesses providing professional and other services to be surveyed are identified through the use of full-scale Background Surveys, conducted approximately once every five years. Participation in the Price Surveys is voluntary. Data are collected by telephone and/or personal interview.

Wherever practical and appropriate, the price of each good or service is obtained from at least three outlets in each allowance area and at least six outlets in the reference area (i.e., the Washington, DC, area). Realty data may be obtained from one or multiple sources, as appropriate.

Release of Information

The price data collected from participating firms may be made available to Congress or to the general public upon request. This includes the name of the company and prices of items or services surveyed. The names of proprietors, managers, or other individuals who provide price information generally will not be made public. However, the Government may release the names of individuals who, on the basis of their expertise, provide opinions or estimates.

Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 1 to 20 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room CHP 500, Washington, DC 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206–0199), Washington, DC 20503.

Nonforeign Area Cost-of-Living Allowances Price Survey Data Collection Procedures

Interview Guidelines

Three types of information are collected in price surveys: price of goods and services, rental rates and related information, and home prices and related information. The following are the typical interview questions used to collect these data.

Price Information Collection

1. What is the regular (non-sale) price of _____ (a specific item or service)?

Examples of items include, but are not limited to:

Chuck Roast, Bone In.
Price per pound. Average size package (e.g., not a 'family' or 'bonus' pack).
lst Choice: Arm pot roast.
2nd Choice: Eye roast.

Peas, Frozen.
Price for 10 ounce package.
lst Choice: Bird's Eye.
2nd Choice: Major brand of equivalent quality.

Men's Jeans.
Price for one pair of blue jeans.
1st Choice: Levi's #501 jeans.
2nd Choice: Equivalent quality jeans.

Automobile, New.
'Sticker' price of current year model Honda Civic, DX, four door sedan, 1.5 liter, four cylinder engine. (Price options, fees, financing, and taxes separately.)

Example of services include, but are not limited to:

Woman's Haircut and Styling.
'Regular service' price for a woman's cut and styled blow dry. Include wash, but do not include use of curling iron if there is an extra charge.

Unclog Drain.
Price to unclog kitchen drain by mechanical means (snake, auger, etc.). Only include pipe removal if necessary to access trap.

Film Developing.

Price to process and print 35 millimeter, 24 exposure, 100 ASA color roll film. Single prints only, standard size and finish.

Doctor, Office Visit.

Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is all that is needed. Do not include the charge for a complete physical examination, injections, medication, laboratory tests, or similar services.

Oil Change.

Price of a regular oil change including oil and filter for a current year model Honda Civic DX sedan, 1.5 liter, 4 cylinder engine.

2. Prices of many of the items can be obtained ''off-the-shelf'' without assistance. Occasionally, when a specific item is not available, assistance from sales or other personnel may be required to identify and price substitution items of comparable quality and quantity.

3. Prices of most services are obtained by telephone or personal interview. A few services are priced with little or no assistance. For example, prices may be obtainable from a displayed price schedule, list, or menu.

Housing Component—Rental Information Collection

1. Describe the location, size, layout, number and types of rooms, and square footage or your rental units.

2. Are they apartments, duplexes, town houses, detached houses, or other types of units? Describe.

3. Are there additional amenities (e.g., pool, sauna, tennis courts, gym)? If so, describe.

4. What is the monthly rent? What is the amount of the security deposit (if any)? What other kinds of fees or assessments are there?

5. Are utilities included? Which ones? If you can, please provide information on average monthly or annual costs of utilities paid by tenants.

6. Are term leases usually required? What are the conditions and penalties associated with the lease?

7. Are there any special restrictions or other factors we should know about (e.g., seasonal tourist trade)?

Housing Component—Information Collection for Comparable Sales

1. Describe the location, size, layout, number and types of rooms, and square footage of some of your recent home sales.

2. Were they condominiums, duplexes, town houses, detached houses, or other types of dwellings? Describe.

3. Were there any atypical characteristics (e.g., extra large lot sizes, beach front, desirable/undesirable locations)?

4. Are there additional amenities provided by the developer, homeowners association, or similar community group (e.g., pool, sauna, tennis courts, gym)? If so, describe facilities and charges.

5. What was the selling price and date of sale?

6. What are the real estate taxes?

7. Do you have any data on utilities relating to these homes?

8. In the past year or so, what has been the average appreciation rate of property in this community? Looking back over the past six years, has this rate changed? How?

9. Describe current market conditions (e.g., soft, booming, so-so). How has this affected housing prices? Describe the housing market over the past six years.

10. Are there any special considerations or other factors we should know about (e.g., retirement/tourist trade) that might affect the housing market in this community?

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Nonforeign Area Cost-of Living Price Information Collection

Survey Date: _____ Survey Area: _____ Data Collector: _____

Survey Item/Description	Outlet	Price	Wgt/Cnt	Remarks

Nonforeign Area Cost-of Living Price Information Collection

Survey Date: _____ Survey Area: _____ Data Collector: _____

Survey Item: _____

Description:

Outlet	Price	Wgt/Count	Remarks

Comments:

OMB Approved
OMB No. 3206-0199
Expires June 30, 1997

Nonforeign Area Cost-of-Living
Housing Component - Information Collection for Comparable Sales

Survey Area: _____ Community: _____ Survey Date: _____ Data Collector: _____

Address	Selling Price	Sale Date	Room Count			Square Feet	Taxes	Other	Remarks
			Total	Bed	Bath				

Comments *(include appreciation/depreciation rate and general market conditions):*

OMB Approved
OMB No. 3206-0199
Expires June 30, 1997

Nonforeign Area Cost-of-Living
Housing Component - Rental Information Collection

Survey Area: _____ Community: _____ Survey Date: _____ Data Collector: _____

Complex Address Phone #	Rental Type	Bedroom Count	Monthly Rent	Total Room Count	Square Feet	Security Deposit	Utilities	Monthly Heating Cost	Amenities	Restrictions	Total Units	Other

Remarks:

OMB Approved
OMB No. 3206-0199
Expires June 30, 1997

BILLING CODE 6325–01–C

Nonforeign Area Cost-of-Living Allowances Background Survey Data Collection Procedures

Survey Description

The following information will be provided to the participants verbally or in writing. Participants who are familiar with the program and the survey may be provided with less information as appropriate.

Purpose

The Federal Government pays cost-of-living allowances (COLA) in Alaska, Hawaii, and certain U.S. territories and possessions. Living cost differences are determined by comparing costs of goods, services, housing, transportation, and other items in the allowance area with the cost of the same or similar items and services in the Washington, DC, area. The U.S. Office of Personnel Management (OPM) is responsible for the operation of the COLA program. OPM, or its representative, conducts annual surveys to determine living cost differences. OPM conducts full-scale Background Surveys approximately once every five years to review the appropriateness of items, services, and businesses covered in the annual Price surveys. Elements of the Background Survey may be repeated annually on a limited basis as part of the maintenance of and preparation for the annual Price Surveys.

OPM uses the Background Survey to identify the services, items, quantities, outlets, and locations that will be surveyed to collect living cost data within the allowance areas and the Washington, DC, area. The Background Survey also is used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs.

Data Collection

Full-scale Background Surveys are conducted approximately once every five years. OPM identifies major manufacturers, local governments, retail outlets, realty firms, and businesses providing professional services to be surveyed on the basis of business volume and local prominence. Participation is voluntary. Data are collected by telephone and/or personal interview.

Confidentiality

All data collected are used only for the purposes described above. The Government pledges to hold all micro or ''raw'' data collected in confidence. Names of participating businesses and institutions may be released. Names of individuals are not released. Summary data will be made available to the public only to the extent that micro data cannot be associated with data sources.

Public Burden Information

Public burden reporting for this collection of information is estimated to vary from 5 minutes to 30 minutes per response. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestion for reducing this burden to Reports and Forms Management Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room CHP 500, Washington, DC 20415; and to the Office of Management and Budget, Paperwork Reduction Project (3206–0199), Washington, DC 20503.

Nonforeign Area Cost-of-Living Allowances Background Survey Data Collection Procedures

Interview Guidelines

Seven types of information are collected in background surveys. Information is collected on products and services, outlet availability and usage, transportation, local taxes and fees, mortgage, real estate, and other topics related to the measurement of living costs (e.g., specialized information from local chambers of commerce, colleges, and universities). The following are the typical interview questions used to collect these data.

Product or Service Information

1. As a major manufacturer/supplier of _____ (a specific product or service, e.g., women's apparel), please identify your items/services that are most popular (e.g., your 'volume sellers').

2. Which of these items are apt to be readily available in the following geographic locations: Alaska (i.e., Anchorage, Fairbanks, and Juneau); Hawaii; Guam; Puerto Rico; the Virgin Islands; and Washington, DC, and suburbs?

3. If the items or services are not universally available, are there other items or services that are of similar function, quality, quantity, size, and type that can be substituted?

4. Is there anything else we should know about your product or service? Are there recommendations you wish to make that would help us in our data collection?

Outlet Availability and Usage (Retail)

1. What is your product or service? What is the address(es) of your establishment(s)? If you have multiple locations, which locations have the greatest sales volumes (i.e., are most utilized by consumers)?

2. What are your store/office hours? Do these vary by location?

3. Is your full line of products or services available at all locations?

4. Is there anything else we should know about your outlet(s) or recommendations you wish to make?

Transportation Information—Private and Public Services

1. What type of transportation services do you provide (e.g., taxi, bus, subway)?

2. What geographic areas do you service? Which routes are 'typical' or most heavily utilized?

3. What is your rate structure? Does it vary by time of day or season?

4. Is there anything else we should know about transportation usage and services in your area? Are there recommendations you wish to make about our data collection?

Transportation Information—Private Use and Maintenance

1. What types of driving are most common in your area? What is the annual distance driven?

2. What types of roads and highways are common in your area? What are the road surfaces and conditions?

3. Are there unusual climatic or other factors that affect the fuel economy, maintenance, and depreciation of vehicles?

4. Is there anything else we should know about private transportation usage and maintenance in your area? Are there suggestions or recommendations you wish to make?

Local Taxes and Fees

1. What types of taxes, licenses, or fees does your State, territory, or local jurisdiction levy on real estate; personal property; sales (including sales of property); automobiles; utilities; or other goods, services, or transactions?

2. Who levies these taxes, licenses or fees (i.e., State, territory, county, city, other jurisdiction)?

3. What are the rates or schedules for these? How often and when are they levied? Do the rates/schedules vary by location, season, or other factors?

4. Is there anything else we should know about taxes and fees in your area? Are there suggestions or recommendations you wish to make?

Mortgage Information

1. What forms of home financing are most common in _____ (the allowance area or Washington DC metropolitan area)? (Do not include second mortgages.)

2. What are the typical conditions and limitations on loans?

3. What is the typical amount(s) of down payment required? What are the terms and rates?

4. Are there special subsidies or other practices that influence home financing in your area?

5. Looking back six years, what types of changes have occurred that affect home financing?

6. Is there anything else we should know about home financing in your area? Are there suggestions or recommendations you wish to make that would help us in our data collection?

Real Estate Information

1. What is the availability of housing in _____ (the allowance area or Washington DC metropolitan area)? Of principal interest is housing for typical salary and wage earners (as distinguished from retirees, tourists, or other special groups) for persons with low, moderate, and high incomes.

2. Describe the communities within your area in which persons _____ (specify occupation/income characteristics) typically live. If appropriate, identify separate communities for renters and home owners. Where are these communities located relative to the major Federal activities in the area?

3. Describe the type of housing (e.g., apartment, condominium, town house, detached house).

4. For each type of housing, what are the usual number of rooms, bedrooms, baths, total square footage, lot size, type of construction, and similar characteristics?

5. What types of utilities are available and typically used in these communities: sewer, water, natural gas, electricity, other?

6. Are there any unusual factors that might affect maintenance requirements in your area?

7. Looking back 6 years, describe the changes that significantly affected the housing market (both rental and owner markets).

8. Is there anything else we should know about the housing market in your area? Are there suggestions or recommendations you wish to make concerning our data collection?

Other Types of Information

Occasionally, it is necessary to collect information from colleges, universities, chambers of commerce, trade associations, and other groups on specific subjects relating to the analysis of living costs. For example, a university known to be involved in home energy research may be contacted to determine whether there are consumption data by region or allowance area that could have application in the COLA program.

When such data are collected, the purpose and basic structure of the interview will follow the patterns shown above. The substance, however, will vary with the subject matter.

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Nonforeign Area Cost-of-Living Background Survey Information Collection

Contact Date: _____ Survey Area: _____ Data Collector: _____

Contact
Name:
Address:
Phone #:

Purpose of Contact	
Product/Service Info.	
Outlet Availability/Usage	
Transportation Info.	
Local Taxes and Fees	
Mortgage Information	
Real Estate Information	
Other: (specify)	

Findings:

Remarks:

OMB Approved
OMB No. 3206-0199
Expires June 30, 1997

BILLING CODE 6325–01–C

APPENDIX 8.—CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Anchorage, AK; Winter 1995 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	111.65	26.40	29.48	23.49	26.23	20.65	23.05
2. Food Away From Home	106.62	14.42	15.38	14.73	15.71	15.04	16.03
3. Tobacco	86.98	3.15	2.74	2.59	2.25	2.05	1.78
4. Alcohol	121.20	2.77	3.35	2.73	3.31	2.69	3.26
5. Furnishings & Household Operations	96.07	14.71	14.13	15.79	15.17	16.85	16.18
6. Clothing	99.33	13.97	13.88	14.65	14.55	15.30	15.20
7. Domestic Services	92.05	1.76	1.62	1.90	1.75	2.04	1.87
8. Professional Services	114.23	6.48	7.40	6.65	7.60	6.82	7.80
9. Personal Care	105.43	3.62	3.82	3.52	3.72	3.43	3.62
10. Recreation	103.41	12.72	13.16	13.94	14.42	15.14	15.66
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			104.96				
Middle					104.71		
Upper							104.45

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Fairbanks, AK; Winter 1995 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	115.65	26.40	30.54	23.49	27.17	20.65	23.88
2. Food Away From Home	109.66	14.42	15.81	14.73	16.16	15.04	16.49
3. Tobacco	88.55	3.15	2.79	2.59	2.30	2.05	1.81
4. Alcohol	115.61	2.77	3.20	2.73	3.15	2.69	3.11
5. Furnishings & Household Operations	106.03	14.71	15.59	15.79	16.74	16.85	17.86
6. Clothing	103.74	13.97	14.50	14.65	15.19	15.30	15.88
7. Domestic Services	87.26	1.76	1.53	1.90	1.66	2.04	1.78
8. Professional Services	103.80	6.48	6.72	6.65	6.91	6.82	7.08
9. Personal Care	107.81	3.62	3.91	3.52	3.80	3.43	3.70
10. Recreation	108.49	12.72	13.80	13.94	15.13	15.14	16.43
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			108.39				
Middle					108.21		
Upper							108.02

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Juneau, AK; Winter 1995 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	123.19	26.40	32.53	23.49	28.94	20.65	25.43
2. Food Away From Home	116.57	14.42	16.81	14.73	17.17	15.04	17.53
3. Tobacco	85.25	3.15	2.68	2.59	2.21	2.05	1.75
4. Alcohol	127.96	2.77	3.54	2.73	3.49	2.69	3.44
5. Furnishings & Household Operations	104.56	14.71	15.38	15.79	16.51	16.85	17.61
6. Clothing	107.88	13.97	15.07	14.65	15.80	15.30	16.51
7. Domestic Services	90.98	1.76	1.60	1.90	1.73	2.04	1.85
8. Professional Services	95.03	6.48	6.16	6.65	6.32	6.82	6.49
9. Personal Care	125.02	3.62	4.53	3.52	4.41	3.43	4.29
10. Recreation	98.72	12.72	12.56	13.94	13.77	15.14	14.95
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			110.86				
Middle					110.35		
Upper							109.85

CONSUMPTION GOODS AND SERVICES ANALYSIS

[Location: Nome, AK; Winter 1995 Survey]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	154.45	26.40	40.78	23.49	36.29	20.65	31.89
2. Food Away From Home	140.54	14.42	20.27	14.73	20.70	15.04	21.13
3. Tobacco	94.48	3.15	2.97	2.59	2.45	2.05	1.94
4. Alcohol	162.60	2.77	4.50	2.73	4.44	2.69	4.37
5. Furnishings & Household Operations	126.58	14.71	18.62	15.79	19.98	16.85	21.32
6. Clothing	113.86	13.97	15.91	14.65	16.68	15.30	17.42
7. Domestic Services	108.02	1.76	1.90	1.90	2.05	2.04	2.20
8. Professional Services	103.62	6.48	6.71	6.65	6.89	6.82	7.07
9. Personal Care	102.94	3.62	3.73	3.52	3.63	3.43	3.53
10. Recreation	126.58	12.72	16.11	13.94	17.65	15.14	19.16
Total Weights		100.00		100.00		100.00	
Total Indexes:							
Lower			131.50				
Middle					130.76		
Upper							130.03

APPENDIX 9.—OPM LIVING COMMUNITY LIST

	Low	Middle	High
Washington, DC DC:			
Homeowner	Southeast DC	Northeast DC	Northwest DC.*
Renter	Southeast DC	Northeast DC	Northwest DC.*

*Northwest DC excludes Georgetown, but includes Dupont Circle, Cleveland Part, and Adams Morgan.

Washington, DC MD:			
Homeowner	Capitol Heights/Suitland	Gaithersburg/Silver Spring	Rockville.
Renter	Capitol Heights/Suitland	Hyattsville/College Park	Rockville.
Washington, DC VA:			
Homeowner	Woodbridge/Dale City	Springfield	Alexandria.
Renter	Woodbridge/Dale City	Alexandria	Arlington.
Anchorage, AK:			
Homeowner	North Anchorage	North Anchorage	South Ancohorage.*
Renter	North Anchorage	North Anchorage	South Anchorage.*

*The line between North and South Anchorage is set by Tudor Road.

Fairbanks, AK:			
Homeowner	Fairbanks	Fairbanks	Fairbanks.
Renter	Fairbanks	Fairbanks	Fairbanks.
Juneau, AK:			
Homeowner	Juneau/Mendenhall	Juneau/Mendenhall	Juneau/Mendenhall.
Renter	Juneau/Mendenhall	Juneau/Mendenhall	Juneau/Mendenhall.
Nome, AK:			
Homeowner	Nome	Nome	Nome.
Renter	Nome	Nome	Nome.

Appendix 10.—HISTORICAL HOME MARKET VALUES AND INTEREST RATES

Area	Year	Interest rate (percent)	Income level	Market value	Annual P&I*
Anchorage, AK	1985	10.875	Lower	$95,004	$8,600
			Middle	124,840	11,300
			Upper	156,302	14,148
	1986	10.000	Lower	87,974	7,412
			Middle	116,993	9,856
			Upper	143,284	12,071
	1987	9.375	Lower	81,024	6,470
			Middle	109,147	8,715
			Upper	130,227	10,398
	1988	10.500	Lower	74,218	6,517
			Middle	101,300	8,896
			Upper	117,190	10,291

Appendix 10.—HISTORICAL HOME MARKET VALUES AND INTEREST RATES—Continued

Area	Year	Interest rate (percent)	Income level	Market value	Annual P&I*
	1989	11.125	Lower	67,538	6,236
			Middle	93,454	8,629
			Upper	112,532	10,390
	1990	10.250	Lower	60,784	5,229
			Middle	87,071	7,490
			Upper	114,783	9,874
	1992	9.000	Lower	65,700	5,075
			Middle	96,200	7,431
			Upper	139,400	10,768
	1993	8.125	Lower	70,902	5,054
			Middle	99,073	7,062
			Upper	130,815	9,324
	1994	7,625	Lower	72,216	4,907
			Middle	99,099	6,734
			Upper	124,780	8,479
	1995	8.625	Lower	83,286	6,219
			Middle	102,089	7,623
			Upper	134,580	10,049
Fairbanks, AK	1985	10.875	Lower	86,124	7,796
			Middle	107,493	9,730
			Upper	148,566	13,448
	1986	10.000	Lower	78,982	6,654
			Middle	102,726	8,654
			Upper	140,199	11,811
	1987	9.375	Lower	71,839	5,736
			Middle	97,958	7,822
			Upper	131,833	10,527
	1988	10.500	Lower	64,696	5,681
			Middle	93,191	8,184
			Upper	123,467	10,842
	1989	11.125	Lower	57,553	5,314
			Middle	88,424	8,164
			Upper	115,101	10,627
	1990	10.250	Lower	50,604	4,353
			Middle	83,619	7,193
			Upper	107,143	9,217
	1992	9.000	Lower	70,851	5,473
			Middle	101,400	7,833
			Upper	137,000	10,582
	1993	8.125	Lower	69,498	4,954
			Middle	101,478	7,233
			Upper	115,787	8,253
	1994	7.625	Lower	76,302	5,185
			Middle	112,580	7,650
			Upper	127,829	8,686
	1995	8.708	Lower	68,940	5,187
			Middle	84,240	6,338
			Upper	108,426	8,157
Juneau, AK	1985	10.875	Lower	97,228	8,801
			Middle	112,929	10,222
			Upper	132,687	12,010
	1986	10.000	Lower	90,811	7,651
			Middle	107,283	9,038
			Upper	127,114	10,709
	1987	9.375	Lower	83,909	6,700
			Middle	100,846	8,052
			Upper	120,885	9,652
	1988	10.500	Lower	76,441	6,713
			Middle	93,787	8,236
			Upper	113,874	10,000
	1989	11.125	Lower	68,797	6,352
			Middle	86,284	7,967
			Upper	106,131	9,799
	1990	10.250	Lower	78,429	6,747
			Middle	99,227	8,536
			Upper	123,324	10,609
	1992	9.000	Lower	89,470	6,911
			Middle	114,400	8,837
			Upper	146,300	11,301
	1993	8.125	Lower	87,570	6,242
			Middle	115,518	8,234

Appendix 10.—HISTORICAL HOME MARKET VALUES AND INTEREST RATES—Continued

Area	Year	Interest rate (percent)	Income level	Market value	Annual P&I*
	.....	.....	Upper	134,232	9,568
	1994	7.625	Lower	92,826	6,307
	.....	.....	Middle	117,364	7,975
	.....	.....	Upper	140,760	9,564
	1995	8.625	Lower	102,879	7,682
	.....	.....	Middle	138,723	10,358
	.....	.....	Upper	163,812	12,231
Nome, AK	1985	10.875	Lower	86,836	7,860
	.....	.....	Middle	114,834	10,394
	.....	.....	Upper	138,156	12,506
	1986	10.00	Lower	84,057	7,082
	.....	.....	Middle	111,159	9,365
	.....	.....	Upper	133,735	11,267
	1987	9.375	Lower	81,367	6,497
	.....	.....	Middle	107,602	8,592
	.....	.....	Upper	129,445	10,337
	1988	10.500	Lower	78,763	6,917
	.....	.....	Middle	104,159	9,147
	.....	.....	Upper	125,312	11,004
	1989	11.125	Lower	76,243	7,040
	.....	.....	Middle	100,826	9,309
	.....	.....	Upper	121,302	11,200
	1990	10.250	Lower	73,803	6,349
	.....	.....	Middle	97,600	8,396
	.....	.....	Upper	117,420	10,101
	1992	9.000	Lower	71,100	5,492
	.....	.....	Middle	97,500	7,531
	.....	.....	Upper	122,400	9,455
	1993	8.125	Lower	56,453	4,024
	.....	.....	Middle	77,415	5,518
	.....	.....	Upper	97,186	6,927
	1994	7.625	Lower	82,365	5,597
	.....	.....	Middle	112,948	7,675
	.....	.....	Upper	141,794	9,635
	1995	8.625	Lower	81,711	6,101
	.....	.....	Middle	118,027	8,813
	.....	.....	Upper	154,343	11,524
Washington, DC (DC)	1985	10.250	Lower	58,996	5,075
	.....	.....	Middle	90,194	7,759
	.....	.....	Upper	160,600	13,816
	1986	10.250	Lower	64,778	5,573
	.....	.....	Middle	99,213	8,535
	.....	.....	Upper	173,448	14,921
	1987	10.205	Lower	70,543	6,069
	.....	.....	Middle	113,015	9,722
	.....	.....	Upper	187,324	16,115
	1988	10.500	Lower	76,327	6,703
	.....	.....	Middle	126,817	11,136
	.....	.....	Upper	202,310	17,766
	1989	9.625	Lower	82,128	6,702
	.....	.....	Middle	140,619	11,474
	.....	.....	Upper	218,495	17,829
	1990	9.875	Lower	87,877	7,326
	.....	.....	Middle	140,974	11,752
	.....	.....	Upper	235,975	19,671
	1992	9.250	Lower	92,007	7,266
	.....	.....	Middle	147,600	11,657
	.....	.....	Upper	247,100	19,515
	1993	8.125	Lower	88,083	6,279
	.....	.....	Middle	115,960	8,266
	.....	.....	Upper	250,512	17,856
	1994	7.625	Lower	91,431	6,213
	.....	.....	Middle	104,572	7,105
	.....	.....	Upper	302,073	20,525
	1995	8.646	Lower	79,326	5,934
	.....	.....	Middle	105,196	7,870
	.....	.....	Upper	326,995	24,463
Washington, DC (MD)	1985	10.250	Lower	54,572	4,695
	.....	.....	Middle	84,505	7,270
	.....	.....	Upper	100,545	8,649
	1986	10.250	Lower	60,029	5,164

Appendix 10.—HISTORICAL HOME MARKET VALUES AND INTEREST RATES—Continued

Area	Year	Interest rate (percent)	Income level	Market value	Annual P&I*
			Middle	92,955	7,997
			Upper	110,600	9,514
	1987	10.125	Lower	66,032	5,622
			Middle	102,250	8,705
			Upper	121,660	10,358
	1988	10.375	Lower	73,295	6,371
			Middle	113,498	9,865
			Upper	135,043	11,738
	1989	10.000	Lower	81,357	6,854
			Middle	125,983	10,614
			Upper	149,898	12,628
	1990	9.875	Lower	89,493	7,460
			Middle	138,581	11,552
			Upper	164,888	13,745
	1992	8.750	Lower	96,115	7,259
			Middle	148,836	11,241
			Upper	172,555	13,032
	1993	8.250	Lower	104,832	7,561
			Middle	125,723	9,067
			Upper	211,667	15,266
	1994	7.500	Lower	90,279	6,060
			Middle	121,527	8,157
			Upper	208,777	14,014
	1995	8.542	Lower	89,532	6,634
			Middle	150,449	11,149
			Upper	205,683	15,241
Washington, DC (VA)	1985	10.250	Lower	65,608	5,644
			Middle	74,031	6,369
			Upper	122,748	10,559
	1986	10.250	Lower	70,857	6,096
			Middle	79,954	6,878
			Upper	132,568	11,404
	1987	10.125	Lower	76,526	6,515
			Middle	86,350	7,351
			Upper	143,173	12,189
	1988	10.500	Lower	83,413	7,325
			Middle	94,122	8,265
			Upper	156,059	13,704
	1989	9.500	Lower	90,086	7,272
			Middle	101,652	8,206
			Upper	168,544	13,605
	1990	10.000	Lower	97,293	8,197
			Middle	109,784	9,249
			Upper	182,028	15,335
	1992	9.000	Lower	107,100	8,273
			Middle	120,900	9,339
			Upper	190,400	14,707
	1993	8.125	Lower	95,184	6,785
			Middle	125,047	8,913
			Upper	182,325	12,996
	1994	7.750	Lower	95,247	6,551
			Middle	126,763	8,718
			Upper	181,492	12,482
	1995	8.604	Lower	103,266	7,696
			Middle	166,673	12,421
			Upper	216,274	16,118

* Principal and interest assumes 80% financing.

APPENDIX 11.—HISTORICAL HOUSING DATA

[Winter 1995 Survey]

Year	Weights	Lower amounts	Subtotal	Middle amounts	Subtotal	Upper amounts	Subtotal
Anchorage:							
1985	6.31	$8,600	542.66	$11,300	713.03	$14,148	892.74
1986	6.77	7,412	501.79	9,856	667.25	12,071	817.21
1987	8.19	6,470	529.89	8,715	713.76	10,398	851.60
1988	7.03	6,517	458.15	8,896	625.39	10,291	723.46
1989	7.72	6,236	481.42	8,629	666.16	10,390	802.11

APPENDIX 11.—HISTORICAL HOUSING DATA—Continued

[Winter 1995 Survey]

Year	Weights	Lower amounts	Subtotal	Middle amounts	Subtotal	Upper amounts	Subtotal
1990	8.32	5,229	435.05	7,490	623.17	9,874	821.52
1992	10.08	5,075	511.56	7,431	749.04	10,768	1,085.41
1993	12.92	5,054	652.98	7,062	912.41	9,324	1,204.66
1994	13.78	4,907	676.18	6,734	927.95	8,479	1,168.41
1995	18.88	6,219	1,174.15	7,623	1,439.22	10,049	1,897.25
Totals	100.00	.....	5,964	.....	8,037	.....	10,264
Fairbanks:							
1985	6.31	$7,796	491.93	$9,730	613.96	$13,448	848.57
1986	6.77	6,654	450.48	8,654	585.88	11,811	799.60
1987	8.19	5,736	469.78	7,822	640.62	10,527	862.16
1988	7.03	5,681	399.37	8,184	575.34	10,842	762.19
1989	7.72	5,314	410.24	8,164	630.26	10,627	820.40
1990	8.32	4,353	362.17	7,193	598.46	9,217	766.85
1992	10.08	5,473	551.68	7,833	789.57	10,582	1,066.67
1993	12.92	4,954	640.06	7,233	934.50	8,253	1,066.29
1994	13.78	5,185	714.49	7,650	1,054.17	8,686	1,196.93
1995	18.88	5,187	979.31	6,338	1,196.61	8,157	1,540.04
Totals	100.00	.....	5,470	.....	7,619	.....	9,730
Juneau:							
1985	6.31	$8,801	555.34	$10,222	645.01	$12,010	757.83
1986	6.77	7,651	517.97	9,038	611.87	10,709	725.00
1987	8.19	6,700	548.73	8,052	659.46	9,652	790.50
1988	7.03	6,713	471.92	8,236	578.99	10,000	703.00
1989	7.72	6,352	490.37	7,967	615.05	9,799	756.48
1990	8.32	6,747	561.35	8,536	710.20	10,609	822.67
1992	10.08	6,911	696.63	8,837	890.77	11,301	1,139.14
1993	12.92	6,242	806.47	8,234	1,063.83	9,568	1,236.19
1994	13.78	6,307	869.10	7,975	1,098.96	9,564	1,317.92
1995	18.88	7,682	1,450.36	10,358	1,955.59	12,231	2,309.21
Totals	100.00	.....	6,968	.....	8,830	.....	10,618
Nome:							
1985	6.31	$7,860	495.97	$10,394	655.86	$12,506	789.13
1986	6.77	7,082	479.45	9,365	634.01	11,267	762.78
1987	8.19	6,497	532.10	8,592	703.68	10,337	846.60
1988	7.03	6,917	486.27	9,147	643.03	11,004	773.58
1989	7.72	7,040	543.49	9,309	718.65	11,200	864.64
1990	8.32	6,349	528.24	8,396	698.55	10,101	840.40
1992	10.08	5,492	553.59	7,531	759.12	9,455	953.06
1993	12.92	4,024	519.90	5,518	712.93	6,927	894.97
1994	13.78	5,597	771.27	7,675	1,057.62	9,635	1,327.70
1995	18.88	6,101	1,151.87	8,813	1,663.89	11,524	2,175.73
Totals	100.00	.....	6,062	.....	8,247	.....	10,229
DC–DC:							
1985	6.31	$5,075	320.23	$7,759	489.59	$13,816	871.79
1986	6.77	5,573	377.29	8,535	577.82	14,921	1,010.15
1987	8.19	6,069	497.05	9,722	796.23	16,115	1,319.82
1988	7.03	6,703	471.22	11,136	782.86	17,766	1,248.95
1989	7.72	6,702	517.39	11,474	885.79	17,829	1,376.40
1990	8.32	7,326	609.52	11,752	977.77	19,671	1,636.63
1992	10.08	7,266	732.41	11,657	1,175.03	19,515	1,967.11
1993	12.92	6,279	811.25	8,266	1,067.97	17,856	2,307.00
1994	13.78	6,213	856.15	7,105	979.07	20,525	2,828.35
1995	18.88	5,934	1,120.34	7,870	1,485.86	24,463	4,618.61
Totals	100.00	.....	6,313	.....	9,218	.....	19,185
DC–MD:							
1985	6.31	$4,695	296.25	$7,270	458.74	$8,649	545.75
1986	6.77	5,164	349.60	7,997	541.40	9,514	644.10
1987	8.19	5,622	460.44	8,705	712.94	10,358	848.32
1988	7.03	6,371	447.88	9,865	693.51	11,738	825.18
1989	7.72	6,854	529.13	10,614	819.40	12,628	974.88

APPENDIX 11.—HISTORICAL HOUSING DATA—Continued

[Winter 1995 Survey]

Year	Weights	Lower amounts	Subtotal	Middle amounts	Subtotal	Upper amounts	Subtotal
1990	8.32	7,460	620.67	11,552	961.13	13,745	1,143.58
1992	10.08	7,259	731.71	11,241	1,133.09	13,032	1,313.63
1993	12.92	7,561	976.88	9,067	1,171.46	15,266	1,972.37
1994	13.78	6,060	835.07	8,157	1,124.03	14,014	1,931.13
1995	18.88	6,634	1,252.50	11,149	2,104.93	15,241	2,877.50
Totals	100.00	.....	6,500	.....	9,721	.....	13,076
DC–VA:							
1985	6.31	$5,644	356.14	$6,369	401.88	$10,559	666.27
1986	6.77	6,096	412.70	6,878	465.64	11,404	772.05
1987	8.19	6,515	533.58	7,351	602.05	12,189	998.28
1988	7.03	7,325	514.95	8,265	581.03	13,704	963.39
1989	7.72	7,272	561.40	8,206	633.50	13,605	1,050.31
1990	8.32	8,197	681.99	9,249	769.52	15,335	1,275.87
1992	10.08	8,273	833.92	9,339	941.37	14,707	1,482.47
1993	12.92	6,785	876.62	8,913	1,151.56	12,996	1,679.08
1994	13.78	6,551	902.73	8,718	1,201.34	12,482	1,720.02
1995	18.88	7,696	1,453.00	12,421	2,345.08	16,118	3,043.08
Totals	100.00	.....	7,127	.....	9,093	.....	13,651

APPENDIX 12.—SUMMARY OF RENTAL ANALYSES

	1995 Data medians								
	B&NB			Non-Brkr			Broker		
	#	$	Change (percent)	#	$	Change (percent)	#	$	Change (percent)
Anchorage:									
Low	117	594	4.0	111	575	6.3	6	613	2.2
Middle	176	688	−0.6	170	663	−1.0	6	713	0.0
High	133	1,100	4.9	121	,1000	0.2	12	1,200	9.1
Fairbanks:									
Low	112	527	5.0	105	520	5.3	7	533	4.7
Middle	144	700	10.6	137	650	3.2	7	750	18.1
High	183	927	9.1	169	875	7.8	14	978	10.3
Juneau:									
Low	32	694	1.8	26	700	−0.4	6	688	4.2
Middle	51	863	0.5	45	900	2.4	6	825	−1.6
High	47	1175	6.9	35	1,200	5.7	12	1,150	8.2
Nome:									
Low	12	663	−2.1	4	650	−5.8	8	675	1.8
Middle	18	825	−2.6	10	800	−4.1	8	850	−1.2
High	8	1,038	−0.9	0	0	NA	8	1,038	−2.1
DCDC:									
Low	205	413	−10.8	199	400	−10.5	6	425	−11.3
Middle	172	548	−10.7	166	545	−13.2	6	550	−8.3
High	125	1238	−15.2	107	1,025	−10.1	18	1,450	−18.5
DCMD:									
Low	71	524	−4.6	65	510	−2.5	6	538	−6.4
Middle	97	643	−18.6	91	635	−20.5	6	650	−16.8
High	136	995	−3.5	124	990	−3.0	12	1,000	−3.9
DCVA:									
Low	40	584	−2.2	34	592.5	−0.3	6	575	−4.2
Middle	188	855	10.5	182	759	−5.9	6	950	28.4
High	195	1,175	14.7	183	1,150	16.8	12	1,200	12.9

APPENDIX 13.—HOUSING COST ANALYSIS

[Location: Anchorage, AK, Winter 1995 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$559	.....	$658	.....	$757	.....
Insurance	388	$149	428	$149	456	$189
Utilities	2,093	1,840	2,410	2,093	2,726	2,241
Real Estate Taxes	1,477	.....	1,811	.....	2,387	.....
Housing	5,964	7,128	8,037	8,256	10,264	13,200
Total Annual Cost	$10,481	$9,117	$13,344	$10,498	$16,590	$15,630

HOUSING COST ANALYSIS

[Location: Fairbanks, AK, Winter 1995 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$461	.....	$542	.....	$623	.....
Insurance	428	$189	522	$189	968	$250
Utilities	2,732	2,393	3,155	2,732	3,579	2,929
Real Estate Taxes	1,319	.....	1,612	.....	2,074	.....
Housing	5,470	6,324	7,619	8,400	9,730	11,124
Total Annual Cost	$10,410	$8,906	$13,450	$11,321	$16,974	$14,303

HOUSING COST ANALYSIS

[Location: Juneau, AK, Winter 1995 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$441	.....	$519	.....	$597	.....
Insurance	273	$164	310	$150	346	$191
Utilities	2,954	2,578	3,424	2,954	3,893	3,173
Real Estate Taxes	1,449	.....	1,953	.....	2,306	.....
Housing	6,968	8,328	8,830	10,356	10,618	14,100
Total annual cost	$12,085	$11,070	$15,036	$13,460	$17,760	$17,464

HOUSING COST ANALYSIS

[Location: Nome, AK, Winter 1995 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$359	.....	$422	.....	$485	.....
Insurance	440	$224	493	$224	571	$309
Utilities	3,960	3,438	4,613	3,960	5,266	4,265
Real Estate Taxes	878	.....	1,269	.....	1,659	.....
Housing	6,062	7,956	8,247	9,900	10,229	12,456
Total annual cost	$11,699	$11,618	$15,044	$14,084	$18,210	$17,030

HOUSING COST ANALYSIS

[Location: Washington DC, DC, Winter 1995 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$302	.....	$355	.....	$408	.....
Insurance	321	$147	363	$147	905	$189
Utilities	1,932	1,705	2,217	1,932	2,501	2,965
Real Estate Taxes	474	.....	722	.....	2,851	.....
Housing	6,313	4,956	9,218	6,576	19,185	14,856
Total annual cost	$9,342	$6,808	$12,875	$8,655	$25,850	$17,110

HOUSING COST ANALYSIS

[Location: Washington DC, MD, Winter 1995 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$315	.....	$371	.....	$427	.....
Insurance	242	$89	232	$82	305	$116
Utilities	2,048	1,809	2,346	2,048	2,644	2,187
Real Estate Taxes	1,215	.....	2,042	.....	2,792	.....
Housing	6,500	6,288	9,721	7,716	13,076	11,940
Total annual cost	$10,320	$8,186	$14,712	$9,846	$19,244	$14,243

HOUSING COST ANALYSIS

[Location: Washington DC, VA, Winter 1995 Survey]

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	$298	.....	$351	.....	$404	.....
Insurance	166	$102	200	$100	244	$122
Utilities	2,102	1,853	2,413	2,102	2,724	2,247
Real Estate Taxes	1,302	.....	2,101	.....	2,727	.....
Housing	7,127	7,008	9,093	10,260	13,651	14,100
Total annual cost	$10,995	$8,936	$14,158	$12,462	$19,750	$16,469

HOUSING COST ANALYSIS—WASHINGTON DC COMPOSITE

[Winter 1995 Survey]

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Washington DC, DC	33.34	$9,342	$6,808	$12,875	$8,655	$25,850	$17,110
Washington DC, MD	33.33	10,320	8,186	14,712	9,846	19,244	14,243
Washington DC, VA	33.33	10,995	8,963	14,158	12,462	19,750	16,469
Total weight	100.00	.....	.....	.....	.....	.....	.....
Composite cost	.....	$10,219	$7,986	$13,915	$10,321	$21,615	$15,941

APPENDIX 14.—HOUSING ANALYSIS

[Location: Anchorage, AK, Winter 1995 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	$10,481	$10,219	102.56	$9,117	$7,986	114.16
Middle income	13,344	13,915	95.90	10,498	10,321	101.71
Upper income	16,590	21,615	76.75	15,630	15,941	98.05

HOUSING ANALYSIS

[Location: Fairbanks, AK, Winter 1995 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	$10,410	$10,219	101.87	$8,906	$7,986	111.52
Middle income	13,450	13,915	96.66	11,321	10,321	109.69
Upper income	16,974	21,615	78.53	14,303	15,941	89.72

HOUSING ANALYSIS

[Location: Juneau, AK, Winter 1995 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	$12,085	$10,219	118.26	$11,070	$7,986	138.62
Middle income	15,036	13,915	108.06	13,460	10,321	130.41
Upper income	17,760	21,615	82.17	17,464	15,941	109.55

HOUSING ANALYSIS

[Location: Nome, AK, Winter 1995 Survey]

	Owners			Renters		
	Total annual cost	Total cost DC area	Index	Total annual cost	Total cost DC area	Index
Lower income	$11,699	$10,219	114.48	$11,618	$7,986	145.48
Middle income	15,044	13,915	108.11	14,084	10,321	136.46
Upper income	18,210	21,615	84.25	17,030	15,941	106.83

APPENDIX 15.—PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Anchorage, AK, Winter 1995 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$982	$1,423	$1,779
Maintenance/oil	645	549	581
Tires	122	177	189
License and registration	118	118	118
Miscellaneous tax	66	66	66
Depreciation	3,106	3,241	2,438
Finance expense	803	829	930
Insurance	1,092	1,092	1,284
Total annual costs	$6,934	$7,495	$7,385

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Fairbanks, AK, Winter 1995 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$963	$1,396	$1,745
Maintenance/oil	782	795	782
Tires	131	173	172
License and registration	52	52	52
Miscellaneous tax	0	0	0
Depreciation	3,096	3,580	3,456
Finance expense	786	873	1,067
Insurance	1,062	992	1,253
Total annual cost	$6,872	$7,861	$8,527

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Juneau, AK, Winter 1995 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$785	$1,138	$1,423
Maintenance/oil	698	633	671
Tires	107	171	145
License and registration	52	52	52
Miscellaneous tax	0	0	0
Depreciation	2,595	3,242	2,445
Finance expense	743	859	964
Insurance	831	831	935
Total annual cost	$5,811	$6,926	$6,635

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Nome, AK, Winter 1995 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$1,351	$1,959	$2,449
Maintenance/oil	664	667	705
Tires	142	201	210
License and registration	118	118	118
Miscellaneous tax	0	0	0
Depreciation	3,819	4,142	3,155
Finance expense	780	831	871
Insurance	976	976	1,110
Total annual cost	$7,850	$8,894	$8,618

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, DC, Winter 1995 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$687	$996	$1,245
Maintenance/oil	475	455	346
Tires	78	102	117
License and registration	69	69	102
Miscellaneous tax	0	0	0

PRIVATE TRANSPORTATION COST ANALYSIS—Continued

[Location: Washington, DC, DC, Winter 1995 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Depreciation	2,542	3,233	3,040
Finance expense	704	824	1,025
Insurance	1,170	1,197	1,355
Total annual cost	$5,725	$6,876	$7,230

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, MD, Winter 1995 Survey]

Category	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$650	$943	$1,179
Maintenance/oil	395	345	346
Tires	78	91	107
License and registration	39	39	39
Miscellaneous tax	0	0	0
Depreciation	2,414	3,058	2,849
Finance expense	638	743	928
Insurance	884	986	935
Total annual costs	$5,098	$6,205	$6,383

PRIVATE TRANSPORTATION COST ANALYSIS

[Location: Washington, DC, VA, Winter 1995 Survey]

Categroy	Annual costs		
	Honda Civic 1.5L 4 cyl DX 4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Fuel	$641	$930	$1,162
Maintenance/oil	385	365	349
Tires	73	89	105
License and registration	52	52	52
Miscellaneous tax	297	340	491
Depreciation	2,304	3,154	2,667
Finance expense	619	755	897
Insurance	723	731	791
Total annual cost	$5,094	$6,416	$6,514

PRIVATE TRANSPORTATION COST ANALYSIS—WASHINGTON DC COMPOSITE

[Winter 1995 Survey]

Location	Weights	Annual costs		
		Honda Civic 1.5L 4 cyl DX4 dr sedan	Ford Taurus 3.0L 6 cyl GL 4 dr sedan	Chevrolet S10 Blazer 4.3L 6 cyl 4WD 2 dr
Washington DC, DC	33.34	$5,725	$6,876	$7,230
Washington DC, MD	33.33	5,098	6,205	6,383
Washington DC, VA	33.33	5,094	6,416	6,514
Total weight	100.00	.....	.....	.....
Composite cost	.....	$5,306	$6,499	$6,709

APPENDIX 16.—AIR FARES AND OTHER TRANSPORATION EXPENSES COST ANALYSIS SUMMARY PROGRAM

[Winter 1995 Survey]

Location	Air fares and other transportation expenses cost	Total cost DC area	Index
Anchorage, AK	$498	$400	124.43
Fairbanks, AK	608	400	151.92
Juneau, AK	522	400	130.43
Nome, AK	882	400	220.38

APPENDIX 17.—TRANSPORTATION ANALYSIS

[Location: Anchorage, AK, Winter 1995 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	$6,934	$5,306	130.69
2. Ford Taurur GL 4 dr sedan 3.0L 6 cyl	7,495	6,499	115.33
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	7,385	6,709	110.08
Average index			118.70

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	118.70	94.64	112.34	93.54	111.04	92.47	109.76
Air fares and other transportation expenses	124.43	5.36	6.66	6.46	8.03	7.53	9.37
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			119.00				
Middle					119.07		
Upper							119.13

TRANSPORTATION ANALYSIS

[Location: Fairbanks, AK, Winter 1995 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 dr sdn 1.5L 4cyl	$6,872	$5,306	129.52
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	7,861	6,499	120.96
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	8,527	6,709	127.10
Average index			125.86

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	subtotal
Private transportation	125.86	94.64	119.12	93.54	117.73	92.47	116.38
Air fare and other transportation expenses	151.92	5.36	8.14	6.46	9.81	7.53	11.44
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			127.26				
Middle					127.54		
Upper							127.82

TRANSPORTATION ANALYSIS

[Location: Juneau, AK, Winter 1995 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	$5,811	$5,306	109.53
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	6,926	6,499	106.58
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	6,635	6,709	98.89
Average index			105.00

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	105.00	94.64	99.38	93.54	98.22	92.47	97.09
Air fares and other transportation expenses	130.43	5.36	6.99	6.46	8.42	7.53	9.82
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			106.37				
Middle					106.64		
Upper							106.91

TRANSPORTATION ANALYSIS

[Location: Nome, AK, Winter 1995 Survey]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 dr sdn 1.5L 4 cyl	$7,850	$5,306	147.94
2. Ford Taurus GL 4 dr sedan 3.0L 6 cyl	8,894	6,499	136.84
3. Chevy S10 Blazer 4WD 2 dr 4.3L 6 cyl	8,618	6,709	128.45
Average index			137.74

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	137.74	94.64	130.36	93.54	128.85	92.47	127.37
Air fares and other transportation expenses	220.38	5.36	11.80	6.46	14.23	7.53	16.59
Total weights		100.00		100.00		100.00	
Total indexes:							
Lower			142.16				
Middle					143.08		
Upper							143.96

APPENDIX 18.—MISCELLANEOUS EXPENSE ANALYSIS

[Location: Anchorage, AK; Winter 1995 Survey]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care						122.98
Nonprescription pain reliever	5.00	5.59	0.8942	4.9	4.38	
Tetracycline	6.28	5.31	1.1811	12.2	14.44	
Vision Check	78.33	52.56	1.4905	5.5	8.14	
Dental Service	171.67	89.33	1.9216	16.1	30.92	
Doctor Visit	61.67	53.61	1.1503	15.9	18.31	

APPENDIX 18.—MISCELLANEOUS EXPENSE ANALYSIS—Continued

[Location: Anchorage, AK; Winter 1995 Survey]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Hospital Room	699.00	523.45	1.3354	4.1	5.49	.....
Health Insurance	1.0000	1.0000	1.0000	41.3	41.30	.....

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical Care	122.98	41.50	51.03	31.33	38.53	23.51	28.92
2. Cash Contributions:							
Lower Income	104.96	15.80	16.58	0.00	0.00	0.00	0.00
Middle Income	104.71	0.00	0.00	16.85	17.64	0.00	0.00
Upper Income	104.45	0.00	0.00	0.00	0.00	17.65	18.44
3. Personal Insurance/Pensions	100.00	42.70	42.70	51.82	51.82	58.83	58.83
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	110.31	.....	.....	.....	.....
Middle	.....	.....	.....	.....	107.99	.....	.....
Upper	.....	.....	.....	.....	.....	.....	106.19

MISCELLANEOUS EXPENSE ACCOUNT

[Location: Fairbanks, AK; Winter 1995 Survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care						117.37
Nonprescription pain reliever	4.49	5.59	8.030	4.9	3.93	.....
Tetracycline	6.14	5.31	1.1560	12.2	14.14	.....
Vision Check	80.33	52.56	1.5285	5.5	8.35	.....
Dental Service	159.67	89.33	1.7873	16.1	28.76	.....
Doctor Visit	57.67	53.61	1.0757	15.9	17.13	.....
Hospital Room	479.00	523.45	0.9151	4.1	3.76	.....
Health Insurance	1.0000	1.0000	1.0000	41.3	41.30	.....

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical Care	117.37	41.50	48.71	31.33	36.77	23.51	27.60
2. Cash Contributions:							
Lower Income	108.39	15.80	17.13	0.00	0.00	0.00	0.00
Middle Income	108.21	0.00	0.00	16.85	18.23	0.00	0.00
Upper Income	108.02	0.00	0.00	0.00	0.00	17.65	19.07
3. Personal Insurance/Pensions	100.00	42.70	42.70	51.82	51.82	58.83	58.83
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	108.54	.....	.....	.....	.....
Middle	.....	.....	.....	.....	106.82	.....	.....
Upper	.....	.....	.....	.....	.....	.....	105.50

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Juneau, AK; Winter 1995 Survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care	.....	.....	.....	.....	.....	132.32
Nonprescription pain reliever	5.09	5.59	0.9101	4.9	4.46	.....
Tetracycline	10.56	5.31	1.9877	12.2	24.31	.....
Vision Check	105.00	52.56	1.9979	5.5	10.91	.....
Dental Service	180.33	89.33	2.0187	16.1	32.48	.....
Doctor Visit	47.67	53.61	0.8891	15.9	14.15	.....
Hospital Room	600.00	523.45	1.1462	4.1	4.71	.....
Health Insurance	1.0000	1.0000	1.0000	41.3	41.30	.....

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical Care	132.32	41.50	54.91	31.33	41.45	23.51	31.11
2. Cash Contributions:							
Lower Income	110.86	15.80	17.52	0.00	0.00	0.00	0.00
Middle Income	110.35	0.00	0.00	16.85	18.59	0.00	0.00
Upper Income	109.85	0.00	0.00	0.00	0.00	17.65	19.39
3. Personal Insurance/Pensions	100.00	42.70	42.70	51.82	51.82	58.83	58.83
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	115.13	.....	.....	.....	.....
Middle	.....	.....	.....	.....	111.86	.....	.....
Upper	.....	.....	.....	.....	.....	.....	109.33

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Nome, AK; Winter 1995 Survey]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care	.....	.....	.....	.....	.....	132.56
Nonprescription pain reliever	7.92	5.59	1.4172	4.9	6.94	.....
Tetracycline	14.75	5.31	2.7755	12.2	33.94	.....
Vision Check	70.00	52.56	1.3319	5.5	7.27	.....
Dental Service	125.00	89.33	1.3993	16.1	22.51	.....
Doctor Visit	50.00	53.61	0.9327	15.9	14.85	.....
Hospital Room	732.00	523.45	1.3984	4.1	5.75	.....
Health Insurance	1.0000	1.0000	1.0000	41.3	41.30	.....

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical Care	132.56	41.50	55.01	31.33	41.53	23.51	31.17
2. Cash Contributions:							
Lower income	131.50	15.80	20.78	0.00	0.00	0.00	0.00
Middle income	130.76	0.00	0.00	16.85	22.03	0.00	0.00
Upper income	130.03	0.00	0.00	0.00	0.00	17.65	22.96
3. Personal Insurance/Pensions	100.00	42.70	42.70	51.82	51.82	58.83	58.83
Total Weights	.....	100.00	.....	100.00	.....	100.00	.....
Total Indexes:							
Lower	.....	.....	118.49	.....	.....	.....	.....
Middle	.....	.....	.....	.....	115.38	.....	.....
Upper	.....	.....	.....	.....	.....	.....	112.96

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Appendix 19

Component Expenditure Amounts

		Indexes					Amounts				
	Incomes	CG&S	Own	Rent	Trn	Misc	CG&S	Own	Rent	Trn	Misc
Reference Wts/Amts...	20800	40.10	25.01	25.01	18.93	15.96	8341	5202	5202	3938	3320
	31500	39.47	23.98	23.98	18.66	17.88	12433	7555	7555	5879	5634
Location	48300	38.87	23.01	23.01	18.41	19.71	18775	11114	11114	8892	9520
Anchorage, AK	Lower	104.96	102.56	114.16	119.00	110.31	8755	5335	5939	4686	3662
	Middle	104.71	95.90	101.71	119.07	107.99	13019	7245	7684	7000	6084
	Upper	104.45	76.75	98.05	119.13	106.19	19610	8530	10897	10593	10109
Fairbanks, AK	Lower	108.39	101.87	111.52	127.26	108.54	9041	5299	5801	5011	3604
	Middle	108.21	96.66	109.69	127.54	106.82	13454	7303	8287	7498	6018
	Upper	108.02	78.53	89.72	127.82	105.50	20281	8728	9971	11366	10044
Juneau, AK	Lower	110.86	118.26	138.62	106.37	115.13	9247	6152	7211	4189	3822
	Middle	110.35	108.06	130.41	106.64	111.86	13720	8164	9852	6269	6302
	Upper	109.85	82.17	109.55	106.91	109.33	20624	9132	12175	9506	10408
Nome, AK	Lower	131.50	114.48	145.48	142.16	118.49	10968	5955	7568	5598	3934
	Middle	130.76	108.11	136.46	143.08	115.38	16257	8168	10310	8412	6501
	Upper	130.03	84.25	106.83	143.96	112.96	24413	9364	11873	12801	10754

Total Comparative Cost Indexes

Location	Income	Income Weights	Own	Rent	Total	WDC	Index
	Lower	20800	38.41	61.59			
	Middle	31500	47.46	52.54			
	Upper	48300	61.67	38.33			
Anchorage, AK	Lower	27.09	22438	23042	22810	20800	
	Middle	33.39	33348	33787	33579	31500	
	Upper	39.52	48842	51209	49749	48300	
		100.00			37062	35241	105.14
Fairbanks, AK	Lower	34.98	22955	23457	23264	20800	
	Middle	37.00	34273	35257	34790	31500	
	Upper	28.02	50419	51662	50895	48300	
		100.00			35271	32465	108.64
Juneau, AK	Lower	19.91	23410	24469	24062	20800	
	Middle	32.77	34455	36143	35342	31500	
	Upper	47.32	49670	52713	50836	48300	
		100.00			40428	37319	108.33
Nome, AK	Lower	28.07	26455	28068	27448	20800	
	Middle	46.67	39338	41480	40463	31500	
	Upper	25.26	57332	59841	58294	48300	
		100.00			41314	32740	126.19

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February 2, 1996

Part V

Department of Transportation

Coast Guard

46 CFR Part 108, et al.

Electrical Engineering Requirements for Merchant Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 108, 110, 111, 112, 113, and 161

[CGD 94–108]

RIN 2115–AF24

Electrical Engineering Requirements for Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of the President's Regulatory Reinvention Initiative, the Coast Guard proposes to amend its electrical engineering regulations to reduce the regulatory burden on the marine industry, purge obsolete and out-of-date regulations, and eliminate requirements that create an unwarranted differential between domestic rules and international standards. This proposed rulemaking would harmonize, where possible, the electrical engineering regulations with recent amendments to the International Convention for the Safety of Life at Sea, 1974, as amended. Additionally, this proposed rulemaking would dramatically revise certain prescriptive electrical equipment design, specification, and approval requirements and replace them with performance-based requirements that incorporate international standrds.

DATES: Comments must be received on or before March 18, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–108), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in ''Incorporation by Reference'' of this preamble is available for inspection at room 1300, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miante, Project Manager, or LTJG Jacqueline M. Twomey, Project Engineer, Design and Engineering Standards Division (G–MMS), (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–108) and the specific section of the proposal to which each coment applies, and give the reason for each comment. Please submit two copies of all comments and attchments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Background and Purpose

On March 30, 1995, the Coast Guard published a notice of a public meeting in the Federal Register (60 FR 16423) and solicited written comments on the President's recently announced Regulatory Reinvention Initiative as well as the Coast Guard's regulatory development process. The meeting was held on April 20, 1995, with a written comment period extended from May 1 to December 8, 1995.

On May 31, 1995, the Coast Guard published a notice in the Federal Register (60 FR 28376) that stated that the Coast Guard has established a goal of eliminating any regulatory differential between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flag of responsible foreign nations. To the maximum extent possible, requirements that create an unwarranted differential between U.S. and internationally recognized standards will be eliminated. This revision of the electrical engineering regulations is, in part, part of this project.

The Coast Guard's electrical safety regulations are based on statutory authority provided in 46 U.S. Code (U.S.C.) 3306 and 3703. The existing regulations for inspected vessels are contained in chapter I, subchapter J, of title 46 of the Code of Federal Regulations (46 CFR chapter I, subchapter J). This proposal is mainly concerned with changes to this subchapter but associated changes in subchapters I–A and Q also are being proposed. All cites in this proposal, unless otherwise indicated, are to title 46 CFR.

This project proposes to revise technical areas of subchapter J to address comments received from Coast Guard field and inspection offices and the marine industry; to clarify requirements where confusion has been shown to exist; to delete or significantly modify obsolete requirements; to reflect experiences with vessel reflaggings; and to more closely parallel international standards. The revision also proposes to incorporate the latest International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) amendments (up to and including 1992), elements of the Coast Guard Regulatory Reform (CGRR) initiative, and industry standards.

The increased frequency of overseas construction of U.S. flag vessels has created a need for the Coast Guard to recognize equipment designed and installed in accordance with international standards. The implementation of SOLAS 74 by the international maritime community has promulgated requirements which closely parallel existing Coast Guard regulations. Subchapter J will be revised to facilitate U.S. acceptance of electrical equipment constructed in accordance with other international standards.

To eliminate needless regulatory burden, the Coast Guard is proposing to delete and extensively revise obsolete or confusing regulations. For example, the entries for Engine Order Telegraphs are proposed to be consolidated and updated. Additionally, the necessary degree of safety and reliability for sound powered telephones can be maintained with minor additions to subchapter J. This proposal would encompass the changes which would make type approval by the Government unnecessary. Therefore, in conjunction with these proposed changes, the Coast Guard would remove the approval requirement for sound powered telephone equipment (now in subchapter Q) and adopt minimum

performance requirements in subchapter J. Similar treatment is being given Fire Protective Systems. A wide variety of national and international standards covering different types of equipment are also proposed for incorporation by reference. Also under the proposal, the equipment manufacturer would be afforded a choice of Independent Laboratories versus the old single-point of testing. Modification of current requirements is allowed under existing U.S. statutes, as 46 U.S.C. 3306 and 3703 provide broad authority to the Secretary to prescribe safety regulations. Presently in the regulations, a Fire Protection Equipment manufacturer is required to provide a sample of its system, built only to the rigid specifications in part 161, subpart 161.002, to the National Bureau of Standards for testing. The Coast Guard would allow equipment to be constructed to several domestic and an internationally recognized standards. Also, the Coast Guard continues to process applications from a variety of third party testing institutions and Commandant (G–MMS) maintains a list at Coast Guard headquarters of Independent Laboratories recognized by the Commandant.

The use of large industrial systems independent of a traditional ship's service and propulsion functions are becoming increasingly popular. These types of systems provide power to systems that are vital to a vessel's mission but not necessarily to its safety. Industrial systems would include drilling, manufacturing and scientific research. Due to the industrial nature of these systems, it is not necessary for them to meet the requirements in subchapter J which are intended to provide for reliable ship's service and electrical propulsion systems. New requirements, therefore, are being proposed which would permit the use of standard industrial equipment without requiring them to meet many of the requirements of subchapter J. Electrical installations in hazardous locations will continue to meet explosion-proof/intrinsically-safe requirements. This action serves the needs of industry while ensuring a comparable level of safety.

On November 1, 1974, the Assembly of the International Maritime Organization (IMO) adopted the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74). To date, IMO has adopted seven sets of amendments to the convention pursuant to Article VIII of SOLAS 74. The United States has played an instrumental role in the development of the Convention and its amendments. As a signatory nation to this international treaty, the United States has embraced these amendments and periodically upgrades existing regulations, as necessary, to bring it into alignment with the SOLAS 74 requirements.

The Coast Guard's electrical engineering regulations were last updated in 1982. In that rulemaking, the Coast Guard reorganized its regulations and incorporated the first set of amendments to SOLAS 74. This rulemaking proposes incorporating the second through seventh sets of amendments to SOLAS 74 (those of 1983, 1988, 1989, 1990, 1991, and 1992.) In doing so, the Coast Guard inspected vessels' electrical safety regulations would be aligned with the international standards for safety which are accepted for merchant ships around the world.

Discussion of Proposed Rules

The proposed revisions to 46 CFR chapter I, subchapter J, would clarify and condense, in technically correct language, the Electrical Engineering Regulations applicable to U.S. Coast Guard certificated vessels. The objective of these revisions is to further reduce the regulatory burden on the industry, eliminate misinterpretation of the regulations by all affected parties, and bring the regulations in line with the state of the art technology in the industry as well as with standards accepted by the international maritime community.

The major changes to subchapter J are discussed below. Other changes which are editorial and do not affect the technical content of this subchapter are not addressed. The editorial corrections are to help the reader understand the intent of the requirements.

As part of the associated changes, the Coast Guard is also proposing to revise 46 CFR 108.170, Definitions, and § 108.181, Ventilation for enclosed spaces, to refer to the appropriate sections of subchapter J.

In addition to updating subchapter J to reflect the most recent amendments to SOLAS 74, the Coast Guard is also proposing to revise subchapter J to incorporate by reference numerous internationally recognized marine electrical standards which address construction, installation, testing, and safety.

Part 110—General Provisions

Section 110.01–1. The Coast Guard would revise § 110.1–1, General, to add 46 CFR chapter I, subchapter K, Small Passenger Vessels Carrying more than 150 Passengers or with Overnight Accommodations for more than 49 Passengers, subchapter L, Offshore Supply Vessels, subchapter R, Nautical School Vessels, and subchapter W, Lifesaving Appliances and Arrangements, to the list of subchapters which require electrical installations in accordance with subchapter J. This is not additional regulation; but an entry to correct a prior omission such as with subchapter R since § 167.40–1(a)(2) already requires such compliance; and cross-reference to new subchapters.

Section 110.01–3. The Coast Guard would revise § 110.01–3, Repairs, to address alterations as well as repairs. It is proposed that minor alterations on vessels meet the requirements of the regulations in effect on the contract date for the original installation, or the contract date for the alteration. Unlike minor repairs and alterations, major conversions, such as adding a large section to the midbody of the vessel or changing the type or size of the main propulsion engine are considered, under Coast Guard policy, on a case-by-case basis by Commandant (G–MCO). Having a single point of review for these situations ensures consistency in application of statutes and regulations.

Section 110.10–1. The Coast Guard would update § 110.10–1, Incorporation by reference, to reflect new standards and to update the editions of references already incorporated. This section provides the addresses of organizations which publish the referenced standards. Additionally, the sections affected by the incorporation of standards are identified in § 110.10–1.

Section 110.15–1. The Coast Guard would revise § 110.15–1, Definitions, to reflect new and modified terms and definitions used in the subchapter. These minor word changes would bring our regulation terminology in line with internationally accepted language. The proposed changes would remove the reference from ''lifeboats'' and replace it with the SOLAS 74 term ''survival craft'' and would replace the current definition for dead ship with the SOLAS 74 definition, (i.e., remove reference from ''ship service generators'' and replace it with ''auxiliaries''). The definition for ''flashpoint'' would be revised to reflect the current industry definition. Definitions for ''waterproof'', ''watertight'', and ''dripproof'' would be modified with reference to the text in the National Electrical Manufacturers Association (NEMA) and the International Electrotechnical Commission (IEC) enclosure categories for the proposed § 111.01–9, Degree of protection. Proper training and licensing would be added to the list of criteria under the definition for qualified person. This is proposed in order to

quantify the definition since Certificates of Inspection require a vessel to be manned by personnel holding certain licensed and unlicensed ratings. Parts 10 and 12 of 46 CFR detail the training, experience and testing procedures needed to obtain these licenses and documents. On the face of the merchant marine license it states that the holder has been duly examined and found competent.

Section 110.20–1. The Coast Guard would revise § 110.20–1, Conditions under which equivalencies may be used, to allow the Commanding Officer, Marine Safety Center (MSC) to accept equivalencies for fittings, materials, apparatus, equipment, or arrangements required by this subchapter. With the consolidation of the Coast Guard's three former merchant marine technical offices into one central location, the opportunity for different interpretations of equivalencies by different Coast Guard offices no longer presents a problem. Allowing the Marine Safety Center to accept equivalencies enables the submitter to send all plans to one point of contact within the Coast Guard. This procedural change would not alter the appeal procedures already contained in 46 CFR 1.03, Rights of appeal.

Subpart 110.25. The Coast Guard would revise various paragraphs of subpart 110.25, Plan Submittal, to remove Commandant (G–MMS) as one of the offices to which plans may be submitted. Commandant (G–MMS) does not perform plan review for specific vessels. All vessel plan review is now conducted by the U.S. Coast Guard Marine Safety Center (MSC). Also, several terms in § 110.25–1(c) will be changed to reflect the wording found in SOLAS 74 and other international standards.

Section 110.30–7. The Coast Guard would revise § 110.30–7, Repairs or alterations, to clarify the material. This section complements § 110.01–3, Repairs, regarding minor and major repairs and alterations. This has been the long-standing regulation in subchapter D: 46 CFR 30.01–10, Application of regulations governing alterations or repairs. Although the application of these regulations has become standard practice for all types of vessels, the Coast Guard now proposes to repeat it in the electrical engineering regulation subchapter to remove any misunderstanding and clarify that this requirement applies to electrical systems on all vessels subject to subchapter J.

Subpart 110.35. The Coast Guard would add a new subpart 110.35, Independent Laboratories, which would define Independent Laboratories. An Independent Laboratory will be a laboratory which has been accepted by the Commandant under part 159 of this chapter for the testing of electrical and electronic equipment and other related apparatus. Paragraph (j) of § 110.25–1 would be changed to refer to an Independent Laboratory instead of specifically named laboratories.

Part 111—Electric Systems—General Requirements

Section 111.01–5. The Coast Guard would add electrical cable to the list of equipment in § 111.01–5, Protection from bilge water. In addition to being sound engineering practice, the American Bureau of Shipping (ABS) Rules for Building and Classing Steel Vessels prohibit generator cable installation in the bilge and the Institute of Electrical and Electronic Engineers (IEEE) Standard 45 (Recommended Practice for Electric Installations on Shipboard) recommend not installing any cable in the bilge.

Section 111.01–7. The Coast Guard would revise § 111.01–7, Accessibility, to remove specific references, throughout the subchapter, to detailed construction requirements. A new paragraph (b) would be added which would provide general performance and safety guidelines. These revisions would set standards for equipment based on performance criteria and therefore allow the removal of more detailed construction specifications.

Section 111.01–9. The Coast Guard would change the title of § 111.01–9, Watertight, waterproof, and dripproof equipment, to Degrees of protection, and revise the section to reflect the revision of § 110.15–1, Definitions. These changes now bring the regulations on enclosures in line with IEC standards while allowing the option of National Electrical Manufacturers Association (NEMA) enclosure selection.

Section 111.01–15. The Coast Guard would revise § 111.01–15, Temperature ratings, to require an ambient temperature of 45 °C for most electrical equipment in machinery spaces instead of the currently required 50 °C. The international community has established 45 °C as the standard ambient temperature for these shipboard applications. Rotating machinery would still be required to be rated for 50 °C because of its inherent heating characteristics, but cable installed in machinery spaces would be rated at 45 °C. Control and instrumentation equipment would be rated at 55 °C in order to comply with the international requirements. The proposed changes would still allow for derating equipment based on the actual ambient temperature of the space.

Section 111.01–17. The Coast Guard would revise § 111.01–17, Nature of electric supply, by renaming the section, Voltage and frequency variations, and deleting specific reference to restrictive standard voltages and frequency as well as deleting table 111.01–17(b), Standard Voltages. The revision would instead reference industry standard operating parameters for electrical machines and apparatus.

Sections 111.01–19, 111.01–21, and 111.01–23. The Coast Guard would add three new sections: § 111.01–19, Inclination of the ship, § 111.01–21, Vibration, and § 111.01–23, Humidity. These sections would include requirements for the electrical systems in relation to the inclination of a vessel and those for conditions of vibration and humidity.

Section 111.05–1. The Coast Guard would revise § 111.05–1, Purpose, with a minor addition to include ''systems'' as stated in the subpart title.

Section 111.05–07. The Coast Guard would revise § 111.05–7, Armored and metallic-sheathed cable, in order to align installation requirements of armor sheathed cable with international standards.

Section 111.05–9. The Coast Guard would revise § 111.05–9, Masts, to address lightning protection for vessels with nonmetallic masts. This proposed revision would account for the expanded use of lighter weight composite materials for masts.

Section 111.05–19. The Coast Guard would revise § 111.05–19, Tank vessels; grounded distribution systems, to align the systems' voltage limits with the IEC (1000 volts) vice 3000 volts currently mandated in the regulations. This gives the designer of nominal 2400 volt plants the option of a grounded distribution system.

Section 111.05–23. The Coast Guard would revise § 111.05–23, Location of ground indicators, to include requirements for branch circuit detection indicators where the circuit is isolated from the main source by a transformer or other device. Normal ground detector indication at the distribution switchboard is required in paragraph (a) for conventional feeder circuits. This proposal extends indication coverage to the load side of isolation devices whose circuits would not be otherwise monitored. Also, this proposal brings to one central location all ground detection device requirements and relieves the engineer of the burden, especially in an emergency, of visiting each transformer

or isolation device to ascertain the ground condition of the branch circuit.

Sections 111.05–25, 111.05–27, and 111.05–29. The Coast Guard would revise § 111.05–25, Ungrounded systems, § 111.05–27, Grounded neutral alternating-current systems, and § 111.05–29, Dual voltage direct-current systems, to offer a greater number of options in ground detection circuitry. The proposed revision would remove restrictive wattage and current limitations on detection circuit components thereby allowing for innovative design and would replace them with performance parameters.

Section 111.05–33. The Coast Guard would revise § 111.05–33, Equipment grounding conductors, to require that each equipment grounding conductor be insulated and be of a size at least equal to current carrying conductor. This proposal would align our regulations with the National Electrical Code (NEC).

Sections 111.05–37 and 111.05–39. The Coast Guard would consolidate § 111.05–39, Switches and circuit breakers, into § 111.05–37, Overcurrent device. Both sections presently address overcurrent protection devices.

Section 111.10–1. The Coast Guard would revise paragraph (a) of § 111.10–1, Definitions, to remove certain cargo refrigeration systems from the list of ship's service electrical loads. These loads are industrial in nature and are not directly related to the safety of the vessel. These refrigeration systems are added to the list of industrial type loads in the same section.

Section 111.10–3. The Coast Guard would revise § 111.10–3, Two generating sets, to add the requirement that a Mobile Offshore Drilling Unit (MODU) must have at least two ship's service generating sets. This is presently a requirement of the International Maritime Organization (IMO) MODU Code. The Coast Guard proposes the inclusion since subchapter I–A for MODU Inspection and Certification references subchapter J for their electrical systems.

Section 111.10–4. The Coast Guard would revise § 111.10–4, Power requirements; generating sets, to define the required generating capacity. The changes would result in regulations which mirror the requirements of SOLAS 74. The Coast Guard would revise paragraph (b) to clarify the fact that the capacity of the ship's service generating set or sets must be sufficient to carry the ship's service loads with the largest ship's service generator stopped. The Coast Guard would revised paragraph (d) to ensure that propulsion-plant loads do not impact on ship's service loads when these loads are supplied by a common generator. New paragraphs (e) and (f) would be added specifically to address main-engine-dependent generators. The proposed regulation reflects a harmonization with international standards, recognized classification society requirements, and present industry practice for these types of generators.

Section 111.10–7. The Coast Guard would revised paragraph (b) of § 111.10–7, Dead ship, by adding a sentence referencing additional existing requirements contained in § 112.05–3 of this chapter. These requirements refer to the main and emergency bus-tie.

Sections 111.10–9 and 111.10–11. The Coast Guard would revise § 111.10–9, Ship's service supply transformers; 2 required, to clarify the intent of the requirement and bring the requirements of § 111.10–11, Power requirements; transformers under this one section.

Section 111.12–1. The Coast Guard would revised paragraph (a) of § 111.12–1, Prime movers, to incorporate American Bureau of Shipping (ABS) Rules for prime movers, paragraph (b) to clarify that all generator prime movers need a governor, and paragraph (c) to remove the exemption from the automatic shut down in case of loss of lubricating oil.

Section 111.12–5. The Coast Guard would revise paragraph (a) of § 111.12–5, Generator construction and testing, to reflect a change in the ABS Rules numbering system and would remove the designation ''(a)'' from the paragraph. Paragraphs (b), (c), and (d) would be removed.

Section 111.12–7. The Coast Guard would revise paragraph (a) of § 111.12–7, Voltage regulation and parallel operation, to reflect a change in ABS Rules numbering system.

Sections 111.15–1, 111.15–2, and 111.15–3. The Coast Guard would revise § 111.15–1, General § 111.15–2, Battery construction, and § 111.15–3, Battery categories, to eliminate restrictive construction details and to allow the use of different types of batteries, including sealed batteries and other designs. The specific size requirement in paragraph (c) of § 111.15–2 would be removed and reclassification would be allowed under paragraph (d) of § 111.15–3. Additionally, the Coast Guard proposes a new paragraph (d) in § 111.15–2 be added as a performance measure to address a battery's suitability for installation in the marine environment.

Section 111.15–5. The Coast Guard would revised paragraph (a) in § 111.15–5, Battery installations, by deleting the reference to specific test laboratories. All electrical equipment and laboratory testing requirements for hazardous locations would be addressed in subpart 111.105, Hazardous Locations. Additionally, the Coast Guard would allow for the expanded use of internationally available electrical equipment by providing reference to IEC hazardous location classifications. The Coast Guard would amend § 111.15–5(c), Small batteries, to allow liberal storage of small-size sealed batteries. This is possible due to the reduced hazard associated with sealed equipment. The Coast Guard would eliminate paragraph 111.15–5(e), Tiers. This requirement is redundant with the spacing requirement specified in paragraph 111.15–5(d), Battery trays. The remaining paragraphs (f), (g) and (h) would be renamed (e), (f) and (g).

Section 111.15–10. The Coast Guard would revise paragraph (g) of § 111.15–10, Ventilation, to explain the intent of ventilation requirements for small battery installations. If the battery box were in a non-environmentally-controlled location, simple vent openings may allow the ingress of water. A statement on preventing ingress would be added.

Section 111.15–20. The Coast Guard would revise § 111.15–20, Conductors, to put the accepted installation practices presently included in this section into proper terminology. The requirements in paragraphs (b) and (c) would be combined into one paragraph.

Section 111.15–30. The Coast Guard would revise § 111.15–30, Battery chargers, to eliminate specific construction requirements for battery chargers. In their place, the Coast Guard proposes certain performance requirements.

Section 111.20–1. The Coast Guard would revise § 111.20–1, General requirements, to reflect internationally accepted practices for transformer construction, installation and protection by allowing not only the winding but also the enclosure to provide the necessary protection.

Section 111.20–15. The Coast Guard would revise § 111.20–15, Transformer overcurrent protection, to reflect internationally accepted practices for transformer overcurrent protection by allowing a choice of standards.

Section 111.25–5. The Coast Guard would revise paragraph (a) of § 111.25–5, Marking, to allow nameplate markings in accordance with the practices of the IEC as an alternative to the present National Electrical Code requirement.

Section 111.30–1. The Coast Guard would revise § 111.30–1, Location and installation, to require switchboard installation to follow industry practice by removing specific construction

detailed regulatory language and instead referring to the appropriate guidance of IEEE Standard 45.

Section 111.30–4. The Coast Guard would revise § 111.30–4, Circuit breakers removable from front, to allow an alternative method of circuit breaker installation. This would permit the circuit breaker to be hard-wired to the switchboard if: (1) The switchboard is divided into two or more sections that can be split by disconnecting a link between a section of the switchboard, and (2) the connection of generators and duplicated equipment is equalized between the sections of the main bus. This allows for the capability of de-energizing a section of the switchboard without shutting down the power supply or degrading the continuity of power supply to vital loads.

Section 111.30–5. The Coast Guard would revise § 111.30–5, Construction, to remove detailed switchboard construction requirements and incorporate international consensus standards (IEEE Standard 45 and IEC Publications 92–302/92–503).

Sections 111.30–9, 111.30–11, and 111.30–13. The Coast Guard would eliminate § 111.30–9, Mechanical protection, § 111.30–11, Mats or gratings, and § 111.30–13, Grounding. The requirements of these sections are included in the industry practices of the IEEE Standard 45 and the IEC Publications.

Section 111.30.–19. The Coast Guard would revise § 111.30–19 Buses and wiring. Paragraph (a) would be revised to allow for the guidance of international performance standards instead of the present detailed technical requirements. Paragraphs (b) through (e) would be deleted because the information they contain is covered by proposed paragraph (a). Paragraph (f) would be renamed paragraph (b) and would be revised to allow for the use of small-conductor-size cable, such as ribbon cable, for instrumentation and control circuitry, as is common industry practice.

Section 111.30–21. The Coast Guard would eliminate § 111.30–21, High temperature devices. This design specification would be addressed in the requirements of the appropriate industry standards of the IEEE and IEC and need not be repeated here.

Section 111.30–23. The Coast Guard would eliminate § 111.30–23, Medium voltage switchboards. These requirements will be part of the proposed revision of § 111.30–5, Construction.

Section 111.30–24. The Coast Guard would revise § 111.30–24, Generation systems greater than 3000 kw, to modify the exemption for MODUs to split the switchboard when the total generator power exceeds 3000 kw. The IMO MODU Code requires self-propelled MODUs to have a split switchboard when the total installed generator capacity exceeds 3 Megawatts (3000 kw). Therefore the exemption will apply only to nonself-propelled MODUs.

Section 111.30–29. The Coast Guard would revise § 111.30–29, Emergency switchboards, by adding paragraphs (g), (h) and (i). These paragraphs are presently contained in part 112. The purpose of this change is to consolidate all of the requirements for the emergency-switchboard instrumentation and equipment into one section.

Section 111.30–31. The Coast Guard would delete § 111.30–31, Tests. Presently this section requires switchboards to be tested to an American Bureau of Shipping requirements. American Bureau of Shipping Rules do not address the testing of switchboards.

Section 111.33–3. The Coast Guard would replace the descriptive nameplate requirements of § 111.33–3, Nameplate data, for semiconductor rectifier systems with industry practice according to international standards.

Section 111.33–5. The Coast Guard would replace the descriptive installation requirements of § 111.33–5, Installation, for semiconductor rectifier systems with industry practice according to international standards.

Section 111.33–11. The Coast Guard would revise § 111.33–11, Propulsion systems, to reflect the current American Bureau of Shipping numbering system regarding semiconductor rectifier systems.

Section 111.35–1. The Coast Guard would revise § 111.35–1, Electrical propulsion installations, to reflect the current American Bureau of Shipping numbering system.

Section 111.40–1, 111.40–5, and 111.40–7. The Coast Guard would remove § 111.40–1, Panelboard, standard, to eliminate the requirement of meeting a specific standard and thereby allowing the use of panelboards which are designed and constructed according to sound engineering practice. Likewise, the Coast Guard would revise § 111.40–5, Enclosure, and § 111.40–7, Location, to allow the installation of panelboards with a suitable degree of protection to be installed in the weather. This change allows more latitude in the electrical arrangement on the ship without reducing personnel safety requirements.

Section 111.50–2. The Coast Guard would add a new § 111.50–2, Systems integration. This new section would reflect the need to consider component compatibility within each overcurrent protection system.

Section 111.50–3. The Coast Guard would revise paragraphs (c), (d), (f) and (h)(2) of § 111.50–3, Protection of conductors, to allow the use and incorporate the requirements of the IEC for fuses, circuit breakers, thermal devices and ground conductors.

Section 111.52–1. The Coast Guard would correct § 111.52–1, General, to identify the physical unit (i.e., ''current'') needed to be calculated when performing short-circuit current calculations.

Section 111.52–5. The Coast Guard would revise § 111.52–5, Systems 1500 kilowatts or above, to allow several additional methods of short-circuit current calculations. This would ensure that the appropriate method of short-circuit current calculation is available to the designer as well as the plan reviewer.

Section 111.53–1. The Coast Guard would revise paragraph (a)(1) of § 111.53–1, General, to eliminate specific reference to parts E and F of the National Electrical Code relative to fuses. The revision would add the option of meeting the general provisions of IEC internationally recognized standards. Additionally, the Coast Guard would revise paragraph (a)(3) to eliminate restrictive reference to Underwriters Laboratories, Inc. This would expand industry's options to list fuses with any Independent Laboratory. The Coast Guard would revise paragraph (b) to eliminate prohibitive reference to Edison-base fuses. The Coast Guard recognizes that systems designed and built to IEC and/or CEN standards may contain these fuses. It is also recognized that many Maritime Administration (MARAD) Ready Reserve Force reflagged vessels have been operating with such equipment for years. The Coast Guard, however, maintains its prohibition of renewable-link cartridge fuses because it is considered a severe safety hazard in that a link of a higher than recommended current value might be placed in a jacket marked with a lower value and the fault be undetectable. The Coast Guard would add a new paragraph (c) to provide for the ability to test for fuse condition, particularly for installations utilizing Edison-base fuses, since the glass or plastic link protector inhibits the readily available test points offered by a more common cartridge fuse.

Section 111.54–1. The Coast Guard would revise § 111.54–1, Circuit breakers, to include reference to and the allowance of internationally recognized standards and at the same time

eliminate reference to restrictive and specific construction standards.

Section 111.55–1, 111.55–5, 111.55–7, and 111.55–9. The Coast Guard would delete § 111.55–5, Knife switches, § 111.55–7, Snap switches, and § 111.55–9, Enclosed switches. These requirements do not provide an additional level of safety beyond that ensured by compliance with § 111.55–1, General.

Subpart 111.57. The Coast Guard would eliminate subpart 111.57, Current-Limiting Devices. The operating and design characteristics of current limiting devices would be included in the revision of subpart 111.53, Fuses, and subpart 111.54, Circuit Breakers. This, in turn, reduces repetitive and unnecessary regulation.

Section 111.59–1. The Coast Guard would rewrite § 111.59–1, General, to eliminate paragraph (b) and the requirement that busways meet a specific construction standard, as the performance of the component is established by compliance with paragraph (a).

Section 111.59–3. The Coast Guard would revise § 111.59–3, No mechanical cooling, to correct an omission. In the present version, the regulations state that ''A busway must need mechanical cooling * * *'' which is opposite to the intent of this section.

Section 111.60–1. The Coast Guard would revise § 111.60–1, Cable construction and testing, to align our regulation language with that of the 1983 edition of IEEE Standard 45. Additionally, the Coast Guard would propose to include, as acceptable, cable that is designed, constructed, tested and installed in accordance with the international standards of IEC Publications 92–3 and certain 92–350 series as well as several MIL Specification cables.

Sections 111.60–2 and 111.60–6. The Coast Guard would add new § 111.60–2, Specialty cable for communication and RF applications, and § 111.60–6, Fiber optic cable, to include requirements for specialty electrical cables and optical fiber cables. The proposed requirements address installation and flammability characteristics for these cables. The Coast Guard feels this is necessary because of the present lack of guidance for this relatively new equipment now on board or contemplated for installation on board certificated vessels and because of the larger fire load the cable represents.

Section 111.60-3. The Coast Guard would revise § 111.60–3, Cable application, to include the applicable requirements of IEC Publication 352 and to assure proper derating of cables according to type construction.

Section 111.60–4. The Coast Guard would revise § 111.60–4, Minimum cable conductor size, to include instrumentation cable with the thermocouple and pyrometer group. Mention of general instrumentation cable was unintentionally omitted from the regulations during the last revision.

Section 111.60–5. The Coast Guard would revise § 111.60–5, Cable installation, to include reference to the installation of cables constructed in accordance with the international standard IEC Publication 92–3 and the IEC 92–350 series.

Section 111.60–11. The Coast Guard would revise § 111.60–11, Wire, to expand the choices available for shipboard wiring. The current requirements are too restrictive and do not constitute an appreciable increase in safety beyond the proposed reduction in those requirements.

Section 111.60–13. The Coast Guard would revise paragraph (a) of § 111.60–13, Flexible electric cord and cables, to remove the restrictions presently governing the use of flexible cord and cables. The proposed change allows compliance with a larger number of nationally-recognized standards.

Section 111.60–17. The Coast Guard would revise § 111.60–17, Connections and terminations. The current regulations are merely a narrative describing standard marine practice. The proposed revision would outline specific installation criteria for connectors and terminals.

Section 111.60–19. The Coast Guard would revise § 111.60–19, Cable splices, to reflect current industry practice as outlined in the internationally accepted IEEE Standard 45.

Section 111.60–21. The Coast Guard would revise § 111.60–21, Cable insulation tests, to reflect a change in numbering system of the referenced IEEE standard.

Section 111.60–23. The Coast Guard would add a new § 111.60–23, Type MC cable, to address the lack of requirements primarily on offshore production platforms. However, the installation of this cable is not limited to offshore platform applications and may be used as shipboard cable provided certain installation requirements are followed.

Subpart 111.70. The Coast Guard would revise subpart 111.70, Motor Circuits, Controllers and Protection, to reflect internationally recognized classification society standards, practices and requirements which do not rely solely on the shoreside code of the National Electrical Code. Additionally, the revision will eliminate obsolete requirements.

Section 111.75–1. The Coast Guard would revise paragraph (a) of § 111.75–1, Lighting feeders, to replace the term ''fire screen'' with the term ''fire'' to agree with SOLAS 74, and include reference to low location egress lighting. The Coast Guard would eliminate paragraph (c). This requirement does not elevate the overall safety level of the vessel. The Note, however, is part of the section and is retained.

Section 111.75–5. The Coast Guard would delete the voltage specific requirements of lighting circuits by deleting paragraph (b), Voltages, in § 111.75–5, Lighting branch circuits, and the remaining paragraphs would be re-lettered and re-numbered accordingly. The Coast Guard would redesignate paragraph (c), Connected load, as paragraph (b) and revise the narrative concerning connected loads. The removed narrative is standard electrical practice and need not be specified in the regulations. The Coast Guard would redesignate paragraph (e), overcurrent protection, as paragraph (d), redesignate paragraph (f), 25 or 30 ampere lighting branch circuits, as paragraph (e), and revise the new paragraph (d) to remove the specifications for the minimum conductor sizes. The requirements for these loads required by proposed revisions of § 111.60–3, Cable application, and § 111.60–4, Minimum cable conductor size, are adequate. The Coast Guard would eliminate paragraph (g), connections to screw-shell lampholders, as it is considered standard practice and need not appear in regulation.

Section 111.75–15. The Coast Guard would revise paragraph (c), Illumination of passenger and crew spaces, in § 111.75–15 to eliminate restrictive wording and replace this requirement with a performance requirement concerning normal habitability and safe egress under emergency conditions.

Section 111.75–16. The Coast Guard would revise § 111.75–16, Lifeboat and liferaft floodlights, to replace the terms ''lifeboat'' and ''liferaft'' with the term ''survival craft'' to agree with SOLAS 74 terminology.

Section 111.75–17. The Coast Guard would delete paragraph (d)(1) of § 111.75–17, Navigation lights, which requires navigation light fixtures to be approved by the Commandant, as this would no longer be required. The Coast Guard proposes instead that paragraph (d) be further revised to incorporate labeling requirements to show compliance with UL 1104 by an Independent Laboratory. The Coast

Guard would delete paragraph (f), Light screens. This requirement is clearly stated in the COLREGS Annex I Rule 5 and in 33 U.S.C. 1602 and need not be repeated here.

Section 111.75–18. The Coast Guard would revise § 111.75–18, Signaling lights, to reflect SOLAS 74 Regulation V/11 for applicability and to reduce specific construction details.

Section 111.75–20. The Coast Guard would revise § 111.75–20, Lighting fixtures, to modify paragraph (a) to include UL's deleting UL 595 (Marine-Type Electric Lighting Fixtures) and incorporating specific Marine requirements into the respective fixture type standards (i.e., UL 1570 is for Fluorescent Lighting Fixtures, UL 1571 is for Incandescent Lighting Fixtures, etc.). Also, the Coast Guard would add an additional paragraph (e) which would address the installation of non-emergency interior and decorative lighting in environmentally-controlled spaces. Also, requirements related to shock and vibration which may be encountered in the marine environment will be addressed. Both paragraphs will reference additional international standard options.

Sections 111.77–3, 111.77–5, 111.77–7, 111.77–9, and 111.77–11. The Coast Guard would eliminate § 111.77–3, Electric cooking equipment, § 111.77–5, Electric motor-operated appliances, § 111.77–7, Dishwashers, § 111.77–9, Refrigerators, and § 111.77–11, Refrigerated drinking water coolers, and replace them with internationally recognized safety standards. Selection of safe appliances, based on industry construction and testing standards for use on commercial vessels, is at the option of the vessel owner.

Section 111.79–1. The Coast Guard would revise § 111.79–1, Receptacle outlets; general, to remove specific construction requirements and to allow for more flexibility in installations.

Section 111.79–5. The Coast Guard would eliminate § 111.79–5, Damp or wet locations and weather locations, and incorporate more general industry standards and practices under § 111.79–1, Receptacle outlets; general, in the proposed revision of paragraphs (c) and (d).

Section 111.79–7. The Coast Guard would remove the detailed construction requirements for receptacle components in § 111.79–7, No live parts, and replace them with performance requirements.

Section 111.79–13. The Coast Guard would revise and rename § 111.79–13, Different potentials on a vessel, to read, Different voltages and power types, to remove any ambiguity and more clearly explain the intent of the regulation.

Sections 111.81–1 and 111.81–5. The Coast Guard would delete § 111.81–5, National Electrical Code, and the text, which addresses the NEC requirements for outlet boxes and junction boxes, would be relocated to new paragraph (d) in § 111.81–1, Outlet boxes and junction boxes: General. The new § 111.81–1(d) would address the general requirements for junction boxes in terms of U.S. national standards and introduce the option of international standards as well. This change would also consolidate the requirements for junction boxes into one section.

Section 111.81–7. The Coast Guard would rename § 111.81–7, Degree of protection. The Coast Guard would also propose to revise this section by incorporating industry accepted standards and terminology, both domestic and international.

Section 111.81–9. The Coast Guard would revise § 111.81–9, Mounting, to remove specific installation restrictions and replace them with performance requirements.

Section 111.81–11. The Coast Guard would eliminate § 111.81–11, Penetration of walls. This regulation is unnecessary since, by definition, a watertight enclosure must retain its integrity to be considered watertight.

Section 111.81–13. The Coast Guard would eliminate § 111.81–13, Construction. General construction requirements for outlet and junction boxes are now addressed in proposed paragraphs 111.81–7(a) and (b).

Section 111.83–3. The Coast Guard would remove § 111.83–3, Spacing: Live parts and live parts and ground, as the subject is addressed in § 111.01–7, Accessibility.

Subpart 111.85. The Coast Guard would revise subpart 111.85, Electric Oil Immersion Heaters, to exempt oil immersion heaters where it can be shown that the operating temperature of the heater can never reach the ignition temperature of the oil or vapor with which it is in contact.

Section 111.87–3. The Coast Guard would revise paragraph (a) of § 111.87–3, General requirements, to remove construction requirements to specific standards and replace them with reference to more general safety related requirements.

Subpart 111.89. The Coast Guard would eliminate subpart 111.89, Motion Picture Projectors. This regulation references a standard that is no longer pertinent to the marine environment. State-of-the-art technology has substituted video tape and laser disk players which do not present the same level of risk as projectors.

Section 111.91–1. The Coast Guard would revise and rename § 111.91–1, Control and interlock circuits, to require elevator and dumbwaiter power, control, interlock, and switch circuitry to meet the requirements of American National Standards Institute, Inc. (ANSI A17.1).

Section 111.91–3. The Coast Guard would eliminate § 111.91–3, Control switches. This design standard is not pertinent to the performance of the device.

Section 111.95–3. The Coast Guard would eliminate the detailed construction requirements of paragraphs (a) through (e) of § 111.95–3, General requirements. Paragraph (f) would be renamed (b) and retained. New general requirements will be set forth in a proposed revision to reference industry accepted standards (both national and international) and other proposed requirements for Degree of Protection and Accessibility.

Section 111.95–5. The Coast Guard would eliminate the detailed requirements of § 111.95–5, Detail construction requirements. Sufficient guidance is afforded in the proposed revision of § 111–95–3, General requirements.

Section 111.95–7. The Coast Guard would delete figures 111.95–7 (e)(1) through (e)(5), which address typical boat winch wiring diagrams and arrangement drawings. The figures create confusion in the application of lifeboat davit switches and serve no useful or safety purpose.

Section 111.97–5. The Coast Guard would revise paragraph (c) of § 111.97–5, Electric and hydraulic power supply, to reduce the required capacity of an accumulator tank on a hydraulic system common to more than one power-operated watertight door. The present regulation requires the tank to have sufficient capacity to open and close all doors three times. Consistent with SOLAS 74, the proposed requirement states that the capacity must be sufficient to close all doors two times and open all doors once.

Subpart 111.99. The Coast Guard would revise subpart 111.99, Firescreen Door Holding and Release Systems, to replace the term ''fire screen'' with the term ''fire'' to provide consistency with the terminology of SOLAS 74, Regulation II–2/47.

Section 111.99–1. The Coast Guard would expand the scope of § 111.99–1, Applicability, to address fire doors installed on all vessels which require fire doors. The subchapters in 46 CFR containing requirements for specific vessel types all require fire doors to meet subpart 111.99.

Subpart 111.105. The Coast Guard would add, delete and revise sections of subpart 111.105, Hazardous Locations, to reflect current national standards and recognized classification society rules. Additionally, means of alternative compliance to these particulars will be provided by incorporating by reference international standards (i.e., IEC, CEN and IEEE). Specific paragraphs and sections affected follow.

Section 111.105–1. The Coast Guard would revise § 111.105–1, Applicability, to remove the restriction to the National Electrical Code references to hazardous locations and provide options from IEC Publication 79 series.

Section 111.105–3. The Coast Guard would add a new § 111.105–3, General requirements, to provide basic guidance to hazardous location information and to set forth the appropriate standards.

Section 111.105–5. The Coast Guard would rename the section and delete the subject material of § 111.105–5, National Electrical Code, whose guidance has been superseded by proposed new § 111.105–3. Proposed § 111.105–5, System integrity, would now address the prohibition of mixing the requirements of the NEC with IEC equipment and systems since, although equivalent in level of safety, they differ in the manner by which this is achieved.

Section 111.105–7, 111.105–9, 111.105–11, and 111.105–23. The Coast Guard would revise § 111.105–7, Approved equipment, § 111.105–9, Explosionproof equipment, § 111.105–11, Intrinsically safe systems, and § 111.105–23, Fan motors, to replace the specifically mentioned test facilities with phraseology that will provide industry with a greater number of options for product testing.

Section 111.105–10. The Coast Guard would eliminate § 111.105–10, Purged and pressurized equipment. Its content, with options, would be sufficiently presented in proposed § 111.105–7, Approved equipment.

Section 111.105–11. The Coast Guard would revise paragraph (a) of § 111.105–11, Intrinsically safe systems, to remove the restriction of specific test laboratories and to add additional accepted international standards to which equipment may be tested.

Section 111.105–11. The Coast Guard would add paragraphs (b)(3) and (b)(4) in § 111.105–11, Intrinsically safe systems, as an additional safety measure and to conform with accepted industry practices as stated in the IEEE Standard 45. Also, the requirements in § 111.105–11(e) are to be relocated to proposed § 110.25–1(c)(12) to consolidate the requirements relating to plan submittal.

Sections 111.105–15 and 111.105–17. The Coast Guard would delete § 111.105–15, Wiring methods for Class I hazardous locations, and § 111.105–17, Wiring methods for Class II and Class III hazardous locations. A new § 111.105–15 entitled, Additional methods of protection, and a new § 111.105–17 entitled, Wiring methods for hazardous locations, are proposed. These would permit the use of conduit systems as allowed by the National Electrical Code and afford a greater variety of equipment complying with internationally accepted standards.

Section 111.105–19. The Coast Guard would revise § 111.150–19, Switches, to conform with reference to proposed revisions which reflect the acceptance of equipment meeting international standards.

Sections 111.105–21, 111.105–23, and 111.105–25. The Coast Guard would revise the title and text of § 111.105–21, Fans, to consolidate the guidance in § 111.105–23, Fan motors, and § 111.105–25, Ventilation ducts, thereby eliminating those two sections.

Section 111.105–29. The Coast Guard would revise paragraph (a) In § 111.105–29, Combustible liquid cargo carriers, to include requirements for submersible pumps on vessels with combustible liquid cargoes having flashpoints 60 °C or higher. This reflects the requirements of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code), which allows for submersible cargo pumps to be used on vessels with a cargo having a flashpoint exceeding 60 °C. The Coast Guard would add paragraph (c) to include hazardous area classification requirements for vessels carrying a cargo with a flashpoint of 60 °C or higher which is heated to within 15 °C of its flashpoint. This reflects the requirements of the IBC Code.

Section 111.105–31. The Coast Guard would revise § 111.105–31, Flammable or combustible cargo with a flashpoint below 60 degrees C (140 degrees F), liquid sulfur and inorganic acid carriers, to include information in agreement with the wording and guidance in 33.14 (Electrical Installations on Tank Vessels) of IEEE Standard 45. The Coast Guard would revise paragraph (e) to include internationally accepted terminology of the IEC concerning zone descriptions of hazardous locations. The Coast Guard would revise paragraph (l) by adding new paragraphs (l)(3) and (l)(4) to include requirements for electrical installations in hazardous locations on board vessels with cargoes with flashprints below 60 °C in accordance with international standards.

Section 111.105–32. The Coast Guard would revise the title of § 111.105–32, Bulk liquefied gas and ammonia carriers, and paragraph (e), which addresses the requirements for submersible cargo pumps in bulk liquefied flammable gas and ammonia carriers, and would reference the requirements of § 111.105–31(d) for submersible pumps.

Section 111.105–35. Presently, when a vessel is issued a Certificate of Inspection to carry coal, the certificate does not differentiate between the types of coal. This allows a vessel to carry both types, bituminous and anthracite coal. The Coast Guard would revise § 111.105–35 to require that vessels carrying coal of any type be subject to the same hazardous area classification requirements. Therefore, the vessel's hazardous area plan should address the worst case scenario.

Section 111.105–37. The Coast Guard would revise § 111.105–37, Flammable anesthetics, to reflect a change in name and number of the referenced NFPA standard.

Section 111.105–39. The Coast Guard would revise and rename § 111.105–39, Gasoline or other highly volatile motor fuel carried in vehicles, to reflect current recognized classification society rules regarding requirements for vessels carrying vehicles with fuel in their tanks. Additionally, means of alternative compliance to classification society rules is provided by citing IEC Zone classification.

Section 111.105–40. The Coast Guard would introduce a new § 111.105–40, Additional requirements for RO/RO vessels, to reflect current international classification society rules regarding RO/RO vessels. Additionally, means of alternative compliance is provided by citing IEC Zone classification.

Section 111.105–41. The Coast Guard would revise § 111.105–41, Battery rooms, to incorporate the provisions of internationally recognized IEEE Standard 45.

Section 111.105–45. The Coast Guard would add § 111.105–45, Vessels carrying agricultural products, to identify hazardous locations on vessels carrying certain agricultural products in bulk due to the hazards associated with grain dust. The proposed requirements are identical to the information published in Navigation and Vessel Inspection circular (NVIC) 9–84 ''Electrical Installations in Agricultural Dust Locations'' which has been Coast Guard policy since this subchapter was last revised.

Section 111.105–47. The Coast Guard would add a new § 111.105–47, Duct keel ventilation or lighting, to reflect

international practice by citing recognized classification society rules for ventilation, lighting and gas detection in special areas such as pipe tunnels, double bottoms and duct keels.

Subpart 111.107. The Coast Guard would revise subpart 111.107, Industrial Systems, to define the subject term. The proposed definition would expand the applicability of industrial systems to vessel types other than Mobile Offshore Drilling Units. Additionally, the Coast Guard proposes the general safety requirements of §§ 111.12–1(b) and 111.12–1(c) for generator prime movers be applied to industrial system prime movers.

Part 112—Emergency Lighting and Power Systems

Section 112.05–1. The Coast Guard would revise paragraph (a) in § 112.05–1, Purpose, to remove ambiguity with regard to the purpose and intent of ensuring a dependable, independent and dedicated emergency power source. The Coast Guard would add a new paragraph (c) to allow the Commanding Officer, Marine Safety Center, to authorize certain electrical loads be connected to the emergency power source. These include loads that may be required in an emergency due to the particular mission or configuration of the vessel. When these additional loads are connected to the emergency power source, the emergency power source must be sized to handle these loads using a unity (1.0) service factor or an automatic load shedding scheme which removes these loads before overloading the emergency source of power.

Section 112.05–5. The Coast Guard would revise paragraph (a) of § 112.05–5, Emergency power source, to reference possible additional loads allowed by the Commanding Officer, Marine Safety Center in accordance with the proposed addition of § 112.05–1(c) above. The Coast Guard would revise note 1 of Table 112.05–5(a) to be consistent with ABS rule 4/5.40.4. The Coast Guard would revise paragraph (c), which addresses the requirements for emergency power installations, to incorporate a reference to subchapter S (Stability). This would require a vessel's emergency power installation to function at specific angles of heel and trim, depending on the vessel type. The Coast Guard would revise paragraph (d), which addresses the requirements for the emergency power source, by adding associated transforming equipment and the emergency switchboard to the list of equipment required to be located aft of the collision bulkhead, outside the machinery space, and above the uppermost continuous deck. The Coast Guard interprets SOLAS 74 as requiring the ''emergency source of power'' to include the power source, any associated transforming equipment, and the emergency switchboard. This proposed change also prohibits any other equipment from being located in the same space as the emergency power source and its associated equipment. The Coast Guard would revise paragraph (e) to conform with the requirements imposed by SOLAS 74 II–1/43–1.3.

Section 112.15–1. The Coast Guard would revise paragraphs (c), (g), (j), and (k) of § 112.15–1, Temporary emergency loads, to incorporate the semantics used in SOLAS 74. Paragraph (p) would be revised to include gas detection systems. New paragraph (q) would be added to include lighting for helicopter operations, if installed. New paragraph (r) would be added to include general emergency alarm power, reflecting SOLAS 74 requirements in Regulation III/50.

Section 112.15–5. The Coast Guard would revise paragraph (b) in § 112.15–5, Final emergency loads, to identify the circuits of a passenger elevator that must be powered from the final emergency power source regardless of the type of vessel. The Coast Guard would also revise paragraph (f) to require electrically-driven sprinkler systems, water-spray extinguishing systems, and the foam system pump to be powered from the final emergency source of power, paragraph (g) to include a geared diesel's lube oil pump which was unintentionally omitted at the last revision of this section, and paragraph (i) to specifically mention new Global Marine Distress Safety System installations (GMDSS). The Coast Guard would combine paragraphs (j), (k), (l), (m), and (n) into a single paragraph concerning navigation aids, all of which are either required or recommended by international practice. This change will allow a degree of latitude in eliminating unnecessary navigation equipment from that required to be powered from the final emergency power source. As a result of this change, paragraphs (o), steering gear feeders, (p), general alarm, (q), blow-out preventer, (r), diving systems, (s), emergency generator starting air compressor, and (t), steering gear failure alarm, of this section would be re-lettered as paragraphs (k), (l), (m), (n), (o), and (p). The Coast Guard would add paragraphs (q), (r), (s), (t), (u), and (v) to require that the following be powered from the final emergency source: the ballast control systems on column-stabilized MODUs, the automation loads required by part 62 of this chapter, motor-operated valves for cargo and fuel oil systems if the emergency source of power is their source of power to meet § 56.50–60(d), stabilizer wing positioning motors and indicators and smoke extraction fans and CO_2 exhaust fans.

Section 112.39–1 and 112.39–3. The Coast Guard would eliminate paragraph (a)(4) of § 112.39–1, General, as § 112.39–3, Operations, sufficiently defines the performance requirements of the lanterns. The Coast Guard would revise paragraph (a) of § 112.39–3, Operation, to conform with SOLAS 74 Regulation II–1/42–1.

Section 112.43–1. The Coast Guard would revise paragraph (b) of § 112.43–1, Switches, to change a reference from a deleted section to an active section.

Sections 112.43–3 and 112.43–7. The Coast Guard would delete § 112.43–3, Controls; general, and rename § 112.43–7, Navigating bridge distribution panel. The Coast Guard would revise certain entries in paragraph (a) to make terminology consistent with SOLAS 74. The present § 112.43–3 repeats the requirements of § 112.43–7.

Section 112.43–5. The Coast Guard would revise § 112.43–5, Controls on island type vessels, to replace the terms ''lifeboat'' and ''liferaft'' with the term ''survival craft'' to agree with SOLAS 74.

Section 112.43–11. The Coast Guard would revise § 112.43–11, Illumination for launching operations, to replace the terms ''lifeboat'' and ''liferaft'' with the term ''survival craft'' to agree with SOLAS 74.

Section 112.43–15. The Coast Guard would revise § 112.43–15, Emergency lighting feeders, to replace the term ''firescreen'' with the term ''fire'' to agree with SOLAS 74.

Section 112.43–17. The Coast Guard would delete § 112.43–17, Emergency light markers. The requirement that all emergency lights be individually marked is overly restrictive and does not provide a significant safety feature.

Section 112.45–5. The Coast Guard would relocate the requirements of § 112.45–5, Test switch, to subpart 111.30, Switchboards. This proposed change would consolidate the requirements for equipment required to be on the emergency switchboard in one section.

Section 112.50–1. The Coast Guard would combine paragraphs (d) and (e) in § 112.50–1, General, to clarify that diesel or gas turbine engines used to power emergency generators must not have any starting aids, except a thermostatically-controlled electric water-jacket heater connected to the final emergency bus. Additionally, the

time for the emergency generator to be capable of carrying its full load is increased from 20 to 45 seconds to agree with SOLAS 74.

Sections 112.50–1, 112.50–3, 112.50–5, and 112.50–7. The Coast Guard would add new paragraph (k) of § 112.50–1 to include requirements for starting devices on emergency generating sets. SOLAS 74, Regulation II–1/44, requires that ''Each emergency generating set arranged to automatically start shall be equipped with starting devices approved by the administration with a stored energy capability of at least three consecutive starts. A second source of energy shall be provided for an additional three starts within 30 minutes unless manual starting can be demonstrated to be effective.'' The proposed change parallels the International Association of Classification Societies (IACS) interpretation and affects § 112.50–3, Hydraulic starting; § 112.50–5, Electric starting; and § 112.50–7, Compressed air starting which are therefore being revised.

Section 112.55–15. The Coast Guard would revise § 112.55–15, Capacity of storage batteries, to reflect the requirements of SOLAS 74 regarding opening and closing of watertight doors. This is similar to the change proposed to subpart 111.97, Electric Power-Operated Watertight Door Systems, which addresses hydraulic opening and closing of watertight doors.

Part 113—Communication and Alarm Systems and Equipment

Subpart 113.10. The Coast Guard would revise the title of subpart 113.10, Fire Detecting and Alarm Systems and Manual Fire Alarm Systems, to include smoke detecting systems.

Section 113.10–7. The Coast Guard would revise § 113.10–7, Connection boxes, to introduce alternative methods of compliance by referencing standards of construction of the IEC.

Section 113.10.9. The Coast Guard would revise paragraph (a) of § 113.10–9, Power supply, to align fire detection system equipment requirements according to international practice, and remove paragraph (c).

Section 113.20–3. The Coast Guard would change the title of § 113.20–3, Watertight equipment, to a more general term, Connection boxes, to introduce alternative methods of compliance by referencing the construction standards of the IEC.

Section 113.25–6. The Coast Guard would revise paragraphs (d) and (e) of § 113.25–6, Power supply. In view of technological advances in electronic simulation and our acceptance of IEC voltages, the 6–120 volt requirement is unnecessarily restrictive. Additionally, since SOLAS 74 Regulation III/50 requires the general emergency alarm to be powered from the main and emergency source, the Coast Guard proposes to refer to that regulation in this paragraph instead. Paragraph (e) would contain wording to retain battery, temporary emergency bus and communication switchboard options.

Section 113.25–8. The Coast Guard would revise paragraphs (b), (c), (f) and (g) in § 113.25–8, Distribution of general alarm system feeders and branch circuits, to remove the restriction of having only five general alarm bells on a branch circuit. The existing regulation used an arbitrary number to ensure that the branch circuit was not overloaded. The specific reference to fuses will be replaced by a general statement regarding overcurrent protection. The remaining requirements ensure that a circuit is not compromised by a fault in another part of the vessel. Additionally, the size of vertical zones, mentioned in paragraph (g), is changed to meet the accepted main vertical fire zone dimension.

Section 113.25–9. The Coast Guard would revise paragraph (b) of § 113.25–9, Location of general alarm bells, to remove the detailed acoustic specifications. These specifications are replaced with more general performance requirements in proposed new paragraph (c).

Section 113.25–10. The Coast Guard would revise § 113.25–10, Location of flashing red lights, to include existing policy that only general alarm beacons, used in high noise areas, be red. This is required so that personnel are not confused by the use of the same visual signal to indicate a number of conditions.

Section 113.25–11. The Coast Guard would revise § 113.25–11, Contact makers, to remove the detailed construction requirements for the general alarm contact maker. The performance requirements for this component remain in effect.

Section 113.25–12. The Coast Guard would revise § 113.25–12, Vibrating bells, to allow the use of electronic devices to simulate the sound produced by a vibrating bell.

Section 113.25–16. The Coast Guard would revise § 113.25–16, Fuses, to have this regulation apply to circuit breakers and fuses, both of which are allowable overcurrent devices.

Subpart 113.30. The Coast Guard would revise subpart 113.30, Sound Powered Telephone and Voice Tube Systems. Voice tubes will be eliminated and, owing to today's technology, the Coast Guard will allow for choices by recognizing systems of communications other than sound powered phones that are accepted by recognized classification society rules.

Section 113.30–1. The Coast Guard would revise § 113.30–1, Applicability, to require self-propelled Mobile Offshore Drilling Units meet the same requirements as other self-propelled vessels.

Section 113.30–5. The Coast Guard would revise paragraphs (a), (d), (g), (h), and (i) of § 113.30–5, Requirements, to generalize communication systems and to incorporate the necessary clarifications pertinent to Mobile Offshore Drilling Unit applications. The Coast Guard would add new paragraph (j) to the list of locations where common means of voice communication and calling are required. This requirement increases the level of safety aboard the vessel and is consistent with the requirements of SOLAS 74.

Section 113.30–20. The Coast Guard would revise paragraphs (a), (b), and (d) (paragraph (d) will be relettered as (c)) of § 113.30–20, Sound-powered telephone systems: General requirements, to correct the semantics of referencing ''communications systems'' versus only ''sound-powered phones''.

Section 113.30–25. The Coast Guard would revise paragraph (a) of § 113.30–25, Sound-powered telephone system; detailed requirements, to remove the requirement that sound-powered telephones be approved by the Commandant. The remaining regulations are sufficient to ensure proper installation and operation of sound-powered telephones, or other reliable means of voice communications and calling.

Section 113.35–3. The Coast Guard would revise paragraph (e)(3) of § 113.35–3, General requirements, to reflect the above change in interior communications terminology.

Sections 113.35–5 and 113.35–7. The Coast Guard would revise § 113.35–5, Electric engine order telegraph systems; general requirements, and § 113.35–7, Electric engine order telegraph systems; detailed requirements, to eliminate the detailed design specifications for electric engine-order telegraph systems. These two sections are combined under § 113.35–5 to produce a single section addressing performance requirements.

Sections 113.35–9 and 113.35–11. The Coast Guard would revise § 113.35–9, Mechanical engine order telegraph systems; general requirements, and § 113.35–11, Mechanical engine order telegraph systems; detailed requirements, to eliminate the detailed design specification for mechanical

engine-order telegraph systems. These two sections are combined under § 113.35–9 to produce a single section addressing performance requirements.

Section 113.37–5. The Coast Guard would correct semantics concerning ''navigating bridge'' versus ''wheelhouse'' in § 113.37–5, General requirements.

Section 113.37–10. The Coast Guard would remove paragraphs (b), (c), and (d) in § 113.37–10, Detailed requirements. Most of these requirements represent standard marine practice, thereby making regulation unnecessary. New paragraph (b) would restate present paragraph (c)'s watertight requirement with international standard option.

Section 113.40–10. The Coast Guard would revise § 113.40–10, Detailed requirements, to add clarifying language that rudder-angle indicator circuits must be separate and independent from the autopilot and the dynamic positioning system as well as the steering gear control system. The Coast Guard would also remove paragraphs (b), (c), (d), (e), and (f) in this section. Most of these requirements represent standard marine practice, thereby making regulation unnecessary. New paragraph (b) would restate present paragraph (e)'s watertight requirement with international standard options.

Sections 113.43–3 and 113.43–5. The Coast Guard would revise paragraph (a) of § 113.43–3, Alarm system, and (b) of § 113.43–5, Power supply, by substituting ''navigating bridge'' for ''pilothouse'' or ''wheelhouse''.

Subpart 113.50. The Coast Guard would revise and rename subpart 113.50, Emergency Loudspeaker Systems, to read, Public Address Systems, in order to incorporate performance requirements which are now in subchapter Q, subpart 161.004. The Coast Guard would eliminate subchapter Q, subpart 161.004. These proposals are consistent with SOLAS 74 III/6.4.

Subpart 113.65. The Coast Guard would revise subpart 113.65, Whistle Operators, to correct the reference to IEEE Standard 45.

Subpart 113.70. The Coast Guard would eliminate subpart 113.70, Smoke Detector Systems. This equipment is now included with Fire Detecting Systems in the proposed revision to § 113.10.

Part 161—Electrical Equipment

Subpart 161.002. The Coast Guard would extensively revise subpart 161.002, Fire-Protective Systems, in order to eliminate overly restrictive construction requirements and to provide for options in the manufacture and testing of fire and smoke detecting and alarm systems via internationally accepted standards.

Subpart 161.004. The Coast Guard would delete subpart 161.004, Emergency Loudspeaker System. The performance requirements would be incorporated into subpart 113.50, which would be renamed Public Address Systems. SOLAS 74 Regulation III/6–4.2 requires every vessel that has a general alarm to have a public address system (or other suitable means of communications) to supplement the general alarm.

Incorporation by Reference

Material that would be incorporated by reference throughout subchapter J is listed in § 110.10–1. Copies of the material are available for inspection where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 110.10–1.

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard has found that most of the changes to the Electrical Engineering Regulations are either editorial or they update technical specifications to reflect the latest practices. There are some regulatory changes that will require different construction. Although some of these changes will cause minor cost increases for shipbuilders, others will result in substantial savings. Many of the proposed rulemaking changes causing cost increases are already current marine industry practice. The remaining changes causing cost increases are more than offset by the cost savings offered by several relaxations in the regulations.

Overall, it is anticipated that there will be a net cost reduction offered for vessels constructed under these rules, but the exact impact is difficult to determine accurately since it may vary from vessel to vessel. For certain vessels, new requirements may increase costs, but the application of national and international industry consensus standards should enhance performance and thus increase the level of safety. Additionally, due to cost decreases that may result from the removal of the requirements for armor on cable, allowance of the use of NEC and IEC motors, and a variety of circuit breakers conforming to international standards in panelboards, it may be possible to significantly lower costs for each vessel. Actual savings will depend upon the industry practices followed by each vessel designer/shipyard before and after the effective date of these regulations.

In addition to the savings in material costs, there are several intangible benefits. Due to the increased reference to national and international standards other than the National Electrical Code and Underwriters Laboratories Inc., certain equipment items will now be more readily available ''off the shelf'' for marine use. The proposed regulations will reduce the regulatory burden on the marine industry, purge obsolete and out-of-date regulations, and eliminate requirements that create an unwarranted differential between domestic rules and international standards.

The Coast Guard expects that significant economic savings will result from the ability of equipment manufacturers, in many cases, to meet performance specifications instead of design standards and the elimination of the need to submit to the U.S. Coast Guard detailed plans and specifications for approval for equipment such as sound powered telephones, emergency loudspeaker systems, and navigation lights.

The Coast Guard solicits cost data and comments regarding the economic impact of these proposed requirements from all interested parties.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small Entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard believes it has addressed the concerns of many small

entities by the adoption of wide variety of national and international standards regarding system arrangement. Additionally, the proposed regulations will dramatically revise certain prescriptive electrical equipment design, specification, and approval requirements, and replace them with performance-based requirements that incorporate international standards.

Whenever possible, requirements have been adjusted to the size of the vessel and in some cases a relaxation of requirements for smaller vessels has been offered. Due to the flexibility of requirements in these proposed rules and the eliminating of regulatory burden, small entities involved in the building or ownership of vessels should experience increasing business opportunities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains a collection-of-information requirement to determine whether the practical value of this information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposed rule contains collection-of-information requirements in the following subparts: subpart 110.25 in subchapter J and subparts 161.002 and 161.010 in subchapter Q. The following particulars apply to subpart 110.25:

DOT No.: 2115.

OMB Control No.: 2115–0115.

Administration: U.S. Coast Guard.

Title: Electrical Engineering Regulations—Subchapter J.

Need for Information: This proposed rule would require amendments to the regulations, clarify the regulations, bring them up to date, and delete unnecessary requirements. The revisions to subchapter J will reduce the reliance on domestic standards and will adopt SOLAS 74 and other international standards developed through consensus by the international maritime community.

Proposed § 110.25–1 would require industry to complete electrical engineering plans to meet performance requirements on new-built vessels and modifications of current vessels. These requirements will help resolve much of the confusion during inspections which has risen due to the complexity of electrical system arrangements on modern merchant vessels.

Proposed Use of Information: The reporting of this information is necessary to ensure compliance with electrical engineering safety regulations. Through the review of the design plans prior to construction, the vessel owner or builder may be assured that the vessel, if built in accordance with the plans, will meet regulatory standards.

Frequency of Response: The various information called for in § 110.25 would be reported on occasion. Design plans will only be submitted when there is construction of new-built vessels or modification of current vessels.

Burden Estimate: 478 hours.

Respondents: 175 owners or operators.

Average Burden Hours per Respondent: 1 hour per submission.

The following particulars apply to subparts 161.002 and 161.010:

DOT No.: 2115.

OMB Control No.: 2115–0121.

Administration: U.S. Coast Guard.

Title: Equipment, Construction, and Materials: Specifications and Approval—Subchapter Q.

Need for Information: This proposed rule world require amendments to the regulations, clarify the regulations, bring them up to date, and delete unnecessary requirements. The revisions to subchapter Q will required industry to maintain records of production tests for some fire protection systems. These plans consist mainly of system/material tests that are necessary to determine that the equipment being used in the construction of a fire protection system meets the minimum performance requirements.

The following is a section-by-section justification of the collection requirements.

Proposed subpart 161.002 would require manufacturers to complete electrical specifications to meet performance requirements for fire protection systems. This requirement will help identify specific equipment approved and to permit the production of equipment identical to the equipment samples originally tested.

Proposed Use of Information: The reporting of this information is necessary to ensure compliance with electrical system arrangement/equipment and fire protection system regulations. Through the review of approval plans, the manufacturer may be assured that the material or device, if manufactured in accordance with the material specifications, will meet regulatory standards.

Frequency of Response: The various information called for in subpart 161.002 would be reported on occasion. Approval for equipment will only be submitted when production tests are required.

Burden Estimate: 60 hours.

Respondents: 6 manufacturers.

Average Burden Hours Per Respondent: 10 hours per respondent.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under paragraphs 2.B.2e(34)(d) and (e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns only system arrangement and equipment approval. The approved system arrangement and equipment required by this rule should contribute in the enhancement of vessel safety, and thereby help to minimize any impact to the marine environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 110

Reporting and recordkeeping requirements, Vessels.

46 CFR Parts 111 and 112

Vessels.

46 CFR Part 113

Communications equipment, Fire prevention, Vessels.

46 CFR Part 161

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Coast Guard proposes to amend 46 CFR parts 108, 110, 111, 112, 113, and 161 as follows:

PART 108—DESIGN AND EQUIPMENT

1. The authority citation for part 108 is revised to read as follows:

2. In § 108.170, in the notes following paragraph (b), note 1 is revised to read as follows:

§ 108.170 Definitions.

* * * * *

Notes: 1. Hazardous atmospheres are further defined in part 111, subpart 111.105, of this chapter.

* * * * *

3. In § 108.181, paragraph (c) is revised to read as follows:

§ 108.181 Ventilation for enclosed spaces.

* * * * *

(c) Each fan in a ventilating system must have remote controls installed in accordance with part 111, subpart 111.103, of this chapter.

* * * * *

PART 110—GENERAL PROVISIONS

4. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

5. In § 110.01–1, paragraphs (a), (b), and (d) are revised to read as follows:

§ 110.01 General.

(a) This subchapter applies to all electrical equipment and systems wherever subchapters D, H, I, I–A, K, L, O, R, T, U, and W of this chapter requires an installation to be in accordance with this subchapter.

(b) This subchapter applies to vessels and installations contracted for or major alternations contracted for after [Insert date 90 days after date of publication in the Federal Register].

* * * * *

(d) Requirements in this subchapter revised or added after [Insert date 90 days after date of publication in the Federal Register] apply to installation contracted for after the effective date of the requirements or as specified in the regulation.

* * * * *

6. Section 110.01–3 is revised to read as follows:

§ 110.01–3 Repairs and alterations.

(a) Minor alternations may comply with the regulations in effect when the vessel was built; major modifications must comply with any regulations in effect at the time such major alterations are made.

(b) When repairs or alterations are major, such as the addition of a midbody; re-enginging; re-powering; upgrading of the main propulsion control system; or the replacement of extensive amounts of cabling, work must comply with any regulations in effect at the time such major alterations are made. Determinations on major conversions are considered on a case-by-case basis by the Commandant (G–MCO).

7. In § 110.10–1, paragraphs (a) and (b) are revised to read as follows:

§ 110.10–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, (G–MMS), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subchapter and the sections affected are as follows:

American Bureau of Shipping (ABS), Two World Trade Center, 106th Floor, New York, NY 10048:	
Rules for Building and Classing Steel Vessels, 1994	111.12–1(a); 111.12–3; 111–12–5; 111.12–7(a); 111.33–11(a); 111.35–1; 111.70–1(a); 111.105–39(a); 111.105–39 (Note); 111.105–40(a); 111.105–47(a).
American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018:	
ANSI/IEEE C37.04, Rating Structure for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis, 1979.	111.54–1(c).
ANSI C37.12, AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis—Specifications Guide, 1991.	111.54–1(c).
ANSI/IEEE C37.13, Standard for Low-Voltage AC Power Circuit Breakers Used in Enclosures, 1990.	111.54–1(c).
ANSI/IEEE C37.14, Low-Voltage DC Power Circuit Breakers Used in Enclosures, 1993	111.54–1(c).
ANSI/ASME A17.1, Safety Code for Elevators and Escalators, 1993	111.91–1.
ANSI/ASME A17.1A, Safety Code for Elevators and Escalators (Addenda to ANSI/ASME A17.1–1993), 1994.	111.91–1.
American Society for Testing and Materials (ASTM), ASTM International Headquarters, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959:	
ASTM B 117, Standard Method of Salt Spray (Fog) Testing, 1990	110.15–1(b).
ASTM D 789, Standard Specification for Nylon Injection Molding and Extrusion Materials, 1978.	111.60–1(a).
International Electrotechnical Commission (IEC), 1, Rue de Varembe; Geneva, Switzerland:	
IEC 68–2–52, Basic Environmental Testing Procedures, Part 2; Tests. Test KB: Salt Mist, Cyclic (Sodium Chloride Solution), 1984.	110.15–1(b).
IEC 79–0, Electrical Apparatus for Explosive Gas Atmospheres, Part 0: General Requirements, 1983 (Including Amendment 2, 1991).	111.105–1; 111.105–3; 111.105–5; 111.105–7; 111.105–15(b); 111.105–17(b).
IEC 79–1, Electrical Apparatus for Explosive Gas Atmospheres, Part 1: Construction and Test of Flameproof Enclosures of Electrical Apparatus, 1990 (Including Amendment 1, 1993).	111.105–3; 111.105–5; 111.105–9; 111.105–15(b); 111.105–17(b).
IEC 79–2, Electrical Apparatus for Explosive Gas Atmospheres, Part 2: Electrical Apparatus—Type of Protection ''P'', 1983.	111.105–3; 111.105–5; 111.105–7(b); 111.105–15(b); 111.105–17(b).
IEC 79–5, Electrical Apparatus for Explosive Gas Atmospheres, Part 5: Sand-Filled Apparatus. First Edition (1967) Incorporating the First Supplement, (1969).	111.105–3; 111.105–5; 111.105–15(a); 111.105–15(b); 111.105–17(b).
IEC 79–6, Electrical Apparatus for Explosive Gas Atmospheres—Part 6: Oil-Immersion ''O'', 1995.	111.105–3; 111.105–5; 111.105–15(a); 111.105–15(b); 111.105–17(b).

IEC 79–7, Electrical Apparatus for Explosive Gas Atmospheres—Part 7: Increased Safety (''E''), 1990.	111.105–3; 111.105–5; 111.105–15(a); 111.105–15(b); 111.105–17(b).
IEC 79–11, Electrical Apparatus for Explosive Gas Atmospheres—Part 11: Intrinsic Safety ''I'', 1991.	111.105–3; 111.105–5; 111.105–11(a); 111.105–15(b); 111.105–17(b).
IEC 79–15, Electrical Apparatus for Explosive Gas Atmospheres—Part 15: Electrical Apparatus, With Type of Protection ''N'', 1987.	111.105–3; 111.105–5; 111.105–15; 111.105–17(b).
IEC 79–18, Electrical Apparatus for Explosive Gas Atmospheres—Part 18: Encapsulation ''M'', 1992.	111.105–3; 111.105–5; 111.105–15(a); 111.105–15(b); 111.105–17(b).
IEC 92–3 Electrical Installation In Ships, Part 3: Cables (construction, testing and installations) Second Edition, 1965 as amended.	111.60–1(a); 111.60–3(a); 111.60–3(c); 111.81–1(d).
IEC 92–101, Electrical Installations in Ships, Part 101: Definitions and General Requirements, 1994.	110.15–1(a); 111.81–1(d).
IEC 92–101—Amendment No. 1, Electrical Installations in Ships—Part 101: Definitions and General Requirements, 1995 (Including Amendment 1, 1995).	110.15–1(a); 111.81–1(d).
IEC 92–201, Electrical Installations in Ships, Part 201: System Design-General, 1994	111.70–3(a); 111.81–1(d).
IEC 92–202, Electrical Installations in Ships Part 202: System Design-Protection, 1994 ..	111.50–3(c); 111.50–3(e); 111.50–3(g); 111.53–1(a); 111.54–1(a); 111.81–1(d).
IEC 92–301—Amendment No. 1, Electrical Installations in Ships, Part 301: Equipment—Generators and Motors, 1994.	111.25–5(a); 111.70–1(a); 111.81–1(d).
IEC 92–302—Amendment No. 2, Electrical Installations, Part 302: Equipment Switchgear and Controlgear Assemblies, 1994.	111.30–5(a); 111.30–19(a); 111.81–1(d).
IEC 92–303, Electrical Installations in Ships, Part 303: Equipment—Transformers for Power and Lighting, 1980.	111.20–15; 111.81–1(d)
IEC 92–304, Electrical Installations in Ships, Part 304: Equipment—Semiconductor Convertors, 1980.	111.33–3(a); 111.33–5(b); 111.81–1(d).
IEC 92–306, Electrical Installations in Ships, Part 306: Equipment-Luminaires and Accessories, 1980.	111.75–20(a); 111.81–1(d).
IEC 92–352, Electrical Installations in Ships, Part 352: Choice and Installation of Cables for Low-Voltage Power Systems, 1979.	111.05–7; 111.81–1(d).
IEC 92–352–Amendment No. 2, Electrical Installations in Ships—Part 352: Choice and Installations of Cables for Low-Voltage Power Systems, 1994.	111.05–7; 111.60–3(a); 111.60–3(c); 111.60–5; 111.81–1(d).
IEC 92–501, Electrical Installations in Ships, Part 501: Special Features—Electrical Propulsion Plant, 1984.	111.81–1(d).
IEC 92–502, Electrical Installations in Ships, Part 502: Tankers—Special Features 1994	111.81–1(d).
IEC 92–503, Electrical Installations in Ships, Part 503: Special Features—A.C. Supply Systems with Voltages in the Range Above 1KV up to and Including 11KV, 1975.	111.30–5(a); 111.81–1(d).
IEC 92–504, Electrical Installations in Ships, Part 504: Special Features: Control and Instrumentation, 1994.	111.81–1(d).
IEC 332–1, Tests on Electric Cables Under Fire Conditions, Part 1: Test on a Single Vertical Insulated Wire or Cable, 1993.	111.30–19(b).
IEC 332–3, Tests on Electric Cables Under Fire Conditions, Part 3: Test on bunched wires or cables, 1992.	111.60–1(a); 111.60–2(a); 111.60–6(a); 111.107–1(c).
IEC 363, Short Circuit Current Evaluation with Special Regard to Rated Short-Circuit Capacity of the Circuit Breakers in Installations in Ships, 1972.	111.52–5(c).
IEC 529, Degrees of Protection Provided by Enclosures (IP Code), 1989	111.01–9(a); 111.01–9(b); 111.01–9(c); 111.01–9(d); 111.01–9 (Note); 113.10–7; 113.20–3; 113.25–11; 113.30–25(c); 113.30–25(h); 113.40–10(b).
IEC 533, Electromagnetic compatibility of Electrical and Electronic Installations in Ships, 1977.	111.81–1(d).
IEC 947–2, Low-Voltage Switchgear and Controlgear, Part 2: Circuit Breakers, 1989	111.54–1(b); 111.54–1(c).
Institute of Electrical and Electronic Engineers (IEEE), IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854:	
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* * * * *

8. Section 110.15–1 is revised to read as follows:

§ 110.15–1 Definitions.

As used in this subchapter—

(a) The electrical and electronic terms are defined in IEEE Std 100 or IEC Publication 92–101.

(b) In addition to the definitions in paragraph (a) of this section—

Coastwise Vessel means a vessel that normally navigates the waters of any ocean or the Gulf of Mexico 20 nautical miles or less offshore and is certificated for coastwise navigation by the U.S. Coast Guard.

Commandant means the Commandant of the U.S. Coast Guard (see § 1.01 of this chapter for delegation of authority).

Corrosion resistant material or finish means any material or finish which meets the testing requirements of ASTM B–117 or test Kb in IEC 68–2–52 for 200 hours and does not show pitting, cracking or other deterioration more severe than that resulting from a similar test on passivated AISI Type 304 stainless steel.

Corrosive location means any location exposed to the weather on vessels operating in salt water or locations onboard which may be exposed to the corrosive effects of the cargo carried or by any of the vessel's systems.

Dead ship condition is the condition in which the main propulsion plant, boilers and auxiliaries are not in operation due to the absence of power.

Dripproof means enclosed so that equipment meets at least a NEMA Type 1 with dripshield, NEMA Type 2 or an IEC IP 32 rating.

Embarkation deck means a deck from which persons embark into survival craft or are assembled before embarking into survival craft.

Emergency squad means the crew designated on the station bill as the nucleus of a damage control party.

Exterior location requiring an exceptional degree of protection means a location exposed to the weather.

Flashpoint means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to form an ignitable mixture with air near the surface of the liquid, as specified by the appropriate test procedure and apparatus.

Great Lakes vessel means a vessel that navigates exclusively on the Great Lakes.

Interior location requiring an exceptional degree of protection means a location requiring equipment to meet the protection requirements of § 111.01–9(a) of this chapter and include—

(1) A machinery space;

(2) A cargo space;

(3) A location within a galley or pantry area, laundry, or water closet which contains a shower or bath; and

(4) Other spaces with similar environmental conditions.

Location not requiring an exceptional degree of protection means a location which is not exposed to the environmental conditions outlined in the previous definition. This location requires the degree of protection of § 111.01–9(c) or (d) of this chapter. These locations include—

(1) An accommodation space;

(2) A dry store room;

(3) A passageway adjacent to quarters;

(4) A water closet without a shower or bath;

(5) A radio, gyro and chart room; and

(6) A location with similar environmental conditions.

Marine inspector or *inspector* means any person from the Coast Guard assigned under an Officer in Charge, Marine Inspection, or any other person who is designated for the duties of inspection, enforcement, and administration of Title 46 U.S.C. and the rules and regulations promulgated under its authority.

Nonsparking fan means a fan that cannot produce sparks that ignite an ignitable mixture with air and has—

(1) Blades or housing of nonmetallic construction;

(2) Blades and housing of nonferrous material;

(3) Blades and housing of corrosion resistant steel;

(4) Ferrous blades and a housing with 13 mm (0.5 inch) or more design tip clearance; or

(5) Blades of aluminum or magnesium alloy and a ferrous housing with a nonferrous insert ring at the peripheral of the impeller. The term *nonsparking fan* does not include any combination of aluminum alloy or a magnesium alloy component and a ferrous component which is considered by the Coast Guard to be a sparking hazard regardless of the material that is used as the fixed or rotating component.

Ocean vessel means a vessel that navigates the waters of any ocean or the Gulf of Mexico more than 20 nautical miles offshore and is certificated by the U.S. Coast Guard for ocean navigation.

Qualified person means a person who by virtue of that person's knowledge, ability, experience, specialized training, or licensing can competently and safely perform required duties or functions.

Waterproof means enclosed so that equipment meets at least a NEMA Type 6, 6P, or an IEC IP 56 rating.

Watertight means enclosed so that equipment meets at least a NEMA Type 4, 4X, or an IEC IP 66 or 67 rating.

§ 110.20–21 [Amended]

9. In § 110.20–1, remove the words ''Commandant (G–MTH)'' and add, in their place, the words ''Commanding Officer of the Marine Safety Center (MSC)''.

10. In § 110.25–1, paragraphs (c)(8) through (c)(11) are revised; paragraph (c)(12) is added; and paragraphs (j), (l), and the notes to paragraphs (m) and (n) are revised to read as follows:

§ 110.25–1 Plans and information required for new construction.

* * * * *

(c) * * *

(8) Fire door holding systems;

(9) Public address system;

(10) Manual alarm system;

(11) Supervised patrol system; and

(12) Each electrical component installed in a hazardous location defined in part 111, subpart 111.105, of this chapter, with the following information identified as appropriate:

(i) System identification by manufacturer's model number;

(ii) System use;

(iii) Cable parameters;

(iv) Equipment locations;

(v) Installation details; and

(iv) Independent laboratory certificate of testing.

* * * * *

(j) Plans and installation instructions for each intrinsically safe system approved by an independent laboratory as indicated in subpart 110.35 of this part (see § 111.105–11 of this chapter).

* * * * *

(l) Plans and information sufficient to evaluate equipment to be considered for equivalency under § 110.20–1.

(m) * * *

Note to paragraph (m): This equipment evaluation is generally performed by the Commanding Officer, Marine Safety Center and includes items such as cable splices, signalling lights, shore connection boxes, submersible pumps, engine order telegraph systems, shaft speed and thrust indicator systems, and steering gear failure alarm systems.

(n) * * *

Note to paragraph (n): This equipment evaluation is generally performed by the Commanding Officer, Marine Safety Center and includes items such as circuit breakers, switches, lighting fixtures, air heating equipment, busways, and outlet and junction boxes. Items required to meet an IEEE, IEC, NEMA, UL, ANSI, other industry standard, or a military specification are considered acceptable if manufacturer's certification of compliance is indicated on a material list or plan.

§ 110.25–3 [Amended]

11. In § 110.25–3, remove ''(G–MSC)'' in paragraph (a)(1) and add, in its place, ''(MSC)''; and paragraph (a)(3) is removed.

12. Section 110.30–7 is revised to read as follows:

§ 110.30–7 Repairs or alterations.

(a) The Officer in Charge, Marine Inspection must be notified prior to—

(1) Modifications or minor alterations that deviate from approved plans,

(2) Extensive repairs or alterations, and

(3) Any repair or alteration that affects the safety of the vessel.

13. Subpart 110.35, consisting of § 110.35–1, is added to read as follows:

Subpart 110.35—Independent Laboratories

§ 110.35–1 General.

Independent Laboratories are accepted by the Commandant under part 159 of this chapter for the testing and listing or certification of electrical equipment.

PART 111—ELECTRICAL SYSTEMS—GENERAL REQUIREMENTS

14. The authority citation for part 111 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

15. Section 111.01–5 is revised to read as follows:

§ 111.01–5 Protection from bilge water.

Each of the following must be arranged or constructed so that it cannot be damaged by bilge water:

(a) Generators.

(b) Motors.

(c) Electric coupling.

(d) Electric cable serving an electrical component in or around the bilge area.

16. Section 111.01–7 is revised to read as follows:

§ 111.01–7 Accessibility.

(a) The design and arrangement of electric apparatus must afford accessibility to each part as needed to facilitate proper inspection, adjustment, maintenance, or replacement.

(b) Within an enclosure, the spacing between energized components (or between an energized component and ground) must be to the appropriate industry standard for the voltage and current utilized in the circuit. Additionally, spacing within any enclosure must be sufficient to facilitate servicing.

17. Section 111.01–9 is revised to read as follows:

§ 111.01–9 Degrees of protection.

(a) Interior electrical equipment exposed to dripping liquids or falling solid particles must be manufactured to at least NEMA Type 2, 12, 12K, or 13 or IEC IP 11, 52, or 54 degree of protection as appropriate for the service intended. For interior locations which may be exposed to water, electrical equipment must be constructed to at least NEMA Type 4 or 4X; or IEC IP 56.

(b) On deck, electric equipment that may be exposed to seas, the weather, splashing, or similar moisture conditions must be enclosed or meet at least a NEMA Type 4, 4X, 6, or 6P or IEC IP 56 or 67 degree of protection as appropriate for the service intended. Each enclosure must be designed in such a way that the total rated temperature of the equipment inside the enclosure is not exceeded.

(c) Central control consoles and similar control enclosures must be manufactured to at least NEMA Type 2, 12, or 12K or IEC IP 11 or 52 degree of protection regardless of location.

(d) Equipment for interior locations not requiring exceptional degrees of protection must be manufactured to at least NEMA Type 2 or IEC IP 11.

Note to § 111.01–9: The degrees of protection designated in this section are described in NEMA Standards Publication No. 250 and IEC IP Code Publication 529.

18. Section 111.01–15 is revised to read as follows:

§ 111.01–15 Temperature ratings.

(a) In this subchapter, an ambient temperature of 40°C is assumed except as otherwise stated.

(b) A 50°C ambient temperature is assumed for all rotating electrical machinery in boilerrooms, enginerooms, auxiliary machinery rooms, and weather decks unless it can be shown that a 45°C ambient temperature will not be exceeded in these spaces.

(c) A 45°C ambient temperature is assumed for cable and all other (non-rotating) electrical equipment in boilerroooms, enginerooms, auxiliary machinery rooms, and weather decks.

(d) Unless otherwise indicated in this subchapter, a 55°C ambient temperature is assumed for all control and instrumentation equipment.

(e) Electrical equipment utilized in a space in which the equipment's rated ambient temperature is below the assumed ambient temperature of the space, must be used at a derated load. The assumed ambient temperature of the space plus the equipment's actual temperature rise at its derated load must not exceed the equipment's total rated temperature (equipment's rated ambient temperature plus its rated temperature rise).

19. Section 111.01–7 is revised to read as follows:

§ 111.01–17 Voltage and frequency variations.

Unless otherwise stated, electrical equipment must function at variations of at least ±5 percent of rated frequency and +6 percent to −10 percent of rated voltage. This limitation does not address transit conditions.

20. Section 111.01–19 is added to read as follows:

§ 111.01–19 Inclination of the ship.

(a) All electrical equipment must be designed and installed to operate under any combination of the following conditions:

(1) 15 degrees static list, 22.5 degrees dynamic roll; and

(2) 7.5 degrees static trim.

(b) All emergency installations must be designed and installed to operate when the ship is at 22.5 degrees list and 10 degrees trim.

21. Section 111.01–21 is added to read as follows:

§ 111.01–21 Vibration.

All electrical control equipment must be designed to operate under the following vibration conditions:

(a) 2 Hz to 13 Hz, displacement amplitude +/−1.5 mm.

(b) 13 Hz to 100 Hz, maximum acceleration 1 g.

22. Section 111.01–23 is added to read as follows:

§ 111.01–23 Humidity.

Electrical control equipment must be designed to operate in 0 to 95 percent noncondensing relative humidity.

23. The text of Section 111.05–1 is revised to read as follows:

§ 111.05–1 Purpose.

This subpart contains requirements for the grounding of electric systems, circuits, and equipment.

* * * * *

24. Section 111.05–7 is revised to read as follows:

§ 111.05–7 Armored and metallic-sheathed cable.

When installed, the metallic armor or sheath must meet the installation requirements of IEC Publication 92–352 (clause 18).

25. Section 111.05–9 is revised to read as follows:

§ 111.05–9 Masts.

Each nonmetallic mast and topmast must have a lightning ground conductor.

26. Section 111.05–19 is revised to read as follows:

§ 111.05–19 Tank vessels; grounded distribution systems.

(a) If the voltage of a distribution system is less than 1,000 volts, line to line, a tank vessel must not have a grounded distribution system.

(b) If the voltage of a distribution system on a tank vessel is 1,000 volts or

greater, line to line, and the distribution system is grounded, any resulting current must not flow through a hazardous (classified) location.

27. In § 111.05–23, paragraph (d) is added to read as follows:

§ 111.05–23 Location of ground detection indicators.

* * * * *

(d) Be provided at the distribution switchboard for each branch circuit isolated from the main source by a transformer or other device.

28. Section 111.05–25 is revised to read as follows:

§ 111.05–25 Ungrounded systems.

Each ungrounded system must be provided with a suitably sensitive ground detection system located at the respective switchboard which provides continuous indication of circuit status to ground with a provision to momentarily remove the indicating device from the reference ground.

29. Section 111.05–27 is revised to read as follows:

§ 111.05–27 Grounded neutral alternating current systems.

Each system must have a suitably sensitive ground detection system which indicates current in the ground connection, be able to withstand the maximum available fault current without damage, and provides continuous indication of circuit status to ground with a provision to momentarily remove the indicating device from the reference ground.

30. Section 111.05–29 is revised to read as follows:

§ 111.05–29 Dual voltage direct current systems.

Each dual voltage direct current system must have a suitably sensitive ground detection system which indicates current in the ground connection, has a range of at least 150% of neutral current rating and indicates the polarity of the fault.

31. Section 111.05–33 is revised to read as follows:

§ 111.05–33 Equipment grounding conductors.

(a) Each equipment grounding conductor must be insulated and be at least as large as any conductor supplying the equipment.

(b) Each insulated grounding conductor of a cable must be permanently identified as a grounding conductor in accordance with the requirements of section 310–12(b) of the National Electrical Code (NEC).

(c) Cable armor must not be used as the grounding conductor.

32. Section 111.05–37 is revised to read as follows:

§ 111.05–37 Overcurrent devices.

(a) A permanently grounded conductor must not have an overcurrent device unless the overcurrent device simultaneously opens each ungrounded conductor of the circuit.

(b) The neutral conductor of the emergency-main switchboard bus-tie must not have a switch or circuit breaker.

§ 111.05–39 [Removed]

33. Section 111.05–39 is removed.

34. In § 111.10–1, paragraph (a) is revised to read as follows:

§ 111.10–1 Definitions.

* * * * *

(a) *Ship's service loads* mean all auxiliary services necessary for maintaining the ship or drilling unit in normal operational and habitable condition. Ship's service loads include, but are not limited to, all safety, lighting, ventilation, navigational, communications, habitability, and auxiliary propulsion loads. Electrical propulsion motor, bow thruster motor, cargo transfer, drilling, cargo refrigeration for other than Class 5.2 organic peroxides and Class 4.1 self-reactive substances, and other industrial type loads are not included.

* * * * *

35. Section 111.10–3 is revised to read as follows:

§ 111.10–3 Two generating sources.

In addition to the emergency power sources required under part 112 of this chapter, each self-propelled vessel and each mobile offshore drilling unit must have at least two electric generating sources.

36. Section 111.10–4 is revised to read as follows:

§ 111.10–4 Power requirements; generating sources.

(a) The aggregate capacity of the electric ship's service generating sources required in § 111.10–3 must be sufficient for the ship's service loads.

(b) With the ship's service generating source of the largest capacity stopped, the combined capacity of the remaining electric ship's service generating source or sources must be sufficient to supply those services necessary to provide normal operational conditions of propulsion and safety, and minimum comfortable conditions of habitability, Habitability services include cooking, heating, air conditioning (where installed), domestic refrigeration, mechanical ventilation, sanitation, and fresh water.

(c) The capacity of the ship's service generating sources must be sufficient for supplying the ship's service loads without the use of a generating source which is dependent upon the speed or direction of the main propelling engines or shafting.

(d) Operating generators must provide a continuous and uninterrupted source of power for the ship's service load under normal operational conditions. Any vessel speed change or throttle movement must not cause a ship's service load power interruption.

(e) Vessels with electric propulsion that have two or more constant-voltage generators which supply both ship's service and propulsion power do not need additional ship's service generators provided that with any one propulsion/ship's service generator out of service the capacity of the remaining generator(s) is sufficient for the electrical loads necessary to provide normal operational conditions of propulsion and safety, and minimum comfortable conditions of habitability.

(f) A generator driven by a main propulsion unit (such as a shaft generator) which is capable of providing electrical power continuously, regardless of the speed and direction of the propulsion shaft, may be considered one of the ship's service generating sets required by § 111.10–3. A main-engine-dependent generator which is not capable of providing continuous electrical power may be utilized as a supplemental generator provided that a required ship's service generator or generators having sufficient capacity to supply the ship's service loads can be automatically brought on line prior to the main-engine-dependent generator tripping off-line due to a change in the speed or direction of the main propulsion unit.

37. In § 111.10–7, paragraph (b) is revised to read as follows:

§ 111.10–7 Dead ship.

* * * * *

(b) If the emergency generator is used for part or all of the electric power necessary to start the main propulsion plant from a dead ship condition, the emergency generator must be capable of providing power to all emergency lighting, emergency internal communications systems, and fire detection and alarm systems in addition to the power utilized for starting the main propulsion plant. Additional requirements are in § 112.05–3(c) of this chapter.

38. Section 111.10–9 is revised to read as follows:

§ 111.10–9 Ship's service supply transformer; 2 required.

If transformers are used to supply the ship's service distribution system required by this subpart for ships and mobile offshore drilling units, there must be at least two installed, independent power transformers. With the largest transformer out of service, the capacity of the remaining units must be sufficient to supply the ship service loads.

Note to § 111.10–9: A ship's service supply system would consist of transformers, overcurrent protection devices, and cables, and would normally be located in the system between a medium voltage bus and a low voltage ship's service switchboard.

§ 111.10–11 [Removed]

39. Section 111.10–11 is removed.

40. Section 111.12–1 is revised to read as follows:

§ 111.12–1 Prime movers.

(a) Prime movers must meet part 58, subpart 58.10, of this chapter and section 4/5.21 of the ABS Rules. Additional requirements for prime movers for emergency generators are in part 112, subpart 112.50, of this chapter.

(b) Each generator prime mover must have an overspeed device that is independent of the normal operating governor and adjusted so that the speed cannot exceed the maximum rated speed by more than 15 percent.

(c) Each prime mover must shut down automatically upon loss of lubricating pressure to the generator bearings if the generator is directly coupled to the engine. If the generator is operating from a power take-off, such as a shaft driven generator on a main propulsion engine, the generator must automatically declutch (disconnect) from the prime mover upon loss of lubricating pressure to generator bearings.

41. Section 111.12–5 is revised to read as follows:

§ 111.12–5 Generator construction and testing.

Each generator must meet the applicable construction and test requirements of section 4/5 of the ABS Rules.

42. Section 111.12–7 is revised to read as follows:

§ 111.12–7 Voltage regulation and parallel operation.

Voltage regulation and parallel operation must meet sections 4/5.31 and 4/5.33 of the ABS Rules.

§ 111.12–11 [Amended]

43. In § 111.12–11, in the heading to paragraph (d), remove the words ''inverse time'' and add, in their place, the words ''longtime overcurrent''.

44. Section 111.15–1 is revised to read as follows:

§ 111.15–1 General.

Each battery must meet the requirements of this subpart.

45. Section 111.15–2 is revised to read as follows:

§ 111.15–2 Battery construction.

(a) A battery cell, when inclined at 40 degrees from the vertical, must not spill electrolyte.

(b) Each fully charged lead-acid battery must have a specific gravity that meets section 16 of IEEE Std 45 (clause 6).

(c) Batteries must not evolve hydrogen at a rate exceeding that of a similar size lead-acid battery under similar charging condition.

(d) Batteries must be constructed to take into account the environmental conditions of a marine installation, including temperature, vibration, and shock.

46. In § 111.15–3, the introductory text and paragraphs (a), (b), and (c) are redesignated as paragraphs (a) introductory text, (a)(1), (a)(2), and (a)(3) and paragraph (b) is added to read as follows:

§ 111.15–3 Battery categories.

* * * * *

(b) Batteries that generate less hydrogen under normal charging and discharging conditions that an equivalent category of lead-acid batteries (e.g., sealed batteries) may have their battery category reduced to an equivalent category of lead-acid batteries.

47. In § 111.15–5, paragraphs (a), (c), (e), (f), and (g) are revised to read as follows and paragraph (h) is removed:

§ 111.15–5 Battery installation.

(a) *Large batteries.* Each large battery installation must be in a room that is only for batteries or a box on deck. Installed electrical equipment must meet the hazardous location requirements in subpart 111.105 of this part.

* * * * *

(c) *Small batteries.* Small size battery installations must be located in well-ventilated spaces. They must not be located in closets, staterooms, or similar spaces, unless the batteries are sealed.

* * * * *

(e) *Nameplates.* Each battery must be provided with the name of its manufacturer, model number, type designation, cold cranking amp rating, amp-hour rating at a specific discharge and fully charged specific gravity value for a lead-acid battery. This information must be permanently fixed to the battery.

(f) *Lining in battery rooms and lockers.* (1) Each battery room and locker must have a watertight lining that is—

(i) On each shelf to a height of at least 76 mm (3 inches); or

(ii) On the deck to a height of at least 152 mm (6 inches).

(2) For lead-acid batteries, the lining must be 1.6 mm (1/16 inch) thick lead or other material that is corrosion-resistant to the electrolyte of the battery.

(3) For alkaline batteries, the lining must be 0.8 mm (1/32 inch) thick steel or other material that is corrosion-resistant to the electrolyte of the battery.

(g) *Lining of battery boxes.* Each battery box must have a watertight lining to a height of at least 76 mm (3 inches) that meets paragraphs (f)(2) and (f)(3) of this section.

48. In § 111.15–10, paragraph (g) is revised to read as follows:

§ 111.15–10 Ventilation.

* * * * *

(g) *Boxes for small battery installations.* Each box for a small battery installation must have openings near the top to allow escape of gas. If the installation is in a non-environmentally-controlled location, the installation must prevent the ingress of water.

49. Section 111.15–20 is revised to read as follows:

§ 111.15–20 Conductors.

(a) Each conductor penetration to a battery room must be made watertight.

(b) The termination of each cable must be sealed to prevent the entrance of electrolyte by spray or creepage.

(c) The current carrying capacity of a connecting cable must be sized to carry the maximum charging current or maximum discharge current, whichever is greater.

50. Section 111.15–30 is revised to read as follows:

§ 111.15–30 Battery chargers.

Each battery charger enclosure must meet § 111.01–9. Additionally, each battery charger must be suitable for the size and type of battery installation which it serves. Except for rectifiers, battery chargers with a voltage exceeding 20 percent of the line voltage must be provided with automatic protection against reversal of current.

51. Section 111.20–1 is revised to read as follows:

§ 111.20–1 General requirements.

Each transformer winding must be resistant to moisture, sea atmosphere, and oil vapor, unless special

precautions are taken, such as enclosing the winding in an enclosure with a high degree of ingress protection.

52. Section 111.20–15 is revised to read as follows:

§ 111.20–15 Transformer overcurrent protection.

Each transformer must have protection against overcurrent that meets article 450 of the NEC or IEC Publication 92–303.

53. In § 111.25–5, paragraph (a) is revised to read as follows:

§ 111.25–5 Marking.

(a) Each motor must have a marking or nameplate which meets either section 430–7 of the NEC or IEC Publication 92–301 (clause 16).

* * * * *

54. Section 111.30–1 is revised to read as follows:

§ 111.30–1 Location and installation.

Each switchboard must meet the location and installation requirements of section 17.1 (clause 7.1) of IEEE Std 45.

55. Section 111.30–4 is revised to read as follows:

§ 111.30–4 Circuit breakers removable from the front.

Circuit breakers, when installed on generator or distribution switchboards, must be mounted or arranged in such a manner that the circuit breaker may be removed from the front without unbolting bus or cable connections or deenergizing the supply, unless the switchboard is divided into sections, such that each section is capable of providing power to maintain the vessel in a navigable condition, and meets § 111.30–24(a) and (b).

56. Section 111.30–5 is revised to read as follows:

§ 111.30–5 Cosntruction.

(a) All low voltage and medium voltage switchboards must meet the requirements of either—

(1) Section 17.2 or 17.3 (clause 7.2 or 7.3) of IEEE Std 45, respectively; or

(2) IEC Publication 92–302 (clause 6) (and IEC Publication 92–503; medium voltage).

(b) Each switchboard must be fitted with a dripshield unless the switchboard is a deck-to-overhead mounted type which can not be subjected to leaks or falling objects.

§§ 111.30–9, 111.30–11, and 111.30–13 [Removed]

57. Sections 111.30–9, 111.30–11, and 111.30–13 are removed.

58. Section 111.30–19 is revised to read as follows:

§ 111.30–19 Buses and wiring.

(a) *General.* Each bus must meet the requirements of either—

(1) Section 17.11 (clause 7.11) of IEEE Std 45; or

(2) IEC Publication 92–302 (clause 6).

(b) *Wiring.* Instrumentation and control wiring must be—

(1) Suitable for installation within in a switchboard enclosure and be rated at 90°C or higher;

(2) Stranded copper;

(3) No. 18 AWG (0.82 mm^2) or larger or be ribbon cable or similar smaller conductor size cable recommended for use in low-power instrumentation, monitoring, or control circuits by the equipment manufacturer;

(4) Flame retardant meeting VW–1 or IEC 332–1;

(5) Extra flexible, if used on a hinged panel; and

(6) In compliance with § 111.60–11.

§§ 111.30–21 and 111.30–23 [Removed]

59. Sections 111.30–21 and 111.30–23 are removed.

60. In § 111.30–24, the introductory text is revised to read as follows:

§ 111.30–24 Generation systems greater than 3,000 kW.

Except on a non-self-propelled mobile offshore drilling unit (MODU), when the total installed electric power of the ship's service generation system is more than 3,000 kW, the switchboard must have the following:

* * * * *

61. In § 111.30–29, paragraphs (g), (h), and (i) are added to read as follows:

§ 111.30–29 Emergency switchboards.

* * * * *

(g) There must be a test switch at the emergency switchboard to simulate a failure of the normal power source and cause the emergency loads to be supplied from the emergency power source.

(h) The emergency switchboard must be as near as practicable to the emergency power source but not in the same space as a battery emergency power source.

(i) If the emergency power source is a generator, the emergency switchboard must be in the same space as the generator.

§ 111.30–31 [Removed]

62. Section 111.30–31 is removed.

63. In § 111.33–3, redesignate paragraphs (a) and (b) as paragraphs (b) and (c) and add a new paragraph (a) to read as follows:

§ 111.33–3 Nameplate data.

(a) Each semiconductor rectifier system must have a nameplate of durable material affixed to the unit which meets the requirements of—

(1) Section 45.11 (clause 34.11) of IEEE Std 45; or

(2) IEC Publication 92–304 (clause 8).

* * * * *

64. Section 111.33–5 is revised to read as follows:

§ 111.33–5 Installation.

Each semiconductor rectifier system must meet the installation requirements of—

(a) Sections 45.2, 45.7 and 45.8 (clauses 34.2, 34.7 and 34.8) of IEEE Std 45; or

(b) IEC Publication 92–304 as appropriate.

65. Section 111.33–11 is revised to read as follows:

§ 111.33–11 Propulsion systems.

Each power semiconductor rectifier system in a propulsion system must meet section 4/5.84 of the ABS Rules.

66. Section 111.35–1 is revised to read as follows:

§ 111.35–1 Electrical propulsion installations.

Each electric propulsion system installation must meet sections 4/5.79, 4/5.81, 4/5.83 and 4/5.84 of the ABS Rules.

§ 111.40–1 [Removed]

67. Section 111.40–1 is removed.

68. Section 111.40–5 is revised to read as follows:

§ 111.40–5 Enclosure.

(a) Each panelboard must have a noncombustible enclosure that meets § 111.01–7.

(b) Each panelboard must meet either of the following:

(1) Section 111.01–9(a), if installed in an interior location.

(2) Section 111.01–9(b), if installed in the weather.

69. Section 111.40–7 is revised to read as follows:

§ 111.40–7 Location.

Each panelboard must be accessible but not in a cargo hold, except a cargo hold on a roll-on/roll-off ship and not in a bunker.

70. Section 111.50–2 is added to read as follows:

§ 111.50–2 Systems integration.

The electrical characteristics of each overcurrent protective device must be compatible with other devices and its coordination must be considered in the design of the entire protective system.

Note to § 111.50–2: The electrical characteristics of overcurrent protective devices may differ between standards. The

interchangeability and compatibility of components complying with differing standards cannot be assumed.

71. In § 111.50–3, paragraph (c) is revised to read as follows; paragraph (d) is removed; paragraphs (e), (f), (g), and (h) are redesignated as paragraphs (d), (e), (f), and (g); and, at the end of redesignated paragraphs (e) and (g)(2), add the words ''or in IEC Publication 92–202'':

§ 111.50–3 Protection of conductors.

* * * * *

(c) *Fuses and circuit breakers.* If the allowable current carrying capacity of the conductor does not correspond to a standard fuse or circuit breaker rating which meets section 240–6 of the NEC or IEC Publication 92–202 and the next larger rating is used, it must be larger than 150 percent of the current carrying capacity of the conductor. The effect of heat on the operation of fuses and thermally controlled circuit breakers must be taken into consideration in the application of these devices if they are subjected to extremely low or extremely high temperatures.

* * * * *

72. In § 111.52–1, the introductory text is revised to read as follows:

§ 111.52–1 General.

The available short-circuit current must be computed—

* * * * *

73. Section 111.52–5 is revised to read as follows:

§ 111.52–5 Systems 1500 kilowatts or above.

Detailed short-circuit calculations must be submitted for systems with an aggregate generating capacity of 1500 kilowatts or more by utilizing one of the following methods:

(a) Exact calculations using actual impedance and reactance values of system components.

(b) Estimated calculations using the Naval Sea Systems Command Design Data Sheet DDS 300–2.

(c) Estimated calculations using the IEC Publication 363.

(d) The estimated calculations using a commercially established analysis procedure for utility or industrial applications.

74. Section 111.53–1 is revised to read as follows:

§ 111.53–1 General.

(a) Each fuse must—

(1) Meet the general provisions of article 240 of the NEC or IEC Publication 92–202 as appropriate;

(2) Have an interrupting rating sufficient to interrupt the asymmetrical RMS short circuit current at the point of application; and

(3) Be listed by an independent laboratory accepted by the Commandant under § 110.35–1 of this chapter.

(b) Renewable link cartridge-type fuses must not be used.

(c) Each fuse installation must provide for ready access to test fuse condition.

75. In § 111.54–1, paragraphs (a), (b), and (c) are revised to read as follows:

§ 111.54–1 Circuit breakers.

(a) Each circuit breaker must—

(1) Meet the general provision of article 240 of the NEC or IEC Publication 92–202, as appropriate;

(2) Meet subpart 111.55 of this part; and

(3) Have an interrupting rating sufficient to interrupt the maximum asymmetrical short-circuit current available at the point of application.

(b) Molded case circuit breakers must not be used in circuits having a nominal voltage of more than 600 volts (1,000 volts for circuits containing circuit breaks manufactured to IEC requirements). Each molded case circuit breaker must meet UL 489 and its marine supplement 489 SA or IEC Publication 947–2 Part 2, except as noted in paragraph (e) of this section.

(c) Circuit breakers, other than the molded case type, that are for use in one of the following systems must meet the following requirements:

(1) An alternating current system having a nominal voltage of 600 volts or less, or 1,000 volts for IEC standard circuit breakers must meet—

(i) ANSI/IEEE Std C37.13;

(ii) IEEE Std 538;

(iii) IEEE Std 331; or

(iv) IEC Publication 947–2, part 2.

(2) A direct current system of 3,000 volts or less must meet ANSI C37.14 or IEC Publication 947–2, part 2.

(3) An alternating current system having a nominal voltage greater than 600 volts, or greater than 1,000 volts for IEC standard circuit breakers must meet—

(i) ANSI C37.04 including all referenced supplements, IEEE Std 320 including all referenced supplements, and ANSI C37.12; or

(ii) IEC Publication 947–2, part 2.

* * * * *

§§ 111.55–5, 111.55–7, and 111.55–9 [Removed]

76. Sections 111.55–5, 111.55–7, and 111.55–9 are removed.

§ 111.57–1 (Subpart 111.5) [Removed

77. Subpart 111.57, consisting of § 111.57–1, is removed.

78. Section 111.59–1 is revised to read as follows:

§ 111.59–1 General.

Each busway must meet article 364 of the NEC.

79. Section 111.59–3 is revised to read as follows:

§ 111.59–3 No mechanical cooling.

A busway must not need mechanical cooling to operate within its rating.

80.Section 111.60–1 is revised to read as follows:

§ 111.60–1 Cable construction and testing.

(a) Each cable must meet the construction and identification requirements of IEEE Std 45, IEC Publication 92–3, MIL–C–915 (Amendment 2), MIL–C–24640 or MIL–C–24643 and the flammability tests contained therein and be of a copper stranded type.

(b) Each cable constructed to IEC Publication 92–3 must meet the flammability requirements of IEC Publication 332–3 Category A.

(c) Electric cable constructed in accordance with Military Specification MIL–C–915 (amendment 2) must—

(1) Pass the flammability test contained in IEEE Std 45, IEEE Std 1202 as modified by IEEE Std 45, or IEC Publication 332–3, Category A; and

(2) Be sized to ensure the maximum current for any conductor does not exceed the current carrying capacities specified in NAVSEA MIL–HDBK–299(SH).

(d) Electric cable that has a polyvinyl chloride insulation with a nylon jacket (Type T/N) must meet the requirements for polyvinyl chloride insulated cable in section 18 (clause 8) of IEEE Std 45, except—

(1) The thickness of the polyvinyl chloride insulation must meet UL 83 for type THWN wire;

(2) Each conductor must have a nylon jacket;

(3) The thickness of the nylon jacket must meet UL 83 for type THWN wire;

(4) The material of the nylon jacket must meet ASTM D789 Type VIII;

(5) The cable must have identification provided by a durable printing or embossing on the cable jacket, or a marker under the cable jacket that, at intervals not exceeding 610 mm (24 inches), gives the information required by section 18.8 (clause 8.8) of IEEE Std 45; and

(6)Type T (T/N) insulations are limited to a 75°C maximum conductor temperature rating.

(e) Each cable regardless of construction must meet, as a minimum, the physical testing requirements of section 18 (clause 8) of IEEE Std 45.

(f) Medium voltage electric cable must meet the requirements of IEEE Std 45 and UL 1072 where applicable for cables rated above 5,000 volts.

(g) Direct current electric cable for industrial applications only must be constructed and labeled in accordance with IADC DCCS–1.

81. Section 111.60–2 is added to read as follows:

§ 111.60–2 Specialty cable for communication and RF applications.

Specialty cables that cannot pass the flammability test contained in IEEE Std 45, IEEE Std 1202 as modified by IEEE Std 45, VW–1 or IEC Publication 332–3, Category A due to unique construction properties, such as certain coaxial cable's must—

(a) Be installed physically separate from all other cable; and

(b) Have fire stops installed—

(1) At least every 7 meters (21.5 feet) vertically, up to a maximum of 2 deck heights;

(2) At least every 15 meters (46 feet) horizontally;

(3) At each penetration of an A or B Class boundary;

(4) At each location where the cable enters equipment; or

(5) Be installed in a cableway that has an A–60 fire rating.

82. Section 111.60–3 is revised to read as follows:

§ 111.60–3 Cable application.

(a) Cable constructed in accordance IEEE Std 45 must meet the cable application section 19 (clause 9) of IEEE Std 45. Cable constructed in accordance with IEC Publication 92–3 must meet the requirements of section 19 (clause 9) of IEEE Std 45 except 19.6.1, 19.6.4, and 19.8 (9.6.1, 9.6.4, and 9.8). Cable constructed in accordance with IEC Publication 92–3 must comply with the ampacity values of IEC Publication 352, Table 1.

(b) Type T/N cables must meet section 19 (clause 9) of IEEE Std 45 for Type T insulation.

(c) Cables constructed in accordance with IEEE Std 45 must be derated in accordance with Table A6, Note 6 of IEEE Std 45. Cables constructed in accordance with IEC Publication 92–3 must be derated in accordance with IEC Publication 352, paragraph 8. MIL–C–914 cable must be rated in accordance with MIL–HDBK–299(SH).

83. Section 111.60–4 is revised to read as follows:

§ 111.60–4 Minimum cable conductor size.

Each cable conductor must be #18 AWG (0.82 mm^2) or larger except—

(a) Each power and lighting cable conductor must be#14 AWG (2.08 mm^2) or larger; and

(b) Each thermocouple, pyrometer, or instrumentation cable conductor must be #22 AWG (0.33 ^{2}) or larger.

84. In § 111.60–5, paragraph (a) is revised; paragraph (b) is redesignated as paragraph (c); and a new paragraph (b) is added to read as follows:

§ 111.60–5 Cable installation.

(a) Each cable installation must meet—

(1) Sections 20 and 22, (clauses 10 and 12), except 20.11 (clause 12.11), of IEEE Std 45; or

(2) IEC Publication 92–3 and paragraph 8 of IEC Publication 92–352.

(b) Each cable installation made in accordance with paragraph 8 of IEC Publication 92–352 must utilize the conductor ampacity values of Table I of IEC Publication 92–352.

* * * * *

85. Section 111.60–6 added to read as follows:

§ 111.60–6 Fiber optic cable.

Each fiber optic cable must—

(a) Be constructed to pass the flammability test contained in IEEE Std 45, IEEE Std 1202 as modified by IEEE Std 45, VW–1, or IEC Publication 332–3 Category A; or

(b) Be installed in accordance with § 111.60–2.

86. Section 111.60–11 is revised to read as follows:

§ 111.60–11 Wire.

(a) Wire must be in an enclosure.

(b) Wire must be component insulated.

(c) Wire, other than in switchboards, must meet the requirements in sections 19.6.4 and 19.8 (clauses 9.6.4 and 9.8) of IEEE Std 45.

(d) Switchboard wire must meet subpart 111.30 of this part.

(e) Wire must be of the copper stranded type.

87. In § 111.60–13, paragraph (a) is revised to read as follows:

§ 111.60–13 Flexible electric cord and cables.

(a) *Construction and testing.* Each flexible cord and cable must meet the requirements in section 19.6.1 (clause 9.6.1) of IEEE Std 45, NEMA WC 3 and NEMA WC 8.

* * * * *

88. Section 111.60–17 is revised to read as follows:

§ 111.60–17 Connections and terminations.

(a) In general, connections and terminations to all conductors must retain the original electrical, mechanical, flame-retarding, and where necessary, fire-resisting properties of the cable.

(b) With the exception of the thread-cutting type of connectors, twist-on type of connectors—

(1) May not be used for making joints in cables, facilitating a conductor splice or extending the length of a circuit; and

(2) Must be suitable for copper stranded conductors.

(c) If twist-on type of connectors are used, the connections must be made within an enclosure and secured to prevent loosening due to vibration.

89. Section 111.60–19 is revised to read as follows:

§ 111.60–19 Cable splices.

(a) A cable must not be spliced in a hazardous location except in intrinsically safe systems.

(b) Each cable splice must be made in accordance with section 20.11 (clause 10.11) of IEEE Std 45.

90. In § 111.60–21, the last sentence is revised to read as follows:

§ 111.60–21 Cable insulation tests.

* * *. The insulation resistance must not be less than that in paragraph 46.2.1 (36.2.1) of IEEE Std 45.

91. Section 111.60–23 is added to read as follows:

§ 111.60–23 Type MC cable.

(a) Type MC cables are allowed in—

(1) All applications aboard vessels, Mobile Offshore Drilling Units (MODUs), Tension Leg Platforms (TLPs) or any other type of Floating Production Systems (FPSs), not exposed to vibration of a destructive nature, festooning, or repeated flexing (typically these applications are associated with all interconnect circuits serving, but not limited to, the drilling portion of the platform, e.g., drill floor, draw works, shaker areas, and pits, etc.); interface installations on MODUs, TLPs or FPSs physically located within the modules, such as generator to switchboard or within living quarters;

(2) Class I, or Zone 0 and 1, hazardous (classified) locations provided cable glands for use with Type MC cable are specifically listed/certified by an US Coast Guard accepted independent testing laboratory as an assembly (consisting of the enclosure, cable gland and cable) for use in the installed Class I, or Zone 0 and 1, hazardous (classified) locations; and

(3) Class II and Zone 2 hazardous (classified) locations provided the associated fittings meet the criteria of the NEC.

(b) The installation of Type MC must—

(1) Follow the sizing and installation criteria of the NEC, and if used in Class I, Class II and Zone 0, 1, and 2 hazardous (classified) locations, follow the applicable installation criteria of the NEC; and

(2) Not allow the metal sheath to be used as the grounding conductor required by § 111.05–7 of this chapter. The system grounding conductors must be of a cross sectional area not less than that of the normal current carrying conductors in the cable. Equipment grounding conductors must be sized in accordance with § 111.05–33(a).

92. In § 111.70–1, paragraphs (a) and (b) are revised to read as follows:

§ 111.70–1 General.

(a) Each motor circuit, controller, and protection must meet the requirements of the ABS Rules, Part 4/5.87–94 through 4/5.94, or IEC Publication 92–301, except the following circuits:

(1) Each steering gear motor circuit and protection must meet subpart 58.25 of this chapter.

(2) Each propulsion motor circuit and protection must meet subpart 111.35 of this part.

(b) In ungrounded three-phase alternating current systems, only two motor-running protective devices need be utilized in any two ungrounded conductors, except when a wye-delta or a delta-wye transformer is utilized.

* * * * *

93. Section 111.70–3 is revised to read as follows:

§ 111.70–3 Motor controllers and motor control centers.

(a) *General.* The enclosure for each motor controller or motor control center must meet the requirements of the NEMA Standard 30 or Table 5 of IEC Publication 92–201, as appropriate, for the location where it is installed, except each enclosure in a hazardous location must meet the requirements of subpart 111.105 of this part.

(b) *Low-voltage release.* Each motor controller for a fire pump, elevator, steering gear, or auxiliary which is vital to the vessel's propulsion system, except a motor controller for a vital propulsion auxiliary which can be restarted from a central control station, must have low-voltage release if automatic restart after a voltage failure or its resumption to operation is not hazardous. If automatic restart is hazardous, the motor controller must have low-voltage protection. Motor controllers for other motors must not have low-voltage release unless the starting current and the short-time sustained current of the additional low-voltage release load is within the capacity of one ship's service generator. Automatic sequential starting of low-voltage release controllers is acceptable to meet this paragraph.

(c) *Low-voltage protection.* Each motor controller must have low-voltage protection, except for the following motor controllers:

(1) A motor controller that has low-voltage release under paragraph (b) of this section.

(2) A motor controller for a motor of less than 2 horsepower (1.5 kw).

(d) *Identification of controllers.* (1) Each controller and motor control center must be marked externally with the following information:

(i) Manufacturer's name or identification.

(ii) Voltage.

(iii) Number of phases.

(iv) Current.

(v) kW (Horsepower).

(vi) Identification of motor being controlled.

(vii) Current rating of trip setting.

(2) Each controller must be provided with heat durable and permanent elementary wiring/schematic diagram of the controller located on the door interior.

94. In § 111.70–5, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 111.70–5 Heater circuits.

(a) If an enclosure for a motor, master switch, or other equipment has an electric heater inside that enclosure which is energized from a separate circuit, the heater circuit must be disconnected from its source of potential by a disconnect device independent of the enclosure containing the heater. The heater disconnecting device must be adjacent to the equipment disconnecting device; a fixed sign, warning the operator to open both devices, must be on the enclosure of the equipment disconnect device, except as in paragraph (b) of this section.

* * * * *

(c) Electric heaters installed within motor controllers and energized from a separate circuit shall be disconnected in the same manner as required by paragraph (a) of this section or as required by § 111.70–7(d).

95. In § 111.70–7, paragraphs (d) introductory text and (d)(2) are revised to read as follows:

§ 111.70–7 Remote control, interlock, and indicator circuits.

* * * * *

(d) *Switching.* In the design of a control, interlock, or indicator circuit, all practicable steps must be taken to eliminate all but one source of power in an enclosure. If the control functions make it impracticable to energize a control interlock or indicator circuit from the load side of a motor and controller disconnect device and the voltage of the control, interlock, or indicator circuit is more than 24 volts, there must be one of the following alternative methods of switching:

* * * * *

(2) Each conductor of a control, interlock, or indicator circuit must be disconnected from all sources of power by a disconnect device actuated by the opening of the controller door, or the power must first be disconnected to allow opening of the door. THe disconnect device and its connections, including each terminal block for terminating the vessel's wiring, must not have any electrically uninsulated or unshielded surface. When this type of disconnect device is used for vital auxiliary circuits, a nameplate shall be affixed to the vital auxiliary motor controller door which warns that opening of the door will trip a vital auxiliary off-line.

96. In § 111.75–1, paragraph (a) is revised to read as follows and paragraph (c) is removed:

§ 111.75–1 Lighting feeders.

(a) *Passenger vessels.* On a passenger vessel with fire bulkheads forming main vertical and horizontal fire zones, the lighting distribution system, including low location egress lighting where installed, must be arranged so that, to the maximum extent possible, a fire in any main vertical and horizontal fire zone does not interfere with the lighting in any other fire zone. This requirement is met if main and emergency feeders passing through any zone are separated both vertically and horizontally as widely as practicable.

* * * * *

97. In § 111.75–5, paragraphs (b) and (g) are removed; paragraphs (c) through (f) are redesignated as paragraphs (b) through (e); and newly redesignated paragraphs (b) and (d) are revised to read as follows:

§ 111.75–5 Lighting branch circuits.

* * * * *

(b) *Connected load.* The connected load on a lighting branch circuit must not be more than 80 percent of the rating of the overcurrent protective device, computed on the basis of the lamp sizes.

* * * * *

(d) *Overcurrent protection.* Each lighting branch circuit must be protected by an overcurrent device rated

at 20 amperes or less, except as allowed under paragraph (e) of this section.

* * * * *

§ 111.75–15 [Amended]

98. In § 111.75–15, paragraph (c) is revised to read as follows:

* * * * *

(c) *Illumination of passenger and crew spaces.* Each space used by passengers or crew must be fitted with lighting which provides for a safe habitable and working environment under normal conditions. Sufficient illumination must be provided by the emergency lighting source under emergency conditions in order to effect damage control procedures and to provide for safe egress from each space.

* * * * *

99. In § 111.75–16, the introductory text is revised and paragraph (c) is added to read as follows:

§ 111.75–16 Survival craft floodlights.

Each vessel must have floodlights for illumination of survival craft launching that meet the following requirements:

* * * * *

(c) The arrangement of circuits must be such that the floodlights at adjacent survival craft locations are supplied by different branch circuits.

100. In § 111.75–17, paragraphs (d) introductory text, (d)(1), (d)(2), and (d)(3) are revised to read as follows and paragraph (f) is removed:

§ 111.75–17 Navigation Lights.

* * * * *

(d) *Navigation lights.* Each navigation light must meet the following:

(1) Meet the technical details of the applicable navigation rules.

(2) Be certified by an independent laboratory to the requirements of UL 1104.

(3) Be labeled with a label stating the following:

(i) ''MEETS UL 1104. TESTED BY _____'' (Insert the name of the independent laboratory, accepted by the Commandant, which tested the fixture to UL 1104);

(ii) Manufacturers name; and

(iii) Model number.

* * * * *

101. Section 111.75–18 is revised to read as follows:

§ 111.75–18 Signaling lights.

Each self-propelled vessel over 150 gross tons which engaged on an international voyage must have onboard an efficient daylight signaling lamp which may not be solely dependent upon the ship's main source of electrical power and meets the following:

(a) The axial luminous intensity of the beam must be at least 60,000 candelas.

(b) The luminous intensity of the beam in every direction within an angle of 0.7 degrees from the axial must be at least 50 percent of the axial luminous intensity.

102. In § 111.75–20, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 111.75–20 Lighting fixtures.

(a) The construction of each lighting fixture must be certified to meet UL 595 or IEC Publication 92–306.

* * * * *

(e) Non-emergency and decorative interior lighting fixtures in environmentally protected, non-hazardous locations require only manufacturers' self-certification to the applicable UL type-fixture standard (UL 1570–1574) in addition to the general requirements of its marine supplement, or UL 595, (whichever is in effect at the time of manufacture). Such fixtures must have vibration clamps on fluorescent tubes longer than 102 cm (40 inches), secure mounting of glassware, and rigid mounting (''Listing'' is not required).

103. Section 111.77–3 is revised to read as follows:

§ 111.77–3 Appliances.

All electrical appliances including, but not limited to, cooking equipment, dishwashers, refrigerators, and refrigerated drinking water coolers must meet internationally recognized construction and safety standards. Also, this equipment must be suitably installed for the location and service intended.

§§ 111.77–5, 111.77–7, 111.77–9, and 111.77–11 [Removed]

104. Sections 111.77–5, 111.77–7, 111.77–9 and 111.77–11 are removed.

105. Section 111.79–1 is revised to read as follows:

§ 111.79–1 Receptacle outlets; general.

(a) There must be a sufficient number of receptacle outlets in the crew accommodations for an adequate level of habitability.

(b) There must be a sufficient number of receptacle outlets throughout the machinery space so that any location can be reached by a portable power cord having a length not greater than 15 meters (50 feet).

(c) Each receptacle outlet must be compatible with the voltage and current of the circuit in which it is installed.

(d) Each receptacle outlet must be suitable for the environment in which it is installed and constructed to the appropriate NEMA or IEC protection standard. Special attention must be given to outlets in hazardous locations. Receptacles must be suitably protected against corrosion when installed in corrosive environments.

§ 111.79–5 [Removed]

106. Section 111.79–5 is removed.

107. Section 111.79–7 is revised to read as follows:

§ 111.79–7 No live parts.

A receptacle outlet must not have any exposed live parts with the plug opening uncovered.

108. Section 111.79–13 is revised to read as follows:

§ 111.79–13 Different voltages and power types.

If receptacle outlets on a vessel are supplied by different voltages (e.g., 110 volts and 220 volts) or by different types of power (e.g., AC and DC), each receptacle outlet must preclude the plugging of a portable device into a receptacle outlet of an incompatible voltage or type of power.

109. In § 111.81–1, paragraph (d) is added to read as follows:

§ 111.81–1 Outlet boxes and junction boxes; general.

* * * * *

(d) Each outlet box and junction box installation must meet section 370 of the NEC or IEC Series 92 Publications (e.g., IEC Publication 92–306) as appropriate.

§ 111.81–5 [Removed]

110. Section 111.81–5 is removed.

111. Section 111.81–7 is revised to read as follows:

§ 111.81–7 Degree of protection.

(a) Each enclosure or junction box must be suitable for the environment in which it is installed and must be constructed to the appropriate NEMA or IEC construction standard.

(b) Each enclosure or junction box installed in a corrosive environment must be suitably protected against damage by the environment.

112. Section 111.81–9 is revised to read as follows:

§ 111.81–9 Mounting.

(a) Each outlet or junction box must be fixed.

(b) Each outlet or junction box must be installed as to maintain its designated degree of protection, as appropriate.

§§ 111.81–11, 111.81–13, and 111.83–3 [Removed]

113. Sections 111.81–11, 111.81–13 and 111.83–3 are removed.

114. In § 111.85–1, introductory text and paragraphs (a), (b), and (c) are redesignated as paragraphs (a), (a)(1), (a)(2), and (a)(3); new paragraphs (a)(4) and (b) are added to read as follows; and paragraph (d) is removed:

§ 111.85–1 Electric oil immersion heaters.

* * * * *

(a) * * *

(4) Either—

(i) A low-fluid-level device that opens all conductors to the heater if the operating level drops below the manufacturer's recommended minimum safe level; or

(ii) A flow device that opens all conductors to the heater if there is inadequate flow.

(b) If a heater is designed so that it could never reach the ignition temperature of the oil or vapor which it serves, it need not meet the requirements of paragraph (a) of this section.

115. In § 111.87–3, paragraph (a) revised to read as follows:

§ 111.87–3 General requirements.

(a) Each electric heater must be tested to a recognized national or international safety standard by an independent laboratory.

* * * * *

§ 111.89 (Subpart 111.89) [Removed]

116. Subpart 111.89, consisting of § 111.89–1, is removed.

§ 111.91–1 [Amended]

117. In § 111.91–1 and the section heading, add the word ''power,'' before the word ''control''.

§ 111.91–3 [Removed]

118. Section 111.91–3 is removed.

119. Section 111.95–3 is revised to read as follows:

§ 111.95–3 General requirements.

(a) Each electrical component (e.g. enclosure, motor controller, or motor) must be constructed to the appropriate NEMA or IEC degree of protection requirement for the service and environment in which it is installed.

(b) Each main line emergency disconnect switch, if accessible to an unauthorized person, must have a means to lock the switch in the open-circuit position with a padlock or its equivalent. The switch must not lock in the closed-circuit position.

§ 111.95–5 [Removed]

120. Section 111.95–5 is removed.

§ 111.95–7 [Amended]

121. In § 111.95–7, the Note and Figures 111.95–7(e)(1) through 111.95(e)(5) are removed.

§ 111.97–5 [Amended]

122. In § 111.97–5, in paragraph (c), remove the word ''twice'' and add, in its place, the word ''once'' and remove the word ''three'' and add, in its place, the word ''two''.

§ 111.97–5 Electric and hydraulic power supply.

* * * * *

(c) The power supply for each hydraulically-operated watertight door system which uses a hydraulic system common to more than one watertight door must be an accumulator tank with enough capacity to open all doors once and to close all doors two times and must be supplied by one or more motor-driven hydraulic pumps which can operate from the final source of the emergency lighting and power system.

* * * * *

Subpart 111.99 [Amended]

123. In subpart 111.99, in the subpart heading, remove the word ''Firescreen'' and add, in its place, the word ''Fire''.

§ 111.99–1 [Amended]

124. In § 111.99–1, remove the words ''firescreen doors on passenger vessels'' and add, in their place, the words ''fire doors''.

125. Section 111.99–3 is revised to read as follows:

§ 111.99–3 Definitions.

As used in this subpart—

Central control station means a manually-operated device on the navigating bridge or in the fire control room for releasing one or more fire doors;

Fire door means a door that is in a fire boundary, such as a stairway enclosure or main vertical zone bulkhead, that is not usually kept closed.

Fire door holding magnet means an electromagnet for holding a fire door open.

Local control station means a manually-operated device next to a fire door for releasing the door so that the fire door self-closing mechanism may close the door.

126. In § 111.99–5, remove the word ''firescreen'' wherever it appears and add, in its place, the word ''fire'' and revise paragraphs (a), (b), (d), and (e) to read as follows:

§ 111.99–5 General.

(a) Each fire door holding and release system must have a central control station and the following for each fire door:

(1) One or more fire door holding magnets.

(2) A self-aligning armature plate on the door to be seized and held by the magnet(s) when the fire door is fully open.

(3) A local control station.

(b) Each fire door holding circuit must be arranged so that loss of power for any cause releases the door, except that a momentary interruption of the circuit that results from the operation of an automatic bus-transfer device in connection with the emergency power and lighting system must not release the door.

* * * * *

(d) The local control station must be an enclosed, externally-operable, overcurrent-protected switching device having a rating of not less than 125 percent of rated system current and voltage, and may be either the momentary contact type or the maintaining contact type. The holding magnet(s) for a single fire door must be connected to the overcurrent-protected end of this local control except that, if several doors are near each other, a single local control station switch of ample rating may be used to release these doors simultaneously.

(e) Each fire door's holding magnet(s) must be designed to hold with an aggregate pull of 90 kg (200 pounds). If the arrangement of the electrical supply involves transfer relays to transfer the supply from a normal to a temporary source, the fire door holding magnet(s) must be designed so that, with a pull on the armature of 50 kg (110 pounds), the armature is held in the sealed position for at least one-fourth of a second after the circuit to the magnet is opened. Each fire door holding magnet must be designed for continuous duty in an ambient temperature of 40°C with a total temperature rise that does not exceed the insulation rating. The electromagnet coil must be vacuum-pressure impregnated and the magnet enclosure must meet the NEMA or IEC requirements for the environment in which it is installed.

* * * * *

127. Section 111.105–1 and its note are revised to read as follows:

§ 111.105–1 Applicability.

This subpart applies to installations in hazardous locations as defined in the NEC, and in the IEC Publication 79–0.

Note to § 111.105–1: Chemicals and materials in addition to those listed in Table 500–2 of the NEC and IEC Publication 79–12 are listed in subchapter O of this chapter.

128. Section 111.105–3 is added to read as follows:

§ 111.105–3 General requirements.

All electrical installations in hazardous locations must comply with

the general requirements of section 43 (clause 33) of IEEE Std 45 and either NEC articles 500–505 or IEC series 79 publications. When installations are made in accordance with the NEC articles, marine shipboard cable that complies with subpart 111.60 of this part may be used instead of rigid metal conduit, if installed fittings are approved for the specific hazardous location and the cable type.

129. Section 111.105–5 is revised to read as follows:

§ 111.105–5 System integrity.

In order to maintain system integrity, electrical installations in a hazardous location must comply specifically with NEC articles 500–505, as amended by § 111.105–3, or the IEC series 79 publications, but not a combination of both. Non-approved equipment or hazardous equipment not approved for the specific system installed is also prohibited.

130. Section 111.105–7 is revised to read as follows:

§ 111.105–7 Approved equipment.

If the NEC states that an item of electrical equipment must be approved or if IEC Publication 79–0 states that an item of electrical equipment must be tested in order to comply with the IEC 79 series publications, that item must be—

(a) Listed or certified by an independent laboratory recognized by the Commandant for use in the hazardous location in which it is installed; or

(b) Purged and pressurized equipment which meets NFPA No. 496 or IEC Publication 79–2.

131. Section 111.105–9 is revised to read as follows:

§ 111.105–9 Explosionproof and flameproof equipment.

Each item of electric equipment that is required under this subpart to be explosionproof is defined by the NEC as tested to meet UL 1203. Each item of electrical equipment that is required under this subpart to be flameproof is defined as tested to comply with IEC Publication 79–1. Each explosionproof or flameproof device must meet the requirements of § 111.105–7(a).

§ 111.105–10 [Removed]

132. Section 111.105–10 is removed.

133. Section 111.105–11 is revised to read as follows:

§ 111.105–11 Intrinsically safe systems.

(a) Each system required under this subpart to be intrinsically safe is defined as meeting UL 913 or IEC Publication 79–11. Each intrinsically safe system must also meet § 111.105–7(a) for use in the hazardous location in which it is installed.

(b) Each electric cable of an intrinsically safe system must—

(1) Be 50 mm (2 inches) or more from cable of non-intrinsically safe circuits;

(2) Be partitioned by a grounded metal barrier from other non-intrinsically safe electric cables, or be a shielded cable;

(3) Not contain conductors for non-intrinsically safe systems; and

(4) Not contain conductors for other intrinsically safe circuits unless specifically approved for that arrangement.

(c) The manufacturer must submit installation instructions and restrictions on the approved system. Typical restrictions include—

(1) Voltage limitations;

(2) Allowable cable parameters;

(3) Maximum length of cable permitted; and

(4) Ability of system to accept passive devices.

(d) Intrinsically safe systems must not be interconnected unless the systems were approved for the particular combined arrangement.

(e) Each intrinsically safe system must meet ISA RP 12.6, ''Installation of Intrinsically Safe Instruments in Class I Hazardous Locations,'' except Appendix A.1.

134. Section 111.105–15 is revised to read as follows:

§ 111.105–15 Additional methods of protection.

(a) Each item of electrical equipment that is—

(1) A sand-filled apparatus must meet IEC Publication 79–5;

(2) An oil-immersed apparatus must meet IEC Publication 79–6;

(3) Type of protection ''e'' must meet IEC Publication 79–7;

(4) Type of protection ''n'' must meet IEC Publication 79–15; and

(5) Type of protection ''m'' must meet IEC Publication 79–18.

(b) When suitable for installation in certain hazardous locations, each item of electrical equipment identified in paragraph (a) of this section must also comply with—

(1) Section 111.105–7;

(2) Section 111.105–17; and

(3) The general guidance provided by IEC 79 series publications.

135. Section 111.105–17 is revised to read as follows:

§ 111.105–17 Wiring methods for hazardous locations.

(a) Marine shipboard cable meeting subpart 111.60 of this part is required for all location installations, except where MI or SI type or other specialty cable or wire is required by this subpart.

(b) Where conduit is installed, the applicable requirements of either the NEC or IEC Publication 79 must be followed.

(c) Each cable entrance into explosionproof or flameproof equipment must be made with a fitting, termination, or gland which meets the requirements of § 111.105–9.

(d) Each cable entrance into a Class II or Class III or Zone 10 or Zone 11 equipment must be made with a fitting, termination, or gland approved for the installation.

136. Section 111.105–19 is revised to read as follows:

§ 111.105–19 Switches.

A switch that is explosionproof or flameproof, or that controls any explosionproof or flameproof equipment, under § 111.105–9 must have a pole for each ungrounded conductor.

137. Section 111.105–21 is revised to read as follows:

§ 111.105–21 Ventilation.

A ventilation duct which ventilates a hazardous location has the classification of that location. Each fan for ventilation of a hazardous location must be nonsparking.

§§ 111.105–23 and 111.105–25 [Removed]

138. Sections 111.105–23 and 111.105–25 are removed.

139. In § 111.105–29, the introductory text and paragraphs (a) and (b) are redesignated as paragraphs (a), (a)(1), and (a)(2); and paragraphs (b) and (c) are added to read as follows:

§ 111.105–29 Combustible liquid cargo carriers.

* * * * *

(b) If a submerged cargo pump motor is in a cargo tank, it must meet the requirements of § 111.105–31(d).

(c) Where the cargo is heated to within 15° C of its flashpoint, the cargo pumproom must meet the requirements of § 111.105–31(f) and the weather locations must meet § 111.105–31(1).

140. In § 111.105–31, paragraphs (e) and (l) introductory text are revised and paragraphs (l)(3) and (l)(4) are added to read as follows:

§ 111.105–31 Flammable or combustible cargo with a flashpoint below 60 degrees C (140 degrees F), liquid sulfur and inorganic acid carriers.

* * * * *

(e) *Cargo tanks.* A cargo tank is a Class I, Division 1 (IEC Zone 0) location which has additional electrical

equipment restrictions outlined in IEEE Std 45, Appendix B. Cargo tanks must not contain any electrical equipment except the following:

(1) Intrinsically safe equipment; and

(2) Submerged cargo pumps and their associated cable.

* * * * *

(l) *Weather locations.* The following locations in the weather are Class I, Division 1 (Zone 1) locations (except the open deck area on an inorganic acid carrier which is considered a non-hazardous location) and may have only explosionproof electrical equipment, purged and pressurized equipment, and through runs of armored or MI type cable if the location is—

* * * *

(3) Within 5 meters (16 ft) of cargo pressure/vacuum valves with an unlimited height; or

(4) Within 10 meters (33 ft) of vent outlets for free flow of vapor mixtures and high velocity vent outlets for the passage of large amounts of vapor, air or inert gas mixtures during cargo loading and ballasting or during discharging.

* * * * *

141. In § 111.105–32, the section heading and paragraph (e) are revised to read as follows:

§ 111.105–32 Bulk liquefied flammable gas and ammonia carriers.

* * * * *

(e) A submerged cargo pump motor, if installed in a cargo tank, must meet § 111.105–31(d).

* * * * *

142. Section 111.105–35 is revised to read as follows:

§ 111.105–35 Vessels carrying coal.

(a) The following are Class II, Division 1 locations on a vessel that carries coal:

(1) The interior of each coal bin and hold.

(2) Each compartment that has a coal transfer point where coal is transferred, dropped, or dumped.

(3) Each open area within 3 meters (10 ft) of a coal transfer point where coal is dropped or dumped.

(b) Each space that has a coal conveyer on a vessel that carries coal is a Class II, Division 2 space.

(c) A space that has a coal conveyer on a vessel that carries coal must have electrical equipment approved for Class II, Division 2 hazardous locations, except watertight general alarm bells.

§ 111.105–37 [Amended]

143. In § 111.105–37, remove the words ''NFPA No. 56A'' and add, in their place, the words ''NFPA No. 99''.

144. Section 111.105–39 is revised to read as follows:

§ 111.105–39 Additional requirements for vessels carrying vehicles with fuel in their tanks.

Each vessel which carries vehicles with fuel in their tanks must meet the requirements of ABS Rule 4/5.157, except as follows:

(a) If the ventilation requirement of ABS Rule 4/5.157 is not met, all installed electrical equipment must be suitable for a Class I, Division 1; Zone 0; or Zone 1 hazardous location.

(b) If the vessel is fitted with an approved fixed gas detection system set at 25 percent the LEL, each item of the installed electrical equipment must meet the requirements for a Class I, Division 1; Class I, Division 2; Zone 0; Zone 1; or Zone 2 hazardous location.

Note to § 111.105–39: The term ''explosionproof'' is internationally recognized as meaning electrical equipment certified suitable for a Class I, Division 1; Zone 0; or Zone 1 hazardous location.

145. Section 111.105–40 is added to read as follows:

§ 111.105–40 Additional requirements for RO/RO vessels.

(a) Each RO/RO vessel must meet ABS Rule 4/5.160.

(b) Each item of installed electrical equipment must meet the requirements for a Class I, Division 1; Class I, Division 2; Zone 0; Zone 1; or Zone 2 hazardous location when installed 450 mm (18 inches) or more above the deck. Electrical equipment installed within 450 mm (18 inches) of the deck must be suitable for either a Class I, Division 1; Zone 0; or Zone 1 hazardous location.

(c) Where the ventilation requirement as ABS Rule 4/5.160 is not met—

(1) All installed electrical equipment must be suitable for a Class I, Division 1; Zone 0; or Zone 1 hazardous location; or

(2) If fitted with an approved fixed gas detection system (set at 25 percent of the LEL), each item of installed electrical equipment must meet the requirements for either a Class I, Division 1; Class I, Division 2; Zone 0; Zone 1; or Zone 2 hazardous location.

146. Section 111.105–41 is revised to read as follows:

§ 111.105–41 Battery rooms.

Each electrical installation in a battery room must meet subpart 111.15 of this part and section 43.11 (clause 33.11) of IEEE Std 45.

147. Section 111.105–45 is added to read as follows:

§ 111.105–45 Vessels carrying agricultural products.

(a) The following areas are Class II, Division 1, locations on vessels carrying bulk agricultural products that may produce dust explosion hazards:

(1) The interior of each cargo hold or bin.

(2) Areas where cargo is transferred, dropped, or dumped and locations within 1 meter (3 feet) of the outer edge of these areas in all directions.

(b) The following areas are Class II, Division 2, locations on vessels carrying bulk agricultural products that may produce dust explosion hazards:

(1) All areas within 2 meters (6.5 feet) of a Division 1 location in all directions except when there is an intervening barrier such as a bulkhead or deck.

Note to § 111.105–45: Information on the dust explosion hazards associated with the carriage of agricultural products is contained in Coast Guard Navigation and Vessel Inspection Circular 9–84 (NVIC 9–84) ''Electrical Installations in Agricultural Dust Locations.''

148. Section 111.105–47 is added to read as follows:

§ 111.105–47 Duct keel ventilation or lighting.

(a) Each pipe tunnel, double bottom or duct keel ventilation and lighting system must meet ABS Rule 4/5.151.7.

(b) If a fixed gas detection system is installed, it must meet the requirements of SOLAS 74 and ABS Rules section 4/5.

149. Section 111.107–1 is revised to read as follows:

§ 111.107–1 Industrial systems.

(a) For the purpose of this subpart, an industrial system is a system that—

(1) Is not a ship's service load, as defined in § 111.10–1;

(2) Is used only for the industrial function of the vessel;

(3) Is not connected to the emergency power source; and

(4) Does not have specific requirements addressed elsewhere in this subchapter.

(b) An industrial system that meets the applicable requirements of the NEC must meet only the following:

(1) The switchgear standards in part 110, subpart 110.10, of this chapter.

(2) Part 110, subpart 110.25, of this chapter—Plan Submittal.

(3) Subpart 111.01 of this part—General.

(4) Subpart 111.05 of this part—Equipment Ground, Ground Detection, and Grounded Systems.

(5) Sections 111.12–1(b) and 111.12–1(c)—Prime movers.

(6) Subpart 111.105 of this part—Hazardous Locations.

(c) Cables that penetrate a watertight or fire boundary deck or bulkhead must meet the following:

(1) Be installed in accordance with § 111.60–5.

(2) Meet the flammability test requirements of—

(i) Section 18.13.5 (clause 8.13.5) of IEEE Std 45 and IEEE Std 383; or

(ii) IEC Publication 332–3, Category A.

(3) Be specialty cable installed in accordance with § 111.60–2.

PART 112—EMERGENCY LIGHTING AND POWER SYSTEMS

150. The authority citation for part 112 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

151. In § 112.05–1, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 112.05–1 Purpose.

(a) The purpose of this part is to ensure a dependable, independent, and dedicated emergency power source with sufficient capacity to supply only those services that are necessary for the safety of the passengers, crew, and other persons in an emergency.

* * * * *

(c) Other loads may be authorized by the Commanding Officer, U.S. Coast Guard Marine Safety Center (MSC), to be connected to the emergency source of power to provide an increased level of safety in recognition of a unique vessel mission or configuration. When these loads are authorized, the emergency power source must—

(1) Be sized to supply these loads using a unity (1.0) service factor; or

(2) Be provided with automatic load shedding that removes these loads and operates before the emergency generator trips due to overload. The automatic load shedding circuit breakers must be manually reset.

152. In § 112.05–5, paragraph (a), footnote 1 to table 112.05–5(a), and paragraphs (c), (d), and (e) are revised to read as follows:

§ 112.05–5 Emergency power source.

(a) The emergency power source must meet table 112.05–5(a) and have the capacity to supply all loads that are simultaneously connected to it, except a load on a bus-tie to the main switchboard or non-required loads that are connected in accordance with § 112.05–1(c).

Table 112.05–5(a)

* * * * *

[1] A 12-hour power supply may be especially considered for vessels engaged regularly in voyages of short duration.

* * * * *

(c) The complete emergency installation must function at full rated power when the ship is upright or inclined to the maximum angle of heel which results from the assumed damage defined in 33 CFR part 155 or by subchapter S of this chapter for the specific vessel type, or 22.5 degrees, whichever is greater; when the trim of the ship is 10 degrees, either in the fore or aft direction, or is in any combination of angles within those limits.

(d) The emergency power source, associated transforming equipment, and the emergency switchboard must be located aft of the collision bulkhead, outside the machinery casing, and above the uppermost continuous deck. Each compartment containing the emergency power source, associated transforming equipment, and the emergency switchboard must be readily accessible from the open deck and must not contain any other machinery.

(e) No compartment that has an emergency power source or its vital components may adjoin a Category A machinery space or those spaces containing the main source of electrical power and its vital components.

* * * * *

153. In § 112.15–1, paragraphs (c), (g), (j), (k), and (p) are revised and paragraphs (q) and (r) are added to read as follows:

§ 112.15–1 Temporary emergency loads.

* * * * *

(c) Lighting, including low location lighting if installed, for passageways, stairways, and escape trunks in passenger quarters, crew quarters, public spaces, machinery spaces, damage control lockers, emergency equipment lockers, and work spaces sufficient to allow passengers and crew to find their way to open decks and to survival craft, muster stations, and embarkation stations with all watertight doors and fire doors closed.

* * * * *

(g) Lighting for survival craft launching, including muster stations, embarkation stations, the survival craft, its launching appliances and the area of the water where it is to be launched. Lights must meet the requirements of § 111.75–16 of this chapter, § 112.43–7 and § 112.43–11.

* * * * *

(j) All shipwide communications systems necessary for the transmittal of information during an emergency.

(k) Each fire door holding and release system.

* * * * *

(p) Each fire detection system; and gas detection system if installed.

(q) All lighting relative to helicopter operations and landing if installed, unless provided for by another source of power (such as independent batteries separately charged by solar cells).

(r) Each general emergency alarm system required by SOLAS 74.

154. In § 112.15–5, paragraphs (b), (f), (q), and (i) through (t) are revised and new paragraphs (u) and (v) are added to read as follows:

§ 112.15–5 Final emergency loads.

* * * * *

(b) The machinery, controls, and alarms for each passenger elevator.

* * * * *

(f) A sprinkler system, water spray extinguishing system, or foam system pump.

(g) If necessary, the lube oil pump for each propulsion turbine and reduction gear, propulsion diesel reduction gear, and ship's service generator turbine which needs external lubrication.

* * * * *

(i) Each radio or global marine distress safety system (GMDSS).

(j) Each radio direction finder, loran, radar, gyrocompass, depth sounder, global positioning system (GPS), satellite navigation system (SATNAV), speed log, rate-of-turn indicator and propeller pitch indicator.

(k) A steering gear feeder if required by part 58, subpart 58.25, of this chapter.

(l) General alarm flashing lights required by § 113.25–10 of this chapter.

(m) Each electric blow-out-preventer control system on a mobile offshore drilling unit.

(n) Any permanently installed diving equipment that is dependent upon the vessel's or drilling unit's power.

(o) An emergency generator starting compressor as allowed by § 112.50–7(c)(3)(ii).

(p) Each steering gear failure alarm required by part 113, subpart 113.43, of this chapter.

(q) The ballast control system on a column-stabilized mobile offshore drilling unit.

(r) The vital system automation loads required by part 62 of this chapter.

(s) Motor-operated valves for the cargo oil and fuel oil systems if the emergency power source is the source of power to meet § 56.50–60(d) of this chapter.

(t) The ship's stabilizer wings, unless a separate source of emergency power is supplied.

(u) The indicator which shows the position of the stabilizer wings, if the emergency power source is their emergency source of power.

(v) Smoke extraction fans (not including smoke detector sampling), and CO_2 exhaust fans for spaces.

115. In § 112.39–1, paragraphs (a)(2) and (a)(3) are revised to read as follows and paragraph (a)(4) is removed:

§ 112.39–1 General.

(a) * * *

(2) Have an automatic battery charger that maintains the battery in a fully charged condition; and

(3) Not be readily portable.

§ 112.39–3 [Amended]

156. In § 112.39–3(a), remove the words ''at least 6'' and add, in its place, the words ''for at least 3''.

§ 112.43–1 [Amended]

157. In § 112.43(b), remove ''§ 112.43–3'' and add, in its place, ''§ 112.43–7''.

§ 112.43–3 [Removed]

158. Section 11243–3 is removed.

§ 112.43–5 [Amended]

159. In § 112.43–5, remove the words ''lifeboat and liferaft'' and add, in their place, the words ''survival craft'' and remove and word ''wheelhouse'' and add, in its place, the words ''navigating bridge''.

160. In § 112.43–7, paragraphs (a) introductory text, (a)(1), (a)(2), (a)(4)(ii), and (b) are revised; and paragraph (a)(4)(v) is added to read as follows:

§ 112.43–7 Navigating bridge distribution panel.

(a) Except as allowed in paragraph (b) of this section, the following emergency lights must be supplied from a distribution panel on the navigating bridge:

(1) Navigation lights not supplied by the navigation light indicator panel.

(2) Floodlights for survival craft launching operations, except as followed in § 112.43–5.

* * * * *

(4) * * *

(ii) On the navigating bridge;

* * * * *

(v) For navigation equipment.

(b) On a mobile offshore drilling unit, the distribution panel required in paragraph (a) of this section must be in the control room.

* * * * *

161. Section 112.43–11 is revised to read as follows:

§ 112.43–11 Illumination for launching operations.

Branch circuits for floodlights for survival craft launching operations must supply no other equipment and meet § 111.75–16(c) of this chapter.

§ 112.43–15 [Amended]

162. In § 112.43–15, remove the word ''firescreen'' and add, in its place, the word ''fire''.

§ 112.43–17 and 112.45–5 [Removed]

163. Sections 112.43–17 and 112.45–5 are removed.

164. The heading to subpart 112.45 is revised to read as follows:

Subpart 112.45—Visible Indicators

165. In § 112.50–1, paragraph (d) is revised; paragraph (e) is removed, paragraphs (f) through (k) are redesignated as paragraphs (e) through (j); newly redesignated paragraph (f) is revised; and a new paragraph (k) is added to read as follows:

§ 112.50–1 General.

* * * * *

(d) The generator set must be capable of carrying its full rated load within 45 seconds after cranking is started with the intake air, room ambient temperature, and starting equipment at 0° C. The generator's prime mover must not have a starting aid to meet this requirement, except that a thermostatically-controlled electric water-jacket heater connected to the final emergency bus is permitted.

* * * * *

(f) The generator set must maintain proper lubrication when inclined to the angles specified in § 112.05–5(c), and must be arranged so that it does not spill oil under a vessel roll of 30 degrees to each side of the vertical.

* * * * *

(k) Each emergency generator that is arranged to be automatically started is to be equipped with a starting device with an energy-storage capability of at least six consecutive starts. A second, separate source of starting energy may provide three of the required six starts. If a second source is provided, the system need only provide three consecutive starts.

166. In § 112.50–3, paragraph (a) is revised to read as follows:

§ 112.50–3 Hydraulic starting.

* * * * *

(a) The hydraulic starting system must be a self-contained system that provides the cranking torque and engine starting RPM recommended by the engine manufacturer. The hydraulic starting system shall be capable of six consecutive starts, unless a second, separate source of starting energy capable of three consecutive starts is provided. A second, separate source of starting energy may provide three of the required six starts. If a second source is provided, the hydraulic system need only provide three consecutive starts.

* * * * *

167. Section 112.50–5 is revised to read as follows:

§ 112.50–5 Electric starting.

An electric starting system must have a starting battery with sufficient capacity for at least six consecutive starts. A second, separate source of starting energy may provide three of the required six starts. If a second source is provided, the electrical starting system need only provide three consecutive starts.

168. In § 112.50–7, paragraph (c)(1) is revised to read as follows and paragraph (d) is removed:

§ 112.50–7 Compressed air starting.

* * * * *

(c) * * *

(1) Has a capacity for at least six consecutive starts. A second, separate source of starting energy may provide three of the required consecutive starts. If a second source is provided, the compressed air starting system need only provide three consecutive starts;

* * * * *

169. In § 112.55–15, paragraph (a) is revised to read as follows:

§ 112.55–15 Capacity of storage batteries.

(a) A storage battery for an emergency lighting and power system must have the capacity—

(1) To close all watertight doors two times;

(2) To open all watertight doors once; and

(3) To carry the remaining emergency loads continuously for the time prescribed in table 112.05–5(a).

* * * * *

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

170. The authority citation for part 113 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46.

171. The heading to subpart 113.10 is revised to read as follows:

Subpart 113.10—Fire and Smoke Detecting and Alarm Systems and Manual Fire Alarm Systems

172. Section 113.10–7 is revised to read as follows:

§ 113.10–7 Connection boxes.

Each connection box must be constructed in accordance with NEMA Type 4 or 4X or IEC IP 56 requirements.

173. In § 113.10–9, in paragraph (a), the third sentence is revised, paragraph (c) is removed; and paragraph (d) is redesignated as paragraph (c):

§ 113.10–9 Power supply.

(a) * * *. The other source must be an automatically charged battery from

the final emergency power source.
* * *

* * * * *

174. Section 113.20–3 is revised to read as follows:

§ 113.20–3 Connection boxes.

Each connection box and each switch enclosure in an automatic sprinkler system must be constructed in accordance with NEMA Type 4 or 4X, or IEC IP 56 requirements.

175. In § 113.25–6, paragraph (d) and paragraph (e) introductory text are revised to read as follows:

§ 113.25–6 Power supply.

* * * * *

(d) Meet the requirements of SOLAS 74;

(e) If using one of the following methods, be—

* * * * *

§ 113.25–8 [Amended]

176. In § 113.25–8, in paragraph (b), remove the word ''fuses'' and add, in its place, the words ''overcurrent protection''; in paragraph (c), remove the words ''battery enclosure'' and add, in their place, the words ''power supply''; in paragraph (f), remove the first sentence; and, in paragraph (g), remove the words ''the vessel must be divided into vertical'' and add, in their place, the words ''the general alarm system must be arranged into vertical service'' and remove ''150 feet (45.7 meters)'' and add, in its place, ''40 meters (131 feet)''.

177. In § 113.25–9, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 113.25–9 Location of general alarm bells.

* * * * *

(b) The general alarm must be audible in the spaces identified in paragraph (a) of this section with all normally closed doors and accesses closed.

(c) The general alarm's sound pressure levels one meter (3 feet) from the source must be 10 dB(A) above normal ambient noise levels. The audible general alarm sound pressure level in any space must not exceed 120 dB(A).

178. In § 113.25–10, the introductory text and paragraphs (a), (b), and (c) are redesignated as paragraphs (a), (a)(1), (a)(2), and (a)(3); in redesignated paragraph (a), remove the word ''light'' and add, in its place, the word ''beacon''; redesignated paragraph (a)(3) is revised; and new paragraphs (b) and (c) are added to read as follows:

§ 113.25–10 Location of flashing red beacons.

(a) * * *

* * * * *

(3) Is supplied by the general alarm system power supply or the vessel emergency power source through a relay that is operated by the general alarm system.

(b) A flashing red beacon must be installed so that it is visible in the cargo pump rooms of vessels that carry combustible liquid cargoes. The installation must be in accordance with the requirements in part 111, subpart 111.105, of this chapter.

(c) A flashing or rotating red beacon must not be used for any other purpose.

179. Section 113.25–11 is revised to read as follows:

§ 113.25–11 Contact makers.

Each contact maker must—

(a) Be normally open and be constructed in accordance with NEMA Type 4 or 4X, or IEC IP 56 requirements;

(b) Have a switch handle that can be maintained in the ''on'' position;

(c) Have the ''off'' and ''on'' positions of the operating handle permanently marked; and

(d) Have an inductive load rating not less than the connected load or, on large vessels, have auxiliary devices to interrupt the load current.

180. Section 113.25–12 is revised to read as follows:

§ 113.25–12 Bells.

(a) Each general alarm bell must produce a signal or tone distinct from any other audible signal on the vessel.

(b) For the purpose of this subpart, a device that produces a bell-like general alarm signal is accepted instead of a bell.

(c) Electronic devices used to produce the general alarm signal must meet the requirements of subpart 113.50 of this part.

181. Section 113.25–16 is revised to read as follows:

§ 113.25–16 Overcurrent protection.

(a) Each fuse in a general alarm system must meet the requirements of part 111, subpart 111.53 of this chapter.

(b) Each overcurrent protection device must cause as wide a differential as possible between the rating of the branch circuit overcurrent protection device and that of the feeder overcurrent protection device.

(c) The capacity of the feeder overcurrent device must be as near as practicable to 200 percent of the load supplied. The capacity of a branch circuit overcurrent device must not be higher than 50 percent of the capacity of the feeder overcurrent device.

§ 113.30–1 [Amended]

182. In § 113.30–1, at the end of the sentence, add the words ''and each self-propelled mobile offshore drilling unit''.

183. Section 113.30–3 is revised to read as follows:

§ 113.30–3 Means of communications.

The common talking means of communication and calling required by this subpart must be a sound-powered telephone or other reliable voice communication method. These systems must be independent of the ship's electrical system.

184. In § 113.30–5, paragraphs (a) introductory text, (d), (g), (h), and (i) are revised and paragraph (j) is added to read as follows:

§ 113.30–5 Requirements.

(a) *Communication.* Each vessel must have a reliable, common talking means of voice communication and calling among the following:

* * * * *

(d) *Emergency lockers.* If the emergency equipment lockers or spaces are not next to the navigating bridge, or control room on a mobile offshore drilling unit, there must be a reliable, common talking system between the navigating bridge or control room and the emergency equipment lockers or spaces.

* * * * *

(g) *Lookout.* Each vessel must have a reliable means of voice communication and calling between the navigating bridge and the bow or forward lookout station unless direct voice communication is possible.

(h) *Engine room local control station.* On a self-propelled vessel equipped with pilothouse control, each local station for the control of the speed or direction of thrust of the propulsion machinery must have a reliable means of voice communication and calling for communication to the engine control room or maneuvering platform, unless an engine order telegraph is installed in accordance with § 113.35–3. Each communications station at a local control station must—

(1) Not be on the same circuit as any other station required by this section; and

(2) Provide the capability of reliable voice communication during vessel operations.

(i) *Mobile offshore drilling units.* Non-self-propelled mobile offshore drilling units must have a reliable common talking means of voice communication and calling system interconnecting the control room, drill floor, machinery space, and silicon controlled rectifier (SCR) room (if installed). Each column-

stabilized mobile offshore drilling unit must have such communication between the ballast control room and the spaces which contain the ballast pumps and valves.

(j) *Survival craft.* Each vessel must have a reliable common talking means of voice communication for calling between the navigating bridge, each survival craft location, and each muster station.

§ 113.30–10 [Removed]

185. Section 113.30–10 is removed.

186. Section 113.30–20 is revised to read as follows:

§ 113.30–20 General requirements.

(a) The communications stations listed in § 113.30–5 (a) through (d), (f), (g), (i), and (j), and other stations for the operation of the vessel, such as the captain's and chief engineer's offices and staterooms, emergency power room, carbon dioxide (or other extinguishing agent) control room, and firepump room, must not be on the same circuit as communications stations installed to meet the requirements of §§ 113.30–5(e) and 113.30–5(h).

(b) If a communications station is in the weather and on the same circuit as other required stations, there must be a cut-out switch on the navigating bridge which can isolate this station from the rest of the stations.

(c) Jack boxes or headsets must not be on a communications system which includes any station required by this subpart, except for a station installed to meet §§ 113.30–5(h) or 113.30–25(d).

187. Section 113.30–25 is revised to read as follows:

§ 113.30–25 Detailed requirements.

(a) Each sound-powered telephone station must include a permanently-wired handset with a push-to-talk button and a hanger for the handset, except those stations detailed in § 113.30–25(d). The hanger must be constructed in such a way to hold the handset away from the bulkhead and such that the handset will not be dislodged by the motion of the vessel.

(b) Each voice communication station device in the weather must be in a proper enclosure as required in § 111.01–9 of this chapter. The audible signal device must be outside the station enclosure.

(c) Each station in a navigating bridge or a machinery space must be in an enclosure meeting at least NEMA Type 2 or IP 11 requirements.

(d) In a noisy location, such as an engine room, there must be a booth or other equipment to permit reliable voice communication during vessel operation.

(e) In a location where the voice communication station audible signal device cannot be heard throughout the space, there must be an additional audible signal device or visual device, such as a light, which is energized from the vessel's electric system.

(f) If two or more voice communication stations are near each other, there must be a means which indicates the station called.

(g) Each voice communication talking circuit must be electrically independent of each calling circuit. A short circuit, open circuit, or ground on either side of a calling circuit must not affect a talking circuit. Circuits must be insulated from ground.

(h) Each connection box must meet at least NEMA Type 4 or 4X, or IP 56 requirements.

(i) Voice communication cables must be run as close to the fore and aft centerline of the vessel as practicable. Cables must not run through high fire risk spaces such as machinery rooms and galleys.

188. Section 113.35–3(e)(3) is revised to read as follows:

§ 113.35–3 General requirements.

* * * * *

(e) * * *

(3) Reliable voice communication and calling which meets the requirements of § 113.30–5(h) is not provided.

* * * * *

189. In § 113.35–5, the section heading and paragraphs (b) through (e) are revised to read as follows and paragraphs (f) through (g) are removed:

§ 113.35–5 Electric engine order telegraph systems.

* * * * *

(b) Each engineroom indicator must be capable of acknowledgment of orders.

(c) There must be an audible signal at each instrument. The signal at both locations must sound continuously when the transmitter and the indicator do not show the same order.

(d) Each telegraph instrument must meet the protection requirements of § 111.01–9 of this chapter.

(e) Each system must have an alarm which—

(1) Automatically sounds and visually signals a loss of power to the system;

(2) Is on the navigating bridge; and

(3) Has a means to silence the audible signal.

§ 113.35–7 [Removed]

190. Section 113.35–7 is removed.

191. In § 113.35–9, the section heading is revised; in paragraph (a) following the word ''other'', add the word '', as''; paragraph (b) is revised to read as follows; and paragraphs (c) through (g) are removed:

§ 113.35–9 Mechanical engine order telegraph systems.

* * * * *

(b) Each transmitter and each indicator must have an audible signal device to indicate, in the case of an indicator, the receipt of an order, and in the case of a transmitter, the acknowledgment of an order. The audible signal device must not be dependent upon any source of power for operation other than that of the movement of the transmitter or indicator handle.

§ 113.35–11 [Removed]

192. Section 113.35–11 is removed.

§ 113.37–5 [Amended]

193. In § 113.37–5, remove the words ''in the wheelhouse'' wherever they appear and add, in their place, the words ''on the navigating bridge''.

194. In § 113.37–10, paragraph (b) is revised to read as follows and paragraphs (c) and (d) are removed:

§ 113.37–10 Detailed requirements.

* * * * *

(b) Each electrical component or its enclosure must meet NEMA Type 4 or 4X or IP 56 requirements.

195. In § 113.40–10, in paragraph (a), the second sentence is revised; paragraph (b) is revised; and paragraphs (c) through (f) are removed as follows:

§ 113.40–10 Detailed requirements.

(a) * * *. This system must be electrically and otherwise independent of all other systems, including the steering gear control system, autopilot, or dynamic positioning system.

(b) Each electric component or its enclosure must meet NEMA Type 4 or 4X or IP 56 requirements.

§ 113.43–3 [Amended]

196. In § 113.43–3(a) introductory text, remove the words ''in the pilothouse'' and add, in their place, the words ''on the navigating bridge''; and remove the words ''§ 58.25–45 and § 111.93–9'' and add, in its place, the words ''subpart 58.25''.

§ 113.43–5 [Amended]

197. In § 113.43–5(b), remove the words ''in the wheelhouse'' and add, in their place, the words ''on the navigating bridge''.

198. The heading to subpart 113.50 is revised to read as follows:

Subpart 113.50—Public Address Systems

199. Section 113.50–1 and 113.50–5 are revised to read as follows:

§ 113.50–1 Applicability.

This subpart applies to each vessel required to have a general alarm system in accordance with § 113.25–1.

§ 113.50–5 General requirements.

(a) Each vessel must have a central-amplifier-type announcing system that will supplement the general alarm. This system must provide for the transmission of orders and information throughout the vessel by means of microphones and loudspeakers connected through a central amplifier.

(b) The announcing station must be located adjacent to the general alarm contact maker on the navigating bridge.

(c) There must be a means to silence all other audio distribution systems at the announcing station.

(d) The system may be arranged to allow broadcasting separately to, or to any combination of, various areas on the vessel. If the amplifier system is used for the general alarm required by subpart 113.25 of this part, the operation of a general alarm contact maker must activate all speakers in the system, except that a separate crew alarm may be used as allowed by § 113.25–5(e)(2).

(e) The amplifier, and the devices used to produce the general alarm signals if used, must be provided in duplicate.

(f) The power supply must be in accordance with the requirements of §§ 113.25–6 and 113.25–7.

(g) Each electrical subsystem in a weather location must be watertight or in a watertight enclosure (NEMA Type 4, 4X or IP 56).

200. Section 113.50–10 is added to read as follows:

§ 113.50–10 Additional requirements for passenger vessels.

(a) Each passenger vessel must have a public address system that enables an officer on the bridge to broadcast separately or collectively to the following stations:

(1) Survival craft stations, port.

(2) Survival craft stations, starboard.

(3) Survival craft embarkation stations, port.

(4) Survival craft embarkation stations, starboard.

(5) Public spaces used for passenger assembly points.

(6) Crew quarters.

(7) Accommodation spaces and service spaces.

(b) Each loudspeaker at a survival craft or embarkation station must allow for two-way conversation with the navigating bridge.

201. In § 113.50–15, the section heading and paragraphs (a) through (d) are revised to read as follows, and Table 113.50–15 is transferred to the end of the section.

§ 113.50–15 Location of loudspeakers.

(a) Loudspeakers must be located to eliminate feedback or other interference which would degrade communication.

(b) Loudspeakers must be located to provide intelligible and audible one-way communication throughout the vessel. Weatherdeck loudspeakers must be watertight and directed aft.

(c) There must be a sufficient number of loudspeakers throughout the vessel to provide the sound level prescribed in table 113.50–15.

(d) Loudspeakers must not have external volume controls or local cutout switches.

* * * * *

202. Section 113.50–20 is revised to read as follows:

§ 113.50–20 Distribution of cable runs.

(a) Each system must have a feeder distribution panel to divide the system into the necessary number of zone feeders, except where, because of the arrangement of the vessel, only one zone feeder is necessary; then a branch circuit distribution panel must be used.

(b) The feeder distribution panel must be in an enclosed space next to the public address system power supply.

(c) Each system must have at least one feeder for each vertical fire zone.

(d) Each system must have one or more branch circuit distribution panels for each zone feeder, with at least one branch circuit for each deck level. The distribution panel must be above the uppermost continuous deck, in the zone served, and there must be no disconnect switches for the branch circuits.

(e) A branch circuit must not supply speakers on more than one deck level, except for a single branch circuit supplying all levels of a single space containing more than one deck level if all other requirements of this section are met.

(f) On a vessel not divided into vertical fire zones by main vertical fire bulkheads, the vessel must be divided into vertical zones not more than 40 meters (131 feet) long, and there must be a feeder for each of these zones.

(g) Feeders and branch circuit cables must be in passageways and must not be in staterooms, lockers, galleys, or machinery spaces unless it is necessary to supply public address speakers in those spaces.

§ 113.50–25 [Removed]

203. Section 113.50–25 is removed.

§ 113.65–5 [Amended]

204. In § 113.65–5, remove the words ''Section 37.25'' and add, in their place, the words ''section 37.19 (clause 27.19)''.

Subpart 113.70 [Removed]

205. Subpart 113.70 is removed.

PART 161—ELECTRICAL EQUIPMENT

206. The authority citation for part 161 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

207. In § 161.002–1, paragraphs (a)(1) through (a)(4) are revised, paragraphs (a)(5) through (a)(9) are added, and paragraph (c) is revised to read as follows:

§ 161.002–1 Applicable specifications, standards, and regulations.

(a) * * *

(1) American Society for Testing and Materials (ASTM) Test Method of Salt Spray (Fog) Testing; B 117–94.

(2) Coast Guard Regulations: Electrical Engineering Regulations, (46 CFR (subchapter J) parts 110 to 113 inclusive).

(3) Comite European de Normalisation (CEN) standard:

EN54 series: Components of automatic fire detection systems—

EN54 Part 1 (1987) Introduction.

EN54 Part 2 (1992) Control and indicating equipment.

EN54 Part 3 (1995) Alarm devices.

EN54 Part 4 (1989) Power supply equipment.

EN54 Part 5 (1994) Heat sensitive detectors: Point detectors, including Amendment 1 (1988).

EN54 Part 6 (1982) heat-Sensitive detectors; Rate-of-Rise point detectors without a static element; including Amendment 1 (1988).

EN54 Part 7 (1994) Smoke detectors: Point detectors using scattered light transmitted light or ionisation.

EN54 Part 8 (1988) High temperature heat detectors.

EN54 Part 9 (1982) Fire sensitivity test.

EN54 Part 10 (1991) Flame detectors.

EN54 Part 11 (1991) Manual call points.

(4) Factory Mutual Engineering and Research standards:

Class Number 3230–3250 (1976): Smoke Actuated Detectors for Automatic Fire Alarm Signaling.

Class Number 3210 (1978): Thermostats for Automatic Fire Detection.

Class Number 3260 (1994): Flame Radiation Detectors for Automatic Fire Alarm Signaling.

Class Number 3820 (1974): Electrical Utilization Equipment.

Class Number 3150 (1974): Audible Signal Devices.

(5) International Electrotechnical Commission (IEC) IEC 533: Electromagnetic Compatibility of Electrical and Electronic Installations in Ships and of Mobile and Fixed Offshore Units, First Edition, (1977).

(6) International Maritime Organization:

International Convention for the Safety of Life at Sea, 1974 (SOLAS); (as amended through 1994).

(7) National Fire Protection Association standard: NFPA 72: national Fire Alarm Code (1993).

(8) Lloyd's Register of Shipping: LR Type Approval System; Test Specification Number 1 (1990).

(9) Underwriters Laboratories Inc. standards:

UL 846 (1991)—Control Units for Fire-Protective Signaling Systems.

UL 521 (1993)—Heat Detectors for Fire-Protective Signaling Systems.

UL 268 (1989)—Smoke Detectors for Fire-Protective Signaling Systems.

UL 38 (1994)—Manually Actuated Signaling Boxes for Use with Fire-Protective Systems.

* * * * *

(c) The ASTM standard may be purchased from the American Society for Testing and Materials; 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. The Coast Guard publication may be purchased from the U.S. Government Printing Office; Superintendent of Documents; Mail Stop: SSOP; Washington, DC 20402–9328. The CEN standards may be purchased from the Central Secretariat; Rue de Brederode 2, B–1000 Brussels; Belgium. The Factory Mutual standards may be obtained from Factory Mutual Engineering and Research; ATTN: Librarian; 1151 Boston-Providence Turnpike; Norwood, MA 02062. The IEC Standard may be purchased from the International Electrotechnical Commission; 1, Rue de Varembe, Geneva, Switzerland. SOLAS may be purchased from the International Maritime Organization; 4 Albert Embankment; London, SE1 7SR; U.K. The NFPA standard may be purchased from the National Fire Protection Association; Batterymarch Park; Quincy, MA 02269. The Lloyd's standard may be obtained from Lloyd's Register of Shipping; 17 Battery Place; ATTN: Publications; New York, NY 10004–1195. The UL standards may be purchased from Underwriters Laboratories Inc.; Publications Stock; 333 Pfingsten Road; Northbrook, IL 60062–2096.

§ 161.002–2 [Amended]

209. In § 161.002–2, in paragraph (a), remove the words ''smoke detector systems'' and add, in their place, the words ''sample extraction smoke detection systems''; in paragraphs (b) and (c), remove the words ''vibrating bells'' and add, in their place, the words ''suitable annunciating devices''; and, in paragraph (d), remove the words ''smoke detector systems'' and add, in their place, the words ''sample extraction smoke detection systems''.

§ 161.002–3 [Amended]

210. In § 161.002–3, paragraphs (c), (d), and (e) are removed.

211. In § 161.002–4, paragraph (b) is added to read as follows:

§ 161.002–4 General requirements.

* * * * *

(b) *Standards.* (1) All fire protection systems must be designed, constructed, tested, and marked according to the applicable standards under § 161.002–1.

(2) All systems must be listed or certified as meeting these standards by an independent laboratory accepted by the Commandant under § 110.35–1 of this chapter.

(3) All parts of the system must pass the environmental tests of Category ENV3 of Lloyd's Register Type Approval System, Test Specification Number 1.

(4) Those parts of the system that are to be installed in interior or exterior locations requiring exceptional degrees of protection must also pass the salt spray test in Category ENV3 of Lloyd's Register Type Approval System, Test Specification No. 1 or in ASTM B–117.

§§ 161.002–5, 161.002–6, and 161.002–7 [Removed]

212. Sections 161.002–5, 161.002–6, and 161.002–7 are removed.

§ 161.002–8 [Amended]

213. In § 161.002–8, paragraph (b) is removed.

214. In § 161.002–10, paragraphs (b)(1) (i) and (ii) are revised to read as follows; and paragraphs (i) through (m) are removed:

§ 161.002–10 Automatic fire detecting system control unit.

(b) * * *

(1) * * * (i) the sounding of a vibrating type fire bell with a gong diameter not smaller than 15 cm (6 inches) or similar annunciating device nippled to or mounted on or within the control unit and at the remote annunciator panel when provided; (ii) the sounding of a vibrating type fire bell with a gong diameter not smaller than 20 cm (8 inches) or similar annunciating device located in the engine room; and * * *.

* * * * *

§§ 161.002–11 and 161.002–13 [Removed]

215. Sections 161.002–11 and 161.002–13 are removed.

216. Section 161.002–15 is revised to read as follows:

§ 161.002–15 Sample extraction smoke detection systems.

(a) *General.* The smoke detecting system must consist of a means for continuously exhausting an air sample from the protected spaces and testing the air for contamination with smoke, together with visual (alarm indicating lights) and aural (sound signaling device) means for indicating the presence of smoke.

(b) In addition to compliance with § 161.002–1, the system must meet the general, installation, and design requirements of SOLAS, Chapter II–2 regulation 13–1.

§ 161.002–16 [Removed]

217. Section 161.002–16 is removed.

218. Section 161.002–18 is added to read as follows:

§ 161.002–18 Method of application for type approval.

(a) The manufacturer must submit the following material to Commandant (G–MMS–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001:

(1) A formal written request that the system be reviewed for approval.

(2) Three copies of the system's instruction manual, including information concerning installation, programming, operation, and troubleshooting.

(3) One copy of the complete test report generated by the independent laboratory recognized by the Commandant for the testing of fire protective systems. A current list of these facilities may be obtained from the address in this section.

(4) Three copies of a list prepared by the manufacturer that contains the name, model number, and function of each major component and accessory, such as the main control cabinet, remote annunciator cabinet, detector, zone card, isolator, central processing unit, zener barrier, special purpose module, or power supply. This list must be identified by the following information assigned by the manufacturer.

(i) A document number.

(ii) A revision number—(the first submission being revision number 0).

(iii) The date the particular revision was issued.

(b) The Coast Guard distributes a copy of the approved instruction manual to the manufacturer and to the Coast Guard Marine Safety Center (MSC).

(c) The manufacturer shall maintain an account of the equipment offered for approval. The list identification information in paragraph (a)(4) (i) through (iii) of this section will appear on the Certificate of Approval and will designate the official compilation of components for the approved system. If the manufacturer seeks to apply subsequently for an approval of a revision (because of, for example, additional accessories becoming available, replacements to obsolete components, or a change in materials or standards of safety), changes to the approved list must be submitted for review and approval.

(d) To apply for a revision, the manufacturer must submit a written request under paragraph (a) of this section, the updated list under paragraph (b) of this section, and the testing laboratory report of proper compliance with the standards and compatibility with the system. A new certificate, normally valid for a full 5 year term, will be issued bearing the updated list data and a revision number.

§§ 161.004–2—161.004–7 (Subpart 161.004) [Removed]

219. Subpart 161.004, consisting of §§ 161.004–2 through 161.004–7, is removed.

Dated: January 29, 1996.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

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federal register

Friday
February 2, 1996

Part VI

Department of Education

Individuals With Disabilities Education Programs; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice of Final Priorities

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces final priorities for six programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use these priorities in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. The final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect on March 4, 1996.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific priority is listed under that priority.

SUPPLEMENTARY INFORMATION: This notice contains ten priorities under six programs authorized by the Individuals with Disabilities Education Act, as follows: Early Education Program for Children with Disabilities (four priorities); Educational Media Research, Production, Distribution, and Training Program (one priority); Postsecondary Education Program for Individuals with Disabilities (one priority); Program for Children with Severe Disabilities (one priority); Secondary Education and Transitional Services for Youth with Disabilities Program (two priorities); and the Program for Children and Youth with Serious Emotional Disturbance (one priority). The purpose of each program is stated separately under the title of that program.

On November 7, 1995, the Secretary published a notice of proposed priorities for these programs in the Federal Register (60 FR 56192–56203).

These final priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these priorities neither precludes the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, Fiscal Year 1996 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, ten comments were received across all of the proposed priorities. Analysis of the comments and of the changes in the proposed priorities follows. Suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are not addressed.

Priority—Early Childhood Research Institutes

Comment: One commenter submitted a suggestion regarding one of the three institutes proposed under this priority, the Institute on Culturally and Linguistically Competent Services. The commenter suggested that the word ''competent'' in the title of this priority be replaced by ''appropriate'' or ''sensitive.'' The commenter also suggested that the institute funded under this priority be required to work with similar initiatives funded by other offices in the U.S. Department of Education or by the U.S. Department of Health and Human Services.

Discussion: The Secretary agrees with both suggestions. The word ''appropriate'' is a less ambiguous term and its usage in the title would be consistent with language in the text of the priority. In addition to the requirement of coordination with other relevant efforts sponsored by the U.S. Department of Education such as clearinghouses, technical assistance providers, and research centers, requiring collaboration by all three institutes with relevant efforts sponsored by the U.S. Department of Health and Human Services would avoid duplication of efforts with initiatives funded by Federal agencies.

Change: The word ''competent'' has been replaced by ''appropriate'' in the title of the priority. Language requiring each institutes to coordinate its activities with other relevant efforts supported by the U.S. Department of Health and Human Services has been added to the priority.

Priority—National Early Childhood Technical Assistance Center Technical Changes

Under the background section, replace ''(2) help entities respond to needs identified through their self-assessment and State monitoring activities'' with ''(2) help entities respond to needs identified through their self-assessment and through Federal and State monitoring activities''.

Also under the background section, replace the sentence ''The center will also provide technical assistance to early childhood projects funded by the Office of Special Education Program (OSEP) under the IDEA'' with ''The center will also provide technical assistance to early childhood model demonstration and outreach projects * * *''

Under the priority section, replace ''(b) Provide technical assistance to all early childhood projects funded by OSEP'' with ''(b) Provide technical assistance to all early childhood model demonstration and outreach projects funded by OSEP''. Also replace ''(4) conduct an annual meeting for directors of early childhood discretionary projects funded by OSEP'' with ''(4) conduct an annual meeting for directors of early childhood research, model demonstration, and outreach projects funded by OSEP''.

Priority—Closed-Captioned Television Programs

Comment: One commenter expressed general support for all of the activities proposed under this priority, but also suggested that the priority be extended to include funding for local television news programs. The commenter further suggested a priority for captioning more video and information productions for elementary and secondary education.

Discussion: The Secretary agrees that the captioning of local television news programs is important. However, with the limited amount of Federal dollars, it is deemed advantageous to the larger population to spend them on national level programming.

Captioned videos and informational productions for elementary and secondary education are funded through other activities under the Educational Media Research, Production, Distribution and Training Program. Also, education telecasts can be captioned under some of the Children's Programs.

Changes: None.

Comment: One commenter urged the Department to fund a minimum of four applications in order to continue to increase competition.

Discussion: In announcing proposed priorities, the Secretary does not establish numbers of awards or funding levels for projects. Information about the anticipated number of awards and about funding levels is provided in the notice inviting applications published separately in this issue of the Federal Register. In the notice of proposed priorities, however, the Secretary did indicate that a minimum of four awards would be made under this priority, at least one in each of the four areas of activity identified in the priority.

Changes: None.

Comment: One commenter suggested that if the Secretary required matching funding under the priority for National News and Public Information and for Movies, Mini-Series, and Specials, this policy should be consistent across the board for all of the captioning priorities.

Discussion: While the Secretary requires matching funding for programs to be captioned under the priority for National News and Public Information and under Movies, Mini-Series, and Specials, and strongly encourages funding partnerships with the private sector for captioning of Syndicated Television Programming and Children's Programs, the Secretary believes that no funding match should be required at this time for these two priorities because experience has shown that private sector funding may not be as readily available for these types of programs.

Changes: None.

Comment: One commenter also indicated that networks which have had their programming captioned under previous awards for closed-captioning of national news and public information programs should be subject to a 50 percent maximum use of Federal funds for captioning, but suggested that networks which have not had the benefit of Federal support for captioning should be subject to a lesser standard. For networks that have not had their national news and public information programming captioned, the commenter suggested a 25 percent non-Federal funding requirement in the first year and a 33 percent non-Federal funding requirement for subsequent years.

Discussion: National news and public information programs that would be eligible for only limited Federal support for captioning are those that have been previously captioned, regardless of the network or the source of captioning funds. The Secretary has found that a program-based approach to captioning has been effective in efficiently allocating resources to the areas with the greater demand for captioning. In addition, the Secretary recognizes the importance of, and encourages expanded private sector support for, all previously closed-captioned news programs, whether or not they have been previously captioned with Federal funds. However, the Secretary agrees with the commenter on the idea of a progressive shift to greater non-Federal participation in the closed-captioning of national news and public information programming.

Changes: The priority has been modified to indicate that funds provided under this competition for news and public information programs that have been previously captioned may be used to support no more than 60 percent of the captioning costs for year one of the project, 55 percent for year two, and 50 percent for year three.

Comment: The commenter also suggested that no more than 50 percent of the awards should be given to nonprofit concerns.

Discussion: Entities eligible to compete for awards are profit and non-profit public and private agencies, organizations, and institutions. Since awards are made on a competitive basis, according to selection criteria published in the Federal Register, these criteria ensure that grants are awarded to entities best able to meet the Secretary's priorities.

Change: None.

Priority—Model Demonstration Projects To Improve the Delivery and Outcomes of Secondary Education Services for Individuals With Disabilities

Comment: One commenter suggested that placement strategies should be emphasized in the priority.

Discussion: The priority currently emphasizes the need for ''cooperative efforts among representatives of the services responsible for successful vocational placements for people with disabilities. These collaborative efforts must include extensive involvement of representatives from an institution's program that provides support services to students with disabilities, the institution's career placement office, the State vocational rehabilitation (VR) agency (for VR-sponsored students), and business and industry.'' Since such cooperative efforts must include placement strategies, the Secretary believes that such strategies are sufficiently emphasized.

Change: None.

Priority—Model Demonstration Projects To Improve the Delivery and Outcomes of Secondary Education for Students With Disabilities

Comment: One commenter suggested that the phrase ''providing counseling'' in service issue (a) should be further qualified as ''providing academic and rehabilitation counseling.''

Discussion: Since the requirement for ''providing counseling'' is in the context of being one of the ''support strategies to prevent course failure among students with disabilities'', it would appear that the counseling focus already includes academic issues. In terms of providing rehabilitation counseling, all students who are participating in the project should be receiving special education and have individualized education programs (IEPs). The IEP requirements contained in the regulations implementing Part B of the Individuals with Disabilities Education Act (IDEA) emphasize the need for other public agencies (usually the rehabilitation agency) to participate in the development of the statement of transition services which must be included in the IEPs for all students 16 and older and who are receiving special education. Therefore, the Secretary believes that to qualify counseling as ''academic and rehabilitation'' would be redundant and would needlessly exclude other important types of counseling, such as career and personal counseling.

Change: None.

Comment: One commenter suggested that service issue (b) should include references to work-based learning and connecting services when addressing the restructuring of academic and/or vocational course offerings.

Discussion: The Secretary agrees that such references should be made to emerging School-to-Work Opportunities Systems and other educational reform movements.

Change: Work-based learning and connecting activities have been added to parenthetical information in the description of the service issue (b).

Comment: One commenter suggested that service issue (c) should emphasize the relationship among academic courses, career awareness, and skills taught in vocational education programs.

Discussion: The Secretary agrees that the additional emphasis on career awareness will improve the linkage between academic courses and vocational skills.

Change: Service issue (c) has been changed to read ''revising academic courses in a manner that includes career awareness and directly complements skills taught in vocational education programs and in other courses.''

Early Education Program for Children With Disabilities Program

Purpose of program: To support activities that are designed (a) to address

the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under these competitions only applications that meet any one of these absolute priorities:

Absolute Priority 1—National Early Childhood Technical Assistance Center

Background: This priority would support a national early childhood technical assistance center that will provide technical assistance to all States, outlying areas and the Bureau of Indian Affairs, in order to (1) assist each entity in implementing comprehensive and quality early intervention services under Part H for children ages birth through two and their families, and educational and related services for young children with disabilities (ages three through five) including minority children and children with limited English proficiency, and (2) help entities respond to needs identified through their self-assessment and through Federal and State monitoring activities. The center will also provide technical assistance to early childhood model demonstration and outreach projects funded by the Office of Special Education Programs (OSEP) under the IDEA. Utilizing State technical assistance systems, national organizations and their State divisions, other technical assistance and clearinghouse projects, the center will provide mechanisms to link professionals who are involved in producing new knowledge and products with program administrators and service providers.

Priority: The Secretary establishes an absolute priority to support a national early childhood technical assistance center. The center must:

(a) Provide technical assistance to all States, outlying areas, and the Bureau of Indian Affairs as they implement early intervention services under Part H, and educational and related services for young children with disabilities. At a minimum, the center must (1) conduct annual needs assessments; (2) develop technical assistance agreements for each entity; (3) provide technical assistance, training, and on-going consultation based on the technical assistance agreements; (4) conduct annual meetings for Part H clients and for Section 619 clients; and (5) assist States in coordinating early intervention services and preschool services with IDEA school-age programs.

(b) Provide technical assistance to all early childhood model demonstration and outreach projects funded by OSEP. At a minimum, the center must (1) conduct annual needs assessments; (2) develop technical assistance agreements for each project; (3) provide technical assistance, training, and on-going consultation based on the technical assistance agreements; and (4) conduct an annual meeting for directors of early childhood research, model demonstration, and outreach projects funded by OSEP;

(c) Establish an advisory group of persons with complementary expertise in the content and provision of technical assistance, e.g., State issues, project issues, family issues, parenting, evaluation, and needs of underrepresented children and families; to advise the center on its technical assistance activities;

(d) Link entities and OSEP-funded early childhood projects with national experts knowledgeable about best practice for young children with disabilities and their families, including children and families from cultural and linguistic minority groups;

(e) Develop informational exchanges between the center and State technical assistance systems; and among States with technical assistance systems;

(f) Develop an information system, current in content and technological accessibility, that contains data and materials to meet the technical assistance needs of the center's clients;

(g) Conduct at least two national forums that identify persistent problems, propose solutions, and respond to emerging issues and trends in early intervention and preschool;

(h) Facilitate exchanges of information among Federal and State programs regarding funding and policy practices and implications for young children with disabilities and their families;

(i) Provide logistical and technical support to the Federal Interagency Coordinating Council;

(j) Compile and disseminate information about (1) early childhood projects funded by OSERS, (2) effective practices for early intervention and preschool programs, (3) major State activities related to implementing Section 619—Preschool Grants Program, (4) major State activities related to implementing the Infant and Toddler Program—Part H program, and (5) successful linkage activities and practices;

(k) Coordinate with other technical assistance networks to sponsor a forum that addresses model practices for national and State technical assistance provision;

(l) Evaluate the impact of the center's technical assistance system and its components relative to (1) the assessed needs of States, jurisdictions and early childhood projects; and (2) the national needs of young children with disabilities and their families.

The Secretary anticipates funding one cooperative agreement for a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the center for the fourth and fifth years of the project period, in addition to applying the requirements of 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the center, are to be performed during the last half of the center's second year and must be included in that year's evaluation required under 34 CFR 75.590. Funds to cover the costs of the review team must be included in the center's budget for year two. These costs are estimated to be approximately $4000.

The Secretary particularly encourages applicants for this cooperative agreement to incorporate technologically innovative approaches in all aspects of center activities, to improve their efficiency and impact.

Selection Criteria for Evaluating Applications. The Secretary will use the following criteria to evaluate an application under the national early childhood technical assistance center competition. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) The quality of the activities proposed to accomplish the goals and objectives;

(iii) The adequacy of proposed timelines for accomplishing those activities; and

(iv) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(3) How the applicant will ensure that project participants who are otherwise

eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) To determine personnel qualifications under (b)(2)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary considers—

(i) The extent to which the applicant's methods of evaluation are appropriate to the project; and

(ii) To the degree possible, the extent to which the applicant's methods of evaluation are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(f) *Evidence of need.* (10 points)

(1) The Secretary reviews each application to assess whether the need for the proposed technical assistance has been adequately justified.

(2) The Secretary determines the extent to which the application—

(i) Describes the technical assistance needs to be addressed by the project;

(ii) Describes how the applicant identified those needs;

(iii) Describes how those needs will be met by the project; and

(iv) Describes the benefits to be gained by meeting those needs.

(g) *Project design.* (40 points)

(1) The Secretary reviews each application to evaluate the quality of the proposed technical assistance project design.

(2) The Secretary determines the extent to which—

(i) The technical assistance objectives are designed to meet the identified needs and are clearly defined, measurable, and achievable;

(ii) The content of the proposed technical assistance is appropriate for all clients.

(3) The Secretary determines the extent to which each application provides for—

(i) Use of current research findings and information on model practices in providing the technical assistance;

(ii) Methods for linking all clients in need of technical assistance;

(iii) Innovative procedures for disseminating information and imparting skills to all clients; and

(iv) Innovative procedures for collaborating and coordinating with other entities that are involved with broader technical assistance efforts.

For further information contact: Peggy Cvach, U.S. Department of Education, 600 Independence Avenue, SW., Room 4609, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9807. FAX: (202) 205–8971. Internet: Peggy__Cvach@ed.gov

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Absolute Priority 2—Model Demonstration Projects for Young Children With Disabilities

Background: This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving young children with disabilities (infants, toddlers, and children ages birth through eight) and their families, including minority children and children with limited English proficiency. Projects supported under this priority are expected to be major contributors of models or components of models for service providers and for outreach projects funded under the Individuals with Disabilities Education Act.

The Secretary anticipates funding projects for a project period of up to 60 months. Projects supported for an initial three-year period may be eligible for an additional two years of funding to field test the viability of their models at other site locations. In determining whether to continue funding for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit, are to be performed during a project's third year and may be included in that year's annual evaluation. The three-plus-two-year funding period is expected to determine whether models yielding positive results at an original site can be successfully replicated at other locations.

Priority: A model demonstration project must—

(a) Develop and implement programs that address a service problem or issue in the most natural or least restrictive environment;

(b) Develop and implement programs with specific components or strategies that are based on theory, research, or evaluation data;

(c) Produce detailed procedures and materials that enable others to replicate the model as implemented at the original site; and,

(d) Evaluate the model at the original model development site and—if approved for funding beyond the initial three years of the project period—at other sites to determine whether the model can be adopted by other sites and yield similar positive results. In its evaluation, a project must use multiple outcome measures to determine the effectiveness of the model and its components or strategies, including measures of multiple, functional child and family outcomes, other indicators of the effects of the model, and cost data associated with implementing the model.

In determining whether to continue a project for the fourth and fifth years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The degree to which the model developed by the project is, or would be by the end of year three, viable and replicable by other agencies, and provides state-of-the-art interventions.

(b) The extent to which dissemination of the model would meet a significant or unique service need in other geographic locations.

(c) Compelling, quantifiable evidence of the effectiveness of the model as

implemented at the original development site.

(d) Availability of funding for the model from sources other than discretionary grants under the Individuals with Disabilities Education Act to support the operation of the model at the original development site during years four and five.

(e) Evidence of the commitment of other agencies not affiliated with the original project to adopt its model and participate in evaluation of the model during years four and five of the project period.

(f) The extent to which the project has sound plans for aiding in replication and for evaluating its model at replication sites during years four and five of the project period.

A project that applies for funding for the fourth and fifth years must set aside in its budget for the third year funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the third year. These funds are estimated to be approximately $4,000.

For further information contact: Patricia Wright, U.S. Department of Education, 600 Independence Avenue, SW., Room 4623, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9377. FAX: (202) 205–8971. Internet: Patricia__Wright@ed.gov

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Absolute Priority 3—Outreach Projects for Young Children With Disabilities

Background: This priority supports projects that assist educational and other agencies in implementing proven models, components of models, and other exemplary practices, to improve services for young children with disabilities (infants, toddlers, and children ages birth through eight) and their families, including minority children and children with limited English proficiency. To accomplish this goal, State agencies and local service agencies need information about and assistance in accessing the range of available, successful practices, curricula, and products.

The models, components of models, or exemplary practices selected for outreach need not have been developed through the Early Education Program for Children with Disabilities under the Individuals with Disabilities Education Act (IDEA), or by the applicant.

To increase the impact of outreach activities, projects are encouraged to select sites in multiple States. The Department of Education funds an Early Childhood Technical Assistance Center under IDEA to assist outreach projects in addressing the needs of States. This Center will help projects match their resources to identified States' needs for years two and three. Therefore, the plan of operation for projects planning to conduct outreach activities in multiple States should include plans concerning specific sites and activities for the initial year only.

Priority: An outreach project must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve services for young children with disabilities and their families in the most natural or least restrictive environment;

(b) Coordinate its dissemination and replication activities with the lead agency for Part H of the IDEA for early intervention services or the State educational agency for special education, as well as with technical assistance, information, and personnel development networks within the State;

(c) Involve families in the design, implementation, and evaluation of project activities;

(d) Ensure interagency coordination if multiple agencies are involved in the provision of services;

(e) Ensure that the model, components of models, or exemplary practices are consistent with Part B and Part H of IDEA, are state-of-the-art, match the needs of the proposed sites, and have evaluation data supporting their effectiveness;

(f) Include public awareness, product development and dissemination, training, and technical assistance activities, and written plans for site development;

(g) Describe criteria for selecting implementation sites and, for potential users, the expected costs, needed personnel, staff training, equipment, and sequence of implementation activities; and

(h) Evaluate the outreach activities to determine their effectiveness. The evaluation must include the types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at the site where models were adopted or adapted, child progress and family satisfaction, and changes in the model or practice made by sites.

For further information contact: Lee Coleman, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4615, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8166. FAX: (202) 205–8971. Internet: Lee__Coleman@ed.gov

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Absolute Priority 4—Early Childhood Research Institutes

Background: The purpose of this priority is to support three early childhood research institutes, each of which will carry out research, development, evaluation and dissemination activities to improve early intervention and preschool services for children with disabilities and their families. One award will be made in each of the following three areas:

(1) *Early Childhood Research Institute on Culturally and Linguistically Appropriate Services.* This institute's program of research will focus on creating a resource bank of validated, culturally and linguistically appropriate materials and documented strategies (including child find and child instructional materials, personnel training manuals, family services materials) that can be used by service providers to work effectively with infants, toddlers, and preschool age children with disabilities and their families who have special needs because of their cultural or linguistic backgrounds. In addition to developing and field testing new materials and documented strategies to fill gaps, the institute will collect and catalog already existing materials, conduct reviews and field testing of selected materials, and broadly disseminate information about how to access materials collected or created by the institute.

(2) *Early Childhood Research Institute on Increasing Learning Opportunities for Children through Families.* The purpose of this institute is to identify, develop and evaluate strategies that will increase the number and intensity of planned learning activities that parents, and other care-givers can implement in structured and unstructured settings for infants, toddlers, and preschool age children with disabilities to prepare these children to enter school ready to learn, including those who are members of racial minority groups and individuals with limited English proficiency. These strategies (such as incidental teaching, use of educational games and toys, technology applications, evening and weekend activities) must be designed in a way that will complement services that are specified on Individualized Family Service Plans and Individual Education

Programs and promote further skill acquisition, generalization and child growth and development. The institute will conduct a series of investigations to determine the effects and costs of various strategies that are developed in each of the following areas of child development: cognitive development, communication development, physical development, and social and emotional development. The institute's dissemination efforts will include the preparation of manuals for professionals, parents, and other care-givers that describe (a) procedures to determine additional learning opportunities for individual children, and (b) how to implement the strategies in a variety of settings and in a manner that complements other early intervention and preschool services.

(3) *Early Childhood Research Institute on Program Performance Measures.* The purpose of this institute is to develop, evaluate, and disseminate a program performance measurement system for early intervention, preschool, and primary-grade programs serving children with disabilities (birth through eight years) and their families. The performance measurement system will consist of child and family outcomes for different child ages within the early childhood age range as well as indicators and sources of data corresponding to each outcome. These child and family outcomes, indicators, and sources of data must be useful for tracking the progress of a broad range of children and families with different disabilities and characteristics and for measuring the impact and effectiveness of early childhood programs. For the performance measurement system to be useful at Federal, State, and local levels, it will include child and family outcomes of a general nature (i.e., outcomes appropriate for tracking the progress of all young children with disabilities and their families, including those who are members of cultural, linguistic, or racial minority groups) as well as sets of more specific outcomes. Each of the sets of more specific outcomes should correspond with a particular subgroup of children and families (e.g., children who are visually-impaired; families with incomes below the poverty level) that have characteristics unique to that subgroup, and that are appropriately separated from other subgroups for more precise and relevant measurement purposes.

In carrying out the developmental work, which will include consensus development activities based on input from a variety of professionals and parents, the institute will build upon other relevant efforts, including the work of the National Center on Educational Outcomes and the National Goals Panel on School Readiness. Once the initial developmental work is complete, the institute will conduct research activities to determine the feasibility, usefulness and appropriateness of the outcomes, indicators, and data sources in a variety of programs serving young children with disabilities and their families. The results of the research will include a system for measuring child and family attainment of outcomes, indicators of outcomes that are written in operational terms, and instruments and other data sources for each outcome. The measurement system must be designed in a manner that captures partial attainment or progress toward attainment of each outcome, and a method of using the results of the measurement system for program improvement.

Priority: Each institute considered for funding under this priority must—

(a) Conduct a program of research and development that addresses one of the issues identified above;

(b) Identify specific strategies and procedures that will be investigated;

(c) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies and procedures to be studied, the research methods and instrumentation that will be used, and the specific target populations and settings that will be studied;

(d) Collect, analyze, and report a variety of data, including (1) Information on the settings, the service providers, the children and families targeted by the institute (e.g., age, disability, level of functioning and membership in a special population, if appropriate), (2) outcome data from multiple measures for the children and families who are the focus of the strategies and procedures; and (3) implementation data from the service providers, administrators and others involved in the research;

(e) Conduct the research with a broad range of children with disabilities and their families who are receiving early intervention and preschool services in typical service delivery settings;

(f) Conduct the research using methodological procedures that are designed to produce unambiguous findings regarding the effects of the strategies and procedures, as well as any findings on interaction effects between particular strategies and particular characteristics of participants or settings. These findings will be obtained through appropriate sample selection and adequate sample size to permit use of the findings in policy analyses;

(g) Design research activities that lead to improved services for children with disabilities and their families;

(h) Develop and field test products that can be used for training and technical assistance activities with policy makers, administrators, school board members, parents, and service providers that are likely to facilitate the implementation of the institute's findings and products in a variety of early intervention and preschool settings;

(i) Coordinate the research activities with other relevant efforts sponsored by the U.S. Department of Education and the U.S. Department of Health and Human Services, including other research institutes, technical assistance entities, and information clearinghouses;

(j) Provide training and research opportunities for a limited number of graduate students.

The Secretary anticipates funding three cooperative agreements with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue an institute for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), will consider the following:

(1) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the Institute, are to be performed during the last half of the Institute's second year and must be included in that year's evaluation required under 34 CFR 75.590. In its budget for the second year, the Institute must set aside funds to cover the costs of the review team. These funds are estimated to be approximately $4,000; (2) the timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and (3) the degree to which the Institute's research designs and methodological procedures demonstrate the potential for producing significant new knowledge and products.

For further information contact: Patricia Wright, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. FAX: (202) 205–8971. Internet: Patricia__Wright@ed.gov

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(TDD) may call the TDD number: (202) 205–8169.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 309.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Program authority: 20 U.S.C. 1423.

Educational Media Research, Production, Distribution, and Training Program

Purpose of program: To promote the general welfare of deaf and hearing-impaired individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Closed-Captioned Television Programs

Background: This priority supports cooperative agreements to provide closed-captioning of television programs in a variety of areas: (1) national news and public information programs; (2) movies, mini-series, special programs, and other programs broadcast during prime-time; (3) children's programs; and (4) syndicated television programs.

National News and Public Information. This activity will continue and expand closed-captioned national news, public information programs, and emergency programming, so that persons with hearing impairments can have access to up-to-date national morning, evening, and weekend news, as well as information concerning current events and other significant public information. In making awards the Secretary will consider the extent to which programs on each major national commercial and public broadcast network continue to be captioned. For news and public information programs that have previously been captioned, funds provided under this category may be used to support no more than 60 percent of the captioning costs for the first year of the project, 55 percent for the second year, and 50 percent for the third year. Funds provided under this category also may be used to support the captioning of emergency programming.

Movies, Mini-Series, and Special Programs. This activity will continue and expand the closed-captioning of movies, mini-series, and special programs available on major national broadcast networks or basic cable networks. In making awards the Secretary will consider the extent to which prime-time movies and other programs on each major national commercial broadcast network continue to be closed-captioned. For movies, mini-series, and special programs that have previously been captioned, funds provided under this category may be used to support no more than 60 percent of the captioning costs for the first year of the project, 55 percent for the second year, and 50 percent for the third year.

Children's Programs. This activity will provide closed-captioning of children's programs shown on national commercial and public broadcast networks, as well as syndicated and basic cable programs shown nationally, so that children who are deaf or hard of hearing will have access to popular children's programs. In making awards the Secretary will consider the extent to which children's programs on each major national commercial and public broadcast network, syndicated children's programs, and basic cable children's programs continue to be captioned.

Syndicated Television Programming. This activity will provide closed-captioning of syndicated television programs, thereby making a variety of programs available at different times, depending on local distribution. Syndicated programming includes both evergreen programming (popular previously-broadcast programs or series), and new programs distributed for showing on individual stations. In making awards, the Secretary considers the anticipated shelf-life and the range of distribution of the captioned programs possible without further costs to the project beyond the initial captioning costs, as well as the extent to which programs currently captioned may continue to be captioned.

Priority

Under this competition, the Secretary intends to make one or more awards in each of the four areas of activity identified above. Each application may address only one of the areas of activity.

Projects must—

(a) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational and cultural experiences of individuals with hearing impairments;

(b) Provide a flexible plan to assure closed-captioning of television programs without interruption, while accommodating last-minute program substitutions and new programs;

(c) Identify the total number of hours and the projected cost per hour for each of the programs to be captioned;

(d) Identify for each proposed program to be captioned the source of private or other public support and the projected dollar amount of that support;

(e) Identify the methods of captioning to be used for each program—indicating whether captioning is provided in real-time, live display, off-line, or reformatted—and the projected cost per hour for each method used;

(f) For national news and public information, provide and maintain back-up systems that will ensure successful, timely captioning service, despite national or regional emergency situations;

(g) Demonstrate the willingness of each major network or providers of syndicated programs included in the project to permit captioning of their programs;

(h) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations; and

(i) Identify the anticipated shelf-life, and the range of distribution of the programs captioned without further costs to the project beyond the initial captioning costs. (Syndicated programs only.)

For further information contact: Ernest Hairston, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4629, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9172. FAX: (202) 205–8971. Internet: Ernest—Hairston@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 330, 331, and 332.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Program authority: 20 U.S.C. 1451, 1452.

Postsecondary Education Programs for Individuals With Disabilities Program

Purpose of program: To provide assistance for the development,

operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals With Disabilities

Background: This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving the needs of students with disabilities in postsecondary settings. Projects supported under this priority are expected to be major contributors of models or components of models for service providers in the field and for outreach projects funded under the Individuals with Disabilities Education Act.

Although institutions of higher education have implemented measures to accommodate students with disabilities since the 1970's, longitudinal and follow-up studies of students exiting from secondary schools consistently show that proportionately fewer students with disabilities receive any type of postsecondary education than students without disabilities. Further, those students with disabilities who do attend postsecondary institutions are significantly less likely to complete their studies or to be employed following their postsecondary experience. To change these outcomes, a number of specific barriers must be addressed, including the following:

Improving student potential for successful postsecondary experiences. Some students with disabilities and their families may be unaware of the range of available postsecondary opportunities. Other students may be aware of these options but may not be prepared to benefit from postsecondary education. To increase the number of students with disabilities entering and successfully completing postsecondary education, there is a need to develop strategies for outreach activities to inform secondary special education teachers and counselors in secondary schools about the range of postsecondary opportunities available and how to work with students and families to understand and access these opportunities. Further, there is a need to develop or adapt programs such as Upward Bound and Talent Search that assist potential candidates to access postsecondary education.

Accommodating diverse learning styles in a range of academic settings. As the number and range of students with disabilities entering postsecondary institutions increase, there will be a continuing need for an institution's administration to accommodate or modify instructional strategies and classroom environments to promote improved participation and performance for these students. Thus, postsecondary institutions will have to work with individual faculty members and staff to implement the accommodations needed by particular students. This is likely to require institutional strategies (1) to understand state-of-the-art practice in accommodating the full range of students with disabilities in traditional and emerging learning environments, and (2) to provide training on an on-going, as well as student-specific, basis to faculty or staff.

Transferring of student accommodations to the employment setting. Students with disabilities who require classroom accommodations and adaptations to improve academic performance may require similar types of accommodations or adaptations on the job. In addition, specific jobs or professions may need additional accommodations or adaptations to successfully employ particular students with disabilities. Thus, there is a need to develop strategies for helping students, placement specialists, and employers determine the accommodations or adaptations that would be required for professions or employment settings of interest to the student, and for transferring or arranging for those accommodations. This is likely to require cooperative efforts among representatives of the services responsible for successful vocational placements for people with disabilities. These collaborative efforts must include extensive involvement of representatives from an institution's program that provides support services to students with disabilities, the institution's career placement office, the State vocational rehabilitation (VR) agency (for VR-sponsored students), and business and industry.

Priority: A model demonstration project must—

(a) Develop and implement programs that address at least one of the three specific service issues described in the background of this proposed priority;

(b) Develop and implement programs with specific components or strategies that are based on theory, research, or evaluation data;

(c) Produce detailed procedures and materials that enable others to replicate the model as implemented in the original site; and,

(d) Evaluate the model by using multiple outcome measures to determine the effectiveness of the model and its components or strategies, including measures of multiple, functional student outcomes, other indicators of the effects of the model, and cost data associated with implementing the model.

For further information contact: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4624, Switzer B Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8163. FAX: (202) 205–8971. Internet: Michael__Ward@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 338.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Program authority: 20.U.S.C. 1424a.

Program for Children With Severe Disabilities

Purpose of program: To provide Federal assistance to address the special needs of infants, toddlers, children, and youth with severe disabilities—including children with deaf-blindness—and their families.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Outreach Projects: Serving Children With Severe Disabilities in General Education and Community Settings

Background: This priority supports projects that assist educational and other agencies in implementing proven models, components of models, and exemplary practices to improve services for children and youth with severe disabilities and their families. State and

local education agencies are engaged in systemic educational reform efforts emphasizing development of teaching and learning standards, student assessment, mobilizing community and parental support, technology, and school to work initiatives for all students. To support these efforts, State agencies and local service agencies need information on successful practices, curricula, and products that have proven effective in including students with severe disabilities in social and academic settings and activities.

The models, components of models, or exemplary practices selected for outreach activities need not have been developed through the Program for Children with Severe Disabilities under the Individuals with Disabilities Education Act, or by the applicant.

The practices to be implemented during the outreach activities may focus on, but are not limited to, transition from school to adult life, behavior management, coordination of services, or strategies that facilitate the inclusion of children with severe disabilities into their neighborhood schools and local communities. To increase their visibility and to enhance the impact of outreach activities, projects are encouraged to establish adoption sites in multiple States.

Priority: An outreach project must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve services for children with severe disabilities and their families in general education and community settings;

(b) Coordinate its dissemination and replication activities with the lead agency for Part H of the IDEA for early intervention services or the State educational agency for special education, as well as technical assistance, information, and personnel development networks within the State;

(c) Involve children, as appropriate, and their families in the design, implementation, and evaluation of project activities;

(d) Ensure interagency coordination if multiple agencies are involved in the provision of services;

(e) Ensure that the models, components of models, or exemplary practices are consistent with Parts B and H of the IDEA, are state-of-the-art, match the needs of the proposed sites, and have evaluation data supporting their effectiveness;

(f) Include public awareness, product development and dissemination, training, and technical assistance activities, and written plans for site development;

(g) Describe criteria for selecting implementation sites and, for potential users, the expected costs, needed personnel, staff training, equipment, and the sequence of implementation activities;

(h) Evaluate the outreach activities to determine their effectiveness. The evaluation must include the types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at the site where models or practices were adopted or adapted, child progress and family satisfaction, and changes in the model or practices made by sites.

For further information contact: Anne Smith, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4621, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8888. FAX: (202) 205–8971. Internet: Anne—Smith@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 315.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Program authority: 20 U.S.C. 1424.

Secondary Education and Transitional Services for Youth With Disabilities Program

Purpose of program: To (1) assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and (2) ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds under these competitions only applications that meet any one of these absolute priorities:

Absolute Priority 1—Outreach Projects for Services for Youth With Disabilities

Background: This priority supports projects that assist educational and other agencies in implementing proven models, components of models, or other exemplary practices to improve secondary education and transitional services for youth with disabilities in areas such as continuing education, self-determination, vocational education and training, supported competitive employment, leisure and recreation, and independent living.

Data from the National Longitudinal Transition Study (NLTS) indicated that secondary education students with disabilities averaged 70 percent of their time in regular education settings. The study also suggests that 38 percent of students with disabilities drop out before their completion, with repeated course failure a strong predictor of dropping out. Many of these students were in regular education classes without the help of academic support services (e.g., tutors, study skills and test-taking preparation classes, learning labs). The provision of these services and enrollment in vocational training courses had significant ''holding power'' for those students who had the potential for dropping out. The NLTS also found that youth who belonged to school or community groups did better in school, were less likely to drop out, and experienced a higher probability of entering postsecondary education. Thus, there is a critical need for secondary schools to accommodate or modify instructional strategies and classroom environments to promote improved participation and performance of students with disabilities.

The Individuals with Disabilities Education Act (IDEA) requires that a statement of needed transition services be included in the individualized education program (IEP) for each student beginning no later than age 16, and at a younger age, if determined appropriate, and that the services be updated on an annual basis (20 U.S.C. 1401(a)(20)(D)). To effectively meet this requirement, State agencies and local service agencies need information on successful practices, curricula, and products.

The models, components of models, or exemplary practices selected for outreach need not have been developed through the Secondary and Transitional Services Program under the IDEA, or by the applicant. To increase the impact of outreach activities, projects are encouraged to select sites in multiple regions or States.

Priority: An outreach project must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve secondary and transitional services for students with disabilities in

community-based settings or the least restrictive environment, as appropriate;

(b) Coordinate its dissemination and replication activities with relevant State and local educational agencies, consumer organizations, administrative entities established in the service delivery area under the Job Training Partnership Act, and, if appropriate, other systems for transitional services for youth with disabilities as well as with technical assistance, information, and personnel development networks within the State;

(c) Involve students and adults with disabilities in the design, implementation, and evaluation of project activities;

(d) Ensure coordination with schools, vocational rehabilitation agencies, adult service providers, and potential employers, if appropriate;

(e) Ensure that the model, components of models, or exemplary practices are consistent with Part B of the IDEA, are state-of-the-art, match the needs of proposed sites, and have evaluation data supporting their effectiveness;

(f) Include public awareness, product development and dissemination, training, and technical assistance activities, and written plans for site development;

(g) Describe criteria for selecting implementation sites and, for potential users, the expected costs, needed personnel, staff training, equipment, and the sequence of implementation activities;

(h) Evaluate the outreach activities to determine their effectiveness. The evaluation must include the types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of youth and families served at the site where models were adopted or adapted, youth progress and satisfaction, and changes in the model or practice made by sites.

For further information contact: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4624, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8163. FAX: (202) 205–8971. Internet: Michael—Ward@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Absolute Priority 2—Model Demonstration Projects To Improve the Delivery and Outcomes of Secondary Education Services for Students With Disabilities

Background: This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving the needs of students with disabilities in secondary school settings. Projects must coordinate their activities with State and local partnerships developed under the School-to-Work Opportunities Act to prepare all students for high-skill, high-wage jobs or further education and training. In particular, the school-based learning activities must be tied to occupational skills standards and challenging academic standards. Projects supported under this priority are expected to be major contributors of models or components of models for secondary school services providers in the field and for outreach projects funded under the Individuals with Disabilities Education Act.

Data from the National Longitudinal Transition Study (NLTS) indicated that secondary education students with disabilities averaged 70 percent of their time in regular education settings. The study also suggests that 38 percent of students with disabilities drop out before their completion, with repeated course failure a strong predictor of dropping out. Many of these students were in regular education classes without the help of academic support services (e.g., tutors, study skills and test-taking preparation classes, learning labs). The provision of these services and enrollment in vocational training courses had significant ''holding power'' for those students who had the potential for dropping out. The NLTS also found that youth who belonged to school or community groups did better in school, were less likely to drop out, and experienced a higher probability of entering postsecondary education. Thus, there is a critical need for secondary schools to accommodate or modify instructional strategies and classroom environments to promote improved participation and performance for students with disabilities.

In order to meet the needs of students with disabilities in secondary settings, a number of service issues need to be addressed: (a) providing counseling, tutoring, assistive technology and other support strategies to prevent course failure among students with disabilities; (b) restructuring academic and/or vocational course offerings (e.g., content, instructional procedures, sequencing, and work-based learning and connecting activities) to accommodate students with disabilities with diverse learning needs and styles; (c) revising academic courses in a manner that includes career awareness and directly complements skills taught in vocational education programs and in other courses; and (d) developing extracurricular activities for students with disabilities that promote the retention and generalization of academic and vocational skills in a variety of settings.

In order to implement the accommodations needed by particular students, it is important that strategies be developed in coordination with individual teachers and related services personnel. These linkages are likely to result from institutional strategies that (a) are based on an understanding of state-of-the-art practice in accommodating the full range of students with disabilities in traditional and emerging learning environments, and (b) provide training on an on-going, as well as student-specific, basis to teachers and other personnel.

Priority: A model demonstration project must—

(1) Develop and implement programs that address at least one of the specific service issues described in the background of this proposed priority;

(2) Develop and implement programs with specific components or strategies that are based on theory, research, or evaluation data;

(3) Produce detailed procedures and materials that would enable others to replicate the model as implemented in the original site; and,

(4) Evaluate the model by using multiple outcome measures to determine the effectiveness of the model and its components or strategies, including measures of multiple, functional student and family outcomes, other indicators of the effects of the model, and cost data associated with implementing the model.

For further information contact: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4624, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8163. FAX: (202) 205–8971. Internet: Michael ____ Ward@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 326.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Program authority: 20 U.S.C. 1425.

Program for Children and Youth With Serious Emotional Disturbance

Purpose of program: To support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Developing Effective Secondary School-Based Practices for Youth With Serious Emotional Disturbance

Background: Recent nationwide research on secondary school experiences and post-school outcomes for students with disabilities finds that youth with serious emotional disturbance (SED) are at particularly high risk for school failure and for poor post-school outcomes. While the majority of secondary age students with SED attend regular high schools, most of these students receive special education and related services outside the regular classroom for a substantial part, or all, of their school day. SED students attending regular secondary schools tend, as a group: to display erratic school attendance patterns; to achieve low levels of academic success despite generally normal-and-above ability levels; to be minimally involved in the social milieu of their schools; and to drop out of school at alarming rates. Fifty percent drop out of school, most by the tenth grade.

Poor adjustment and behavioral concerns are common during and beyond high school among these students. Data from the National Longitudinal Transition Study show that only one in ten students with serious emotional disturbance have behavior management plans. They tend to be under- or un-employed, are rarely involved in post-secondary education, and are at high risk for engaging in activities and behaviors outside the bounds of the law.

While fairly substantial recent and current efforts are focusing on improving results for younger students with SED, little attention is being directed toward their secondary-age counterparts. This priority is intended to address this critical need.

Priority: The Secretary establishes an absolute priority for projects to develop, implement, test the efficacy of, and disseminate practices for improving academic, vocational, personal, social, and behavioral results for students with SED in regular high schools, including consideration of the most appropriate and least restrictive placements.

Under this priority, projects must—

(1) Develop practices with sound conceptual bases that are designed to improve critical academic, vocational, personal, social, and behavioral outcomes for SED students;

(2) Apply rigorous research standards in testing the efficacy of practices developed;

(3) Develop products that include clear, comprehensive descriptions of tested practices, test site contexts, and target student characteristics, and disseminate these products to appropriate research institutes, clearinghouses, and technical assistance providers.

A project must budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) another meeting to meet and collaborate with the OSEP project officer and with other relevant OSEP funded projects.

For further information contact: Helen Thornton, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3520, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–5910. FAX: (202) 205–8105. Internet: Helen____Thornton@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 328.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Program authority: 20 U.S.C. 1423.

Intergovernmental Review

All programs included in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Dated: January 29, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Numbers: Early Education Program for Children with Disabilities, 84.024; Media Research, Production, Distribution, and Training Program, 84.026; Postsecondary Education Program for Individuals with Disabilities Program, 84.078; Program for Children with Severe Disabilities, 84.086; Secondary Education and Transitional Services Program for Youth with Disabilities, 84.158; and Program for Children and Youth with Serious Emotional Disturbance, 84.237)

[FR Doc. 96–2199 Filed 2–1–96; 8:45 am]

BILLING CODE 4000–01–P

Office of Special Education and Rehabilitative Services; Individuals With Disabilities; Notice Inviting Applications

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1996.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1996 competitions under six programs authorized by the Individuals with Disabilities Education Act. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

[CFDA No. 84.024]

Early Education Program for Children With Disabilities Program

Purpose of Program: To support activities that are designed (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

Eligible Applicants: Public agencies and private nonprofit organizations.

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Absolute Priority 1—National Early Childhood Technical Assistance Center (84.024A). The priority for National Technical Assistance Center in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications available: February 16, 1996.

Deadline for Transmittal of Applications: May 31, 1996.

Deadline for Intergovernmental Review: July 30, 1996.

Estimated Average Size of Award: $4,000,000.

Estimated number of awards: One.

Project period: 60 months.

Available funds: $4,000,000.

Absolute Priority 2—Model Demonstration Projects for Young Children with Disabilities (84.024B). The priority for Model Demonstration Projects for Young Children with Disabilities in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications available: February 16, 1996.

Deadline for Transmittal of Applications: April 10, 1996.

Deadline for Intergovernmental Review: June 9, 1996.

Estimated Average Size of Award: $137,000.

Estimated Number of awards: Eight.

Project Period: 60 months.

Available Funds: $1,100,000.

Absolute Priority 3—Outreach Projects for Young Children with Disabilities (84.024D). The priority for Outreach Projects for Young Children with Disabilities in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Competitive Priority

Under 34 CFR 75.105(c)(2) the Secretary gives a competitive preference to applications that are otherwise eligible for funding under this priority and that meet the following competitive priority:

Propose to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by the projects. To meet this priority an applicant must indicate that it will:

- Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprises Communities; or
- Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities.

As appropriate, the proposed project under the Individuals with Disabilities Education Act must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities.

The Secretary awards 5 points to an application that meets the competitive priority relating to Empowerment Zones and Enterprises Communities published in the Federal Register on November 7, 1994 (59 FR 55534). These points are in addition to any points the application earns under the selection criteria for the program.

A listing of areas that have been selected as Empowerment Zones or Enterprises Communities is included in an appendix to a notice published in the Federal Register on December 6, 1995 (60 FR 62699).

Applications Available: February 16, 1996.

Deadline for Transmittal of Applications: April 12, 1996.

Deadline for Intergovernmental Review: June 11, 1996.

Estimated Average Size of Award: $133,000.

Estimated Number of Awards: 15.

Project Period: 36 months.

Available Funds: $2,000,000.

Absolute Priority 4—Early Childhood Research Institutes (84.024S). The priority for Early Childhood Research Institutes in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 16, 1996.

Deadline for Transmittal of Applications: May 10, 1996.

Deadline for Intergovernmental Review: July 9, 1996.

Estimated Average Size of Award: $833,000.

Estimated Number of Awards: Three .

Project Period: 60 months.

Available Funds: Approximately $2,500,000 is expected to be available for this competition. The anticipated award is $1,000,000 for the Institute on Culturally and Linguistically Appropriate Services; $750,000 for the Institute on Increasing Learning Opportunities for Children through Families; and $750,000 for the Institute on Program Performance Measures.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Patricia Wright, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. Fax: (202) 205–8971. Internet: Patricia__Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

FOR TECHNICAL INFORMATION CONTACT: For the National Early Childhood Technical Assistance Center (84.024A): Peggy Cvach, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4609, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9807. Fax: (202) 205–8971. Internet: Peggy__Cvach@ed.gov

For Model Demonstration Projects for Young Children with Disabilities (84.024B): Gail Houle, U.S. Department of Education. 600 Independence Avenue, S.W., Room 4613, Switzer Building, Washington D.C. 20202–2641. Telephone: (202) 205–9045. Fax: (202) 205–8971. Internet: Gail__Houle@ed.gov

For Outreach Projects for Young Children with Disabilities (84.024D): Lee Coleman, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4615, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8166. Fax: (202) 205–8971. Internet: Lee__Coleman@ed.gov

For Early Childhood Research Institutes (84.024S): Gail Houle, U.S. Department of Education. 600 Independence Avenue, S.W., Room 4613, Switzer Building, Washington D.C. 20202–2641. Telephone: (202) 205–9045. Fax: (202) 205–8971. Internet: Gail__Houle@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1423.

[CFDA No. 84.026]

Educational Media Research, Production, Distribution, and Training Program

Purpose of Program: To promote the general welfare of deaf and hearing-impaired individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

Eligible Applicants: Profit and nonprofit public and private agencies, organizations, and institutions.

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 330, 331, and 332.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Absolute Priority—Closed-Captioned Television Programs (84.026U). The priority for Closed-Captioned Television Programs in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 16, 1996.

Deadline for Transmittal of Applications: April 1, 1996.

Deadline for Intergovernmental Review: May 31, 1996.

Estimated Average Size of Award: $605,000.

Estimated Number of Awards: 10.

Project Period: 36 months.

Available Funds: $6,050,000.

FOR APPLICATIONS AND INFORMATION CONTACT: JoAnn McCann, U.S. Department of Education, 600 Maryland Avenue, S.W., Room 4629, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8475. Fax: (202) 205–8971. Internet: JoAnn__McCann@Ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1451, 1452.

[CFDA No. 84.078]

Postsecondary Education Programs for Individuals With Disabilities Program

Purpose of Program: To provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Eligible Applicants: State educational agencies, institutions of higher education; junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 338.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Absolute Priority—Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education for Individuals with Disabilities (84.078C). The priority for Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education for Individuals with Disabilities in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 16, 1996.

Deadline for Transmittal of Applications: April 5, 1996.

Deadline for Intergovernmental Review: June 4, 1996.

Estimated Average Size of Award: $110,000.

Estimated Number of Awards: 14.

Project Period: 36 months.

Available Funds: $1,540,000.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Patricia Wright, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. Fax: (202) 205–8971. Internet: Patricia____Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

FOR TECHNICAL INFORMATION CONTACT: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4624, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8163. Fax: (202) 205–8971. Internet: Michael____Ward@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1424a.

[CFDA No. 84.086]

Program for Children With Severe Disabilities

Purpose of Program: To provide Federal assistance to address the special needs of infants, toddlers, children, and youth with severe disabilities, including children with deaf-blindness and their families.

Eligible Applicants: Public or nonprofit private organizations and institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 315.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Absolute Priority—Outreach Projects: Serving Children with Severe Disabilities in General Education and Community Settings (84.086U). The priority for Outreach Projects: Serving Children with Severe Disabilities in General Education and Community Settings in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 16, 1996.

Deadline for Transmittal of Applications: May 24, 1996.

Deadline for Intergovernmental Review: July 23, 1996.

Estimated Average Size of Award: $148,000.

Estimated Number of Awards: 9.

Project Period: 36 months.

Available Funds: $1,330,000.

FOR APPLICATIONS AND GENERAL INFORMATION: Robin Murphy, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4617, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9884. Fax: (202) 205–8971. Internet: Robin____Murphy@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

FOR TECHNICAL INFORMATION CONTACT: Anne Smith, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4621, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8888. Fax: (202) 205–8971. Internet: Anne____Smith@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1424.

[CFDA No. 84.158]

Secondary Education and Transitional Services for Youth With Disabilities Program

Purpose of Program: To (1) assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and (2) ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities.

Eligible Applicants: Institutions of higher education, State educational

agencies, local educational agencies, and other public and nonprofit private institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 326.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Absolute Priority 1—Outreach Projects for Services for Youth with Disabilities (84.158Q). The priority for Outreach Projects for Services for Youth with Disabilities in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 16, 1996.

Deadline for Transmittal of Applications: April 1, 1996.

Deadline for Intergovermmental Review: May 31, 1996.

Estimated Average Size of Award: $110,000.

Estimated Number of Awards: Nine.

Project Period: 36 months.

Available Funds: $1,000,000.

Absolute Priority 2—Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education Services for Students with Disabilities (84.158V). The priority for Model Demonstration Projects to Improve the Delivery and Outcomes of Secondary Education Services for Students with Disabilities in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 16, 1996.

Deadline for Transmittal of Apllications: May 1, 1996.

Deadline for Intergovernmental Review: June 30, 1996.

Estimated Average Size of Award: $130,000.

Estimated Number of Awards: Eight.

Project Period: 36 months.

Available Funds: $1,040,000.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Patricia Wright, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4623, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9377. Fax: (202) 205–8971. Internet: Patricia____Wright@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

FOR TECHNICAL INFORMATION CONTACT: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Room 4624, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8163. Fax: (202) 205–8971. Internet: Michael____Ward@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8169.

Program Authority: 20 U.S.C. 1425.

[CFDA No. 84.237H]

Program for Children and Youth With Serious Emotional Disturbance

Purpose of Program: To support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies, and other appropriate public and nonprofit private institutions or agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 328.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority

Absolute Priority—Developing Effective Secondary School-Based Practices for Youth with Serious Emotional Disturbance (84.237H). The priority Developing Effective Secondary School-Based Practices for Youth with Serious Emotional Disturbance in the notice of final priority for this program, published elsewhere in this issue of the Federal Register, applies to this competition.

Applications Available: February 16, 1996.

Deadline for Transmittal of Applications: April 30, 1996.

Deadline for Intergovernmental Review: June 29, 1996.

Estimated Average Size of Award: $167,000.

Estimated Number of Awards: Three

Project Period: Up to 48 months.

Available Funds: In fiscal year 1996, approximately $500,000 will be available to support an estimated 3 projects. The estimated average size of award is $167,000 for the first 12 months of the project. Multi-year projects will be level funded unless there are increases in costs attributable to significant changes in activity level.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, S.W., room 3525, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–9864. Fax: (202) 20508105. Internet: Claudette____Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

FOR TECHNICAL INFORMATION CONTACT: Helen Thornton, U.S. Department of Education, 600 Independence Avenue, SW., room 3520, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–5910. Fax: (202) 205–8105. Internet: Helen__Thornton@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1426.

Dated: January 29, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–2198 Filed 2–1–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
February 2, 1996

Part VII

Department of Education

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the allocation reduction for the underuse of funds under the Federal Perkins Loan, Federal Work-Study (FWS), or Federal Supplemental Educational Opportunity Grant (FSEOG) programs (known collectively as the campus-based programs).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the allocation reduction being applied to its Federal Perkins Loan, FWS, or FSEOG allocation for the 1996–97 award year (July 1, 1996 through June 30, 1997) because the institution returned more than 10 percent of its allocation for that program for the 1994–95 award year (July 1, 1994 through June 30, 1995).

DATES: *Closing Date for Submitting a Waiver Request and any Supporting Information or Documents.* For an institution that returned more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for the 1994–95 award year to be considered for a waiver of the allocation reduction for its 1996–97 award year allocation, it must mail or hand-deliver its waiver request and any supporting information or documents on or before March 4, 1996. The Department will not accept a waiver request submitted by facsimile transmission. The waiver request must be submitted to the Campus-Based Programs Financial Management Division at one of the addresses indicated below.

ADDRESSES: *Waiver Request and any Supporting Information or Documents Delivered by Mail.* The waiver request and any supporting information or documents delivered by mail must be addressed to Sandra Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use certified or at least first class mail. Institutions that submit waiver requests and any supporting information or documents after the closing date will not be considered for a waiver of the allocation reduction being applied to its allocation under any of the campus-based programs for award year 1996–97.

Waiver Requests and any Supporting Information or Documents Delivered by Hand. A waiver request and any supporting information or documents delivered by hand must be taken to Sandra Donelson, Financial Management Specialist, Campus-Based Financial Operations, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. Hand-delivered waiver requests will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A waiver request for the 1996–97 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under sections 413D(e)(2), 442(e)(2), and 462(j)(4) of the Higher Education Act of 1965, as amended, if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the second succeeding award year for that program reduced by the dollar amount returned. The Secretary may waive this requirement for a specific institution if the Secretary finds that enforcement of the requirement would be contrary to the interest of the affected campus-based program. The institution must provide a written waiver request and any supporting information or documents by the established March 4, 1996 closing date. The waiver request must be signed by an appropriate institutional official and above the signature the official must include the statement: ''I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education.'' If the institution submits a waiver request and any supporting information or documents after the closing date, the request will not be considered.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Perkins Loan Program, 34 CFR Part 674.

(3) Federal Work-Study Program, 34 CFR Part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(6) New Restrictions on Lobbying, 34 CFR Part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(8) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the waiver request or other operational procedures of the campus-based programs, contact: Sandra Donelson, Financial Management Specialist, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 600 Independence Avenue SW., Washington, D.C. 20202–5458, Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

Dated: January 30, 1996.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program;

84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program)

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–2197 Filed 2–1–96; 8:45 am]

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federal register

Friday
February 2, 1996

Part VIII

Environmental Protection Agency

Thirty-Seventh Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report, Request for Comments, Solicitation of Use and Exposure Data; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41044; FRL–4991–6]

Thirty-Seventh Report of the TSCA Interagency Testing Committee to the Administrator; Receipt of Report, Request for Comments, Solicitation of Use and Exposure Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The TSCA Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its 37th Report to the Administrator of the EPA on November 22, 1995. In its 37th Report, which is included with this notice, the ITC revised the *Priority Testing List* by adding a group of 28 alkylphenols and alkylphenol ethoxylates to the List for consideration by the EPA Administrator for promulgation of test rules under section 4(a) of the Act. The ITC also removed 43 previously-recommended silicone chemicals and 5 isocyanates. The ITC's reasons for removing these chemicals from the List are described in the 37th Report. As noted in this Report, the ITC is soliciting use and exposure data for 9 of the 12 High Production Volume Chemicals that were recommended in its 36th Report (60 FR 42982, August 17, 1995) and consumer use and data for the 10 isocyanates remaining on the List. There are no designated or recommended with intent-to-designate chemicals or chemical groups in the 37th Report. EPA invites interested persons to submit written comments on the Report.

DATES: Written comments on the 37th ITC Report should be submitted by March 4, 1996.

ADDRESSES: Comments on the 37th Report should be submitted to both the ITC and the TSCA Public Docket. Send one copy of written submissions to: John Walker, ITC Director, U.S. EPA (7401), 401 M St. SW., Washington, DC 20016. Send six copies of written submissions to: TSCA Public Docket Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. B-607 NEM, 401 M St. SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS–41044; FRL–4991–6).

The public record supporting this action, including comments, is available for public inspection in Rm. B–607 NEM at the address noted above from 12:00 noon to 4 pm Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St. SW., Rm. ET–543B,Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's 37th Report to the Administrator.

I. Background

TSCA (Pub. L. 94–469, 90 Stat. 2003 et seq; 15 U.S.C. 260l et seq.) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee (ITC) to recommend chemicals and chemical groups to the Administrator of the EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months. The most recent revisions to this List are included in the ITC's 37th Report. The Report was received by the Administrator on November 22, 1995, and is included in this Notice. The Report recommends a group of 28 alkylphenols and alkylphenol ethoxylates, removes 43 silicone chemicals and 5 isocyanates previously recommended for testing and solicits use and exposure data for 9 High Production Volume Chemicals (HPVCs) and 10 isocyanates from the TSCA section 4(e) *Priority Testing List*.

II. Status of List

The ITC's 37th Report requests use and exposure data for 9 HPVCs and 10 isocyanates, adds 28 chemicals to and removes 48 chemicals from the *Priority Testing List*. The current TSCA section 4(e) *Priority Testing List* contains 5 chemicals and 9 chemical groups; of these 3 chemical groups and 3 chemicals were designated for testing.

A notice will be published at a later date in the Federal Register adding certain of the substances recommended in the ITC's 37th Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. That notice will also add some of the chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

III. Electronic and Oral Comments

The EPA invites interested persons to submit detailed comments on the ITC's Report. A record has been established for this notice under docket number [OPPTS–41044]. A public version of this record including printed paper versions of electronic comments, which does not contain any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Non-confidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. Electronic comments can be sent directly to the ITC at

Walker.johnd@epamail.epa.gov and to the EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of ecryption.

The official record for the 37th report, as well as the public version as described above, will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the EPA address in **ADDRESSES** at the beginning of this document.

Authority: 15 U.S.C. 2603.

Dated: January 22, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Thirty-Seventh Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

Summary

This is the 37th Report of the TSCA Interagency Testing Committee (ITC) to the Administrator of the U.S. Environmental Protection Agency (EPA). In this Report, the ITC is revising its TSCA section 4(e) *Priority Testing List* by recommending 28 alkylphenols and alkylphenol ethoxylates and removing 43 previously-recommended silicone chemicals and 5 isocyanates. As noted in this Report, the ITC is

soliciting use and exposure data for 9 of the 12 High Production Volume Chemicals that were recommended in its 36th Report (60 FR 42982, August 17, 1995) and consumer use and exposure data for the 10 isocyanates remaining on the *List*. Comments on this Report should be submitted both to the ITC and the TSCA Public Docket. The revised TSCA section 4(e) *Priority Testing List* follows as Table 1.

TABLE 1.—THE TSCA SECTION 4(E) PRIORITY TESTING LIST (NOVEMBER 1995)

Report	Date	Chemical/Group	Action
26	May 1990	Isocyanates	Recommended with intent-to-designate.
27	November 1990	62 Aldehydes	Recommended with intent-to-designate.
28	May 1991	Acetone	Designated.
28	May 1991	Thiophenol	Designated.
29	November 1991	10 Alkyl-, bromo-, chloro-, hydroxymethyl diaryl ethers	Recommended.
30	May 1992	13 Siloxanes	Recommended.
31	January 1993	24 Chemicals with no dermal toxicity data	Designated.
32	May 1993	32 Chemicals with insufficient dermal absorption data	Designated.
34	May 1994	White phosphorus	Designated.
34	May 1994	Ethyl tert-butyl ether	Recommended.
34	May 1994	Tert-amyl methyl ether	Recommended.
35	November 1994	24 Chemicals with insufficient dermal absorption data	Designated.
36	May 1995	12 High Production Volume Chemicals	Recommended.
37	November 1995	28 Alkylphenols and alkylphenol ethoxylates	Recommended.

I. Background

The TSCA Interagency Testing Committee (ITC) was established by section 4(e) of the Toxic Substances Control Act (TSCA) ''to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every 6 months..., the Committee shall make such revisions in the *List* as it determines to be necessary and to transmit them to the Administrator together with the Committee's reasons for the revisions'' (Pub. L. 94–469, 90 Stat. 2003 et seq., 15 U.S.C. 2601 et seq.). Since its creation in 1976, the ITC has submitted 36 semi-annual Reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. These Reports have been published in the Federal Register and are also available from the ITC. The ITC meets monthly and produces its revisions of the *List* with the help of staff and technical contract support provided by EPA. ITC membership and support personnel are listed at the end of this Report.

Following receipt of the ITC's Report and the addition of chemicals to the *Priority Testing List*, EPA's Office of Pollution Prevention and Toxics adds new chemicals from the *List* to TSCA section 8(a) and 8(d) rules that require manufacturers and importers of these chemicals to submit TSCA section 8(a) production and exposure data and manufacturers, importers and processors of the listed chemicals to submit TSCA section 8(d) health and safety studies within 60 days of the rule's effective date. The submissions are indexed and maintained by EPA. The ITC reviews the TSCA section 8(a) and 8(d) information and other available data on chemicals and chemical groups (e.g., TSCA section 8(e) ''substantial risk'' studies, ''For Your Information'' (FYI) submissions to EPA, and published papers) to determine if revisions to the *List* are necessary. Revisions can include changing a general recommendation to a specific designation for testing action by the EPA Administrator within 12 months, modifying the recommended testing, or removing the chemical or chemical group from the *List*.

II. Revisions to the TSCA Section 4(e) Priority Testing List

Revisions to the TSCA section 4(e) *Priority Testing List* are summarized in Table 2.

TABLE 2.—REVISIONS TO THE TSCA SECTION 4(E) PRIORITY TESTING LIST

CAS No.	Chemical Name	Action	Date
	Alkylphenols and alkylphenol ethoxylates	Recommended	11/95
	Butylphenols	.	
88–18–6	2-tert-Butylphenol[a]		
98–54–4	4-tert-Butylphenol[a].		
99–71–8	4-sec-Butylphenol[a].		
1638–22–8	4-*n*-Butylphenol[b].		
3180–09–4	2-Butylphenol[b].		
27178–34–3	tert-Butylphenol (mixed isomers)[b]		
31195–95–6	Isobutylphenol (mixed isomers)[b]		
	Pentylphenols		
80–46–6	4-tert-Pentylphenol[a]		
94–06–4	4-(1-Methylbutyl)phenol[b]		
14938–35–3	4-Pentylphenol[b]		

TABLE 2.—REVISIONS TO THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

CAS No.	Chemical Name	Action	Date
	Octylphenols		
949–13–3	2-Octylphenol[b]		
1806–26–4	4-Octylphenol[b]		
3884–95–5	2-(1,1,3,3-Tetramethylbutyl)phenol[b]		
27193–28–8	(1,1,3,3-Tetramethylbutyl)phenol (mixed isomers)[a,c]		
1322–69–6			
29932–96–5			
30105–54–5			
62744–41–6			
27985–70–2	(1-Methylheptyl)phenol (mixed isomers)[b]		
54932–78–4	4-(2,2,3,3-Tetramethylbutyl)phenol[b]		
	Nonylphenols		
104–40–5	4-Nonylphenol[b]		
11066–49–2	Isononylphenol (mixed isomers)[b]		
17404–66–9	4-(1-Methyloctyl)phenol[b]		
25154–52–3	Nonylphenol (mixed isomers)[a,c]		
1300–16–9			
84852–15–3	Branched 4-nonylphenol (mixed isomers)[a]		
	Dodecylphenols		
104–43–8	4-Dodecylphenol[b]		
27193–86–8	Dodecylphenol (mixed isomers)[a,c]		
1331–57–3			
	Octylphenol ethoxylates		
2315–66–4	Decaethylene glycol 4-isooctylphenyl ether[b]		
2497–58–7	Hexaethylene glycol 4-isooctylphenyl ether[b]		
9002–93–1	Polyethylene glycol 4-(tert-octyl)phenyl ether[b]		
9036–19–5	Polyethylene glycol mono(octyl)phenyl ether[b]		
68987–90–6	Poly(oxy-1,2-ethanediyl),α-(octylphenyl)-ω-hydroxy-, branched[a]		
	Silicone Chemicals	Remove previously recommended chemicals	11/95
107–50–6	Tetradecamethylcyloheptasiloxane		
107–52–8	Tetradecamethylhexasiloxane		
107–53–9	Tetracosamethylundecasiloxane		
541–01–5	Hexadecamethylheptasiloxane		
541–05–9	Hexamethylcyclotrisiloxane		
546–56–5	Octaphenylcyclotetrasiloxane		
556–68–3	Hexadecamethylcyclooctasiloxane		
556–69–4	Octadecamethyloctasiloxane		
556–70–7	Docosamethyldecasiloxane		
556–71–8	Octadecamethylcyclononasiloxane		
999–97–3	Hexamethyldisilazane		
2370–88–9	Tetramethylcyclotetrasiloxane		
2374–14–3	Trifluoropropylmethylcyclotrisiloxane		
2471–08–1	Hexacosamethyldodecasiloxane		
2471–09–2	Octacosamethyltridecasiloxane		
2471–10–5	Triacontamethyltetradecasiloxane		
2471–11–6	Dotriacontmethylpentadecasiloxane		
2554–06–5	Methylvinylcyclosiloxane		
2627–95–4	Tetramethyldivinyldisiloxane		
2652–13–3	Eicosamethylnonasiloxane		

TABLE 2.—REVISIONS TO THE TSCA SECTION 4(E) PRIORITY TESTING LIST—Continued

CAS No.	Chemical Name	Action	Date
9004–73–3	Methylpolysiloxane		
9006–65–9	Dimethicone		
9016–00–6	Polydimethylsiloxane		
18766–38–6	Docosamethylcycloundecasiloxane		
18772–36–6	Eicosamethylcyclodecasiloxane		
18844–04–7	Hexatriacontamethylheptadecasiloxane		
18919–94–3	Tetracosamethylcyclododecasiloxane		
23523–12–8	Hexatriacontamethylcyclooctadecasiloxane		
23523–14–0	Triacontamethylcyclopentadecasiloxane		
23732–94–7	Hexacosamethylcyclotridecasiloxane		
36938–50–8	Tetratriacontamethylhexadecasiloxane		
36938–52–0	Octatriacontamethyloctadecasiloxane		
67762–94–1	Dimethylmethylvinylsiloxane		
68037–59–2	Dimethylhydropolysiloxane		
68607–75–0	Polymethyloctadecylsiloxane		
115631–68–7	Siloxanes and silicones, dimethylmethyl 3,3,3-trifluoropropyl[d]		
149050–40–8	Octacosamethylcyclotetradecasiloxane		
150026–95–2	Dotriacontamethylcyclohexadecasiloxane		
150026–96–3	Tetratriacontamethylcycloheptadecasiloxane		
150026–97–4	Octatriacontamethylcyclononadecasiloxane		
150026–98–5	Tetracontamethylcycloeicosasiloxane		
150026–99–6	Tetracontamethylnonadecasiloxane		
150027–00–2	Dotetracontamethyleicosasiloxane		
	Isocyanates	Remove previously recommended chemicals	11/95
102–36–3	3,4-Dichlorophenyl isocyanate		
104–71–9	Phenyl isocyanate		
104–12–1	*p*-Chlorophenyl isocyanate		
111–36–4	*n*-Butyl isocyanate		
3173–53–3	Cyclohexyl isocyanate		

[a] Chemicals with production or importation volumes > 1 million pounds that are being considered for designation.
[b] Chemicals with production or importation volumes < 1 million pounds that are being recommended because they are structurally related to alkylphenols or alkylphenol ethoxylates being considered for designation.
[c] Alternate CAS numbers are listed for these chemicals.
[d] Listed as dimethylmethyltrifluoropropylsiloxane with no CAS number in ITC's 30th Report (57 FR 30608, July 9, 1992).

III. Rationale for the Revisions

A. ITC's Activities During this Reporting Period

During the 6 months covered by this Report, the ITC evaluated several chemical groups. For alkylphenols and alkylphenol ethoxylates, 1989 and 1993 TSCA production and importation volume data were reviewed and online toxicology databases were searched. For silicone chemicals, unpublished chemistry, toxicology, use and exposure data were reviewed; these data were submitted in response to the ITC's 30th Report (57 FR 30608, July 9, 1992). For the isocyanates recommended in the ITC's 26th Report (55 FR 23050, June 5, 1990), published and unpublished toxicology, use and exposure data were reviewed.

B. Specific Rationales

1. *Recommended chemicals—Alkylphenols and alkylphenol ethoxylates—Recommendation.* Alkylphenols and alkylphenol ethoxylates are being added to the *Priority Testing List* to obtain unpublished TSCA section 8(d) studies and to determine if these studies meet U.S. Government data needs.

Rationale for recommendation. Alkylphenols and alkylphenol ethoxylates are being recommended to determine if there are unpublished studies that contain data to meet the needs of the Department of the Interior (DoI), the EPA and other U.S. Government organizations represented on the ITC. The ITC wants to review these unpublished data before determining if these chemicals should be designated for testing to meet U.S. Government data needs. Alkylphenols and alkylphenol ethoxylates are being recommended at this time because: (1) 1989 and 1993 TSCA production and importation volumes are in the multimillion pound range, (2) releases to the environment can occur through wastewater treatment systems and from agricultural runoff, (3) alkylphenol ethoxylates can degrade to alkylphenols, (4) alkylphenols can persist in the environment and be highly toxic to aquatic organisms and (5) exposure to

alkylphenols and alkylphenol ethoxylates may result in estrogenic, reproductive or other adverse effects.

Supporting information. The Substructure-based Computerized Chemical Selection Expert System (*SuCCSES*) is used to identify chemicals with shared substructures and associated health or ecological effects and similar TSCA production or importation volumes (Walker, Refs. 4 and 6). *SuCCSES* was used to identify the alkylphenols and alkylphenol ethoxylates listed in Table 2. As indicated in Table 2, nine of the alkylphenols and alkylphenol ethoxylates have 1989 and 1993 TSCA production and importation volumes greater than 1 million pounds and are being considered for designation. The ITC is listing alternate CAS numbers for some of these alkylphenols and alkylphenol ethoxylates to increase the possibility of retrieving a study because it is filed under a different CAS number. Table 2 also indicates that 19 alkylphenols and alkylphenol ethoxylates are being recommended because they are structurally related to those being considered for designation. Relevant data from these additional 19 chemicals will be used to predict or gain insight into the activity of the 9 alkylphenols and alkylphenol ethoxylates being considered for designation when no data are available for those 9 chemicals. The ITC is recommending structurally-related chemicals and alternate CAS-numbered chemicals to increase the possibility of obtaining unpublished studies on alkylphenols and alkylphenol ethoxylates that are related to those being considered for designation.

Existing U.S. Government data needs. The ITC has identified several data needs for alkylphenols and alkylphenol ethoxylates: (1) chemical composition (major components and impurities), (2) environmental fate of components and impurities and (3) health and ecological effects, including toxicokinetics and endocrine-modulating effects.

Completed activities of the ITC, EPA and alkylphenol manufacturers. The ITC is aware that for a few alkylphenols and alkylphenol ethoxylates there are numerous studies including those already developed under TSCA section 4 (Talmage, Ref. 3). The ITC is also aware that for some of these chemicals, few health effects, environmental fate and ecological effects data are available. The ITC reviews of butylphenols, pentylphenols, octylphenols, and nonylphenols suggested that these chemicals had potential to cause biological effects. Studies by Soto et al. (Ref. 2), White et al. (Ref. 10) and Purdom et al. (Ref. 1) suggest that alkylphenols and alkylphenol ethoxylates may cause endocrine-modulating effects. Soto et al. (Ref. 2) reported that nonylphenol and 4-tert-butylphenol caused proliferation of human estrogen-sensitive MCF_7 breast tumor cells. White et al. (Ref. 10) reported that 4-octylphenol, 4-nonylphenol and 4-nonylphenol diethoxylate were capable of stimulating vitellogenin gene expression in trout hepatocytes. Vitellogenin is a protein synthesized by the liver of oviparous fish in response to stimulation by estradiol or estrogenic compounds. Purdom et al. (Ref. 1) suggested that alkylphenols or alkylphenol ethoxylates may have been responsible for elevated vitellogenin concentrations in fish exposed to effluents from 15 sewage-treatment works.

The ITC previously designated three alkylphenols for testing. 2-sec-Butylphenol was designated in the 32nd Report (58 FR 38490, July 16, 1993). In response to this designation, the EPA solicited parties that would be interested in developing consent agreements for dermal absorption testing. The ITC designated 4-(1,1,3,3-tetramethylbutyl)phenol in its 11th Report (47 FR 54625, December 3, 1982) and 2,6-di-tert-butylphenol in its 18th Report (51 FR 18368, May 19, 1986). In response to these designations, the EPA implemented testing and the alkylphenol manufacturers developed the TSCA section 4 chemical fate and aquatic toxicity data. These data have been published (Walker, Refs. 5, 7, and 8).

The EPA has pursued testing for two other alkylphenols. The EPA published a TSCA section 4 notice proposing reproductive effects and developmental toxicity testing for dodecylphenol (56 FR 9092, March 4, 1991). The EPA worked with the alkylphenol manufacturers to develop chemical fate and aquatic toxicity data for branched 4-nonylphenol under a TSCA section 4 Enforceable Consent Agreement/Order (55 FR 5991, February 21, 1990). These data for branched 4-nonylphenol have been published (Walker, Ref. 8).

The TSCA section 8(d) rule that EPA promulgated for 2-sec-butylphenol did not require submission of ecological effects data (59 FR 5956, February 9, 1994). The ITC is recommending that the EPA amend this rule to require submission of ecological effects data in response to the data needs of the DoI and EPA. In response to the ITC's designations of 4-(1,1,3,3-tetramethylbutyl)phenol and 2,6-di-tert-butylphenol, the EPA promulgated TSCA section 8(d) rules. The ITC will include studies that were submitted in response to these rules in its review of other unpublished studies that are submitted in response to the TSCA section 8(d) rules that the EPA will promulgate for the other alkylphenols or alkylphenol ethoxylates listed in Table 2. The ITC is not recommending these three alkylphenols because TSCA section 8(d) studies were previously submitted in response to these designations.

Related activities. The Organisation for Economic Cooperation and Development (OECD) has three of the recommended and two of the previously-designated alkylphenols in its Screening Information Data Sets (SIDS) program. The recommended alkylphenols with their sponsoring countries listed in parentheses are 4-tert-butylphenol (Japan), nonylphenol (mixed isomers) (United Kingdom and United States) and branched 4-nonylphenols (mixed isomers) (United Kingdom). The previously-designated alkylphenols are 4-(1,1,3,3-tetramethylbutyl)phenol and 2,6-di-tert-butylphenol (both the United States). The National Toxicology Program has scheduled branched 4-nonylphenols (mixed isomers) for a multigeneration reproductive effects and developmental toxicity test. The National Academy of Sciences is planning to review published data on hormone-related chemicals in the environment and alkylphenols is one chemical group for which they will be reviewing data. Industry convened the Endocrine Issues Coalition in 1995 to address scientific issues related to subtances in the environment that potentially may modulate the endocrine system. The CMA's Alkylphenols and Ethoxylates Panel is a member of this Coalition.

2. *Removal of chemicals from the Priority Testing List—a. Silicone chemicals.* Fifty-six silicone chemicals were recommended for health effects testing in the ITC's 30th Report to meet the data needs of the Food and Drug Administration (57 FR 30608, July 9, 1992). In response to this recommendation, the Silicones Environmental Health and Safety Council (SEHSC) met with the ITC and the EPA to discuss unpublished toxicity, use and exposure data. Most of the unpublished toxicity and exposure data were submitted in response to the TSCA section 8(d) reporting rule that was promulgated in response to the ITC's 30th Report recommendations (58 FR 28511, May 15, 1993) and the technical amendments to that rule (58 FR 47647, September 10, 1993). All of the use data and some of the exposure data were submitted voluntarily to the

ITC by the SEHSC. Interactions with the SEHSC facilitated information exchange and data development for a previously-designated siloxane, octamethylcyclotetrasiloxane (Walker and Smock, Ref. 9). The SEHSC worked with the ITC and the EPA to develop a computerized system of physical properties, effects and use data for the 56 recommended silicone chemicals. The ITC has used the information in this system, the TSCA section 8(a) production and exposure data, and the information submitted voluntarily by the SEHSC to determine that, at this time, 43 of the previously-recommended silicone chemicals should be removed from the *Priority Testing List* (Table 2). The specific rationales for removing these chemicals are listed in the following Table 3.

TABLE 3.—PREVIOUSLY RECOMMENDED SILICONE CHEMICALS BEING REMOVED FROM THE PRIORITY TESTING LIST

CAS No.	Chemical Name	Removal rationale
999–97–3	Hexamethyldisilazane	
9006–65–9	Dimethicone	Highly reactive with moisture and therefore difficult to test for health effects
9016–00–6	Polydimethylsiloxane	Highly reactive with moisture and therefore difficult to test for health effects
9004–73–3	Methylpolysiloxane	
115631–68–7	Siloxanes and silicones, dimethylmethyl 3,3,3-trifluoropropyl[a]	Synonyms for dimethyl silicones and siloxanes that remains on the Priority Testing List
67762–94–1	Dimethylmethylvinylsiloxane	Site-limited intermediates used in the production of siloxane polymers
68037–59–2	Dimethylhydropolysiloxane	Site-limited intermediates used in the production of siloxane polymers
68607–75–0	Polymethyloctadecylsiloxane	Siloxane polymers that are consumed in their end use
546–56–5	Octaphenylcyclotetrasiloxane	Siloxane that has no commercial sales or applications at this time
2370–88–9	Tetramethylcyclotetrasiloxane	Siloxane that has no commercial sales or applications at this time
2374–14–3	Trifluoropropylmethylcyclotrisiloxane	Siloxane that has no commercial sales or applications at this time
2554–06–5	Methylvinylcyclosiloxane	Siloxane that has no commercial sales or applications at this time
2627–95–4	Tetramethyldivinyldisiloxane	Siloxane that has no commercial sales or applications at this time
	Linear Siloxanes	
107–52–8	Tetradecamethylhexasiloxane (L_6)[b]	Siloxanes that are limited to industrial applications and transformed to polymers during processing
541–01–5	Hexadecamethylheptasiloxane (L_7)	Siloxanes that are limited to industrial applications and transformed to polymers during processing
556–69–4	Octadecamethyloctasiloxane (L_8)	Siloxanes that are limited to industrial applications and transformed to polymers during processing
2652–13–3	Eicosamethylnonasiloxane (L_9)	Siloxanes that are limited to industrial applications and transformed to polymers during processing
556–70–7	Docosamethyldecasiloxane (L_{10})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
107–53–9	Tetracosamethylundecasiloxane (L_{11})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
2471–08–1	Hexacosamethyldodecasiloxane (L_{12})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
2471–09–2	Octacosamethyltridecasiloxane (L_{13})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
2471–10–5	Triacontamethyltetradecasiloxane (L_{14})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
2471–11–6	Dotriacontmethylpentadecasiloxane (L_{15})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
36938–50–8	Tetratriacontamethylhexadecasiloxane (L_{16})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
18844–04–7	Hexatriacontamethylheptadecasiloxane (L_{17})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
36938–52–0	Octatriacontamethyloctadecasiloxane (L_{18})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
150026–99–6	Tetracontamethylnonadecasiloxane (L_{19})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
150027–00–2	Dotetracontamethyleicosasiloxane (L_{20})	
	Cyclic Siloxanes	
541–05–9	Hexamethylcyclotrisiloxane (D_3)[c]	Siloxanes that are limited to industrial applications and transformed to polymers during processing
107–50–6	Tetradecamethylcyloheptasiloxane (D_7)	Siloxanes that are limited to industrial applications and transformed to polymers during processing

TABLE 3.—PREVIOUSLY RECOMMENDED SILICONE CHEMICALS BEING REMOVED FROM THE PRIORITY TESTING LIST—Continued

CAS No.	Chemical Name	Removal rationale
556–68–3	Hexadecamethylcyclooctasiloxane (D_8)	Siloxanes that are limited to industrial applications and transformed to polymers during processing
556–71–8	Octadecamethylcyclononasiloxane (D_9)	Siloxanes that are limited to industrial applications and transformed to polymers during processing
18772–36–6	Eicosamethylcyclodecasiloxane (D_{10})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
18766–38–6	Docosamethylcycloundecasiloxane (D_{11})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
18919–94–3	Tetracosamethylcyclododecasiloxane (D_{12})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
23732–94–7	Hexacosamethylcyclotridecasiloxane (D_{13})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
149050–40–8	Octacosamethylcyclotetradecasiloxane (D_{14})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
23523–14–0	Triacontamethylcyclopentadecasiloxane (D_{15})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
150026–95–2	Dotriacontamethylcyclohexadecasiloxane (D_{16})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
150026–96–3	Tetratriacontamethylcycloheptadecasiloxane (D_{17})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
23523–12–8	Hexatriacontamethylcyclooctadecasiloxane (D_{18})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
150026–97–4	Octatriacontamethylcyclononadecasiloxane (D_{19})	Siloxanes that are limited to industrial applications and transformed to polymers during processing
150026–98–5	Tetracontamethylcycloeicosasiloxane (D_{20})	Siloxanes that are non-isolated components of dimethyl siloxanes

[a] Listed as dimethylmethyltrifluoropropylsiloxane with no CAS number in ITC's 30th Report (57 FR 30608, July 9, 1992).
[b] L followed by a number refers to the number of repeating dimethyl siloxanes in a linear chain.
[c] D followed by a number refers to the number of repeating dimethyl siloxanes in a cyclic chain.

There are 13 siloxanes remaining on the *Priority Testing List* as shown in the following Table 4:

TABLE 4.—SILOXANES REMAINING ON THE PRIORITY TESTING LIST

CAS No.	Chemical Name
	Cyclic Siloxanes
556–67–2	Octamethylcyclotetrasiloxane (D_4)
541–02–6	Decamethylcyclopentasiloxane (D_5)
540–97–6	Dodecamethylcyclohexasiloxane (D_6)
69430–24–6	Cyclopolydimethylsiloxane (D_x)
	Linear Siloxanes
107–46–0	Hexamethyldisiloxane (L_2)
107–51–7	Octamethyltrisiloxane (L_3)
141–62–8	Decamethyltetrasiloxane (L_4)
141–63–9	Dodecamethylpentasiloxane (L_5)
	Phenyl Siloxanes
68083–14–7	Dimethyldiphenylsiloxane[a]
	Polymers
63148–62–9	Dimethyl silicones and siloxanes[a]
9006–65–9	
9016–00–6	
67762–90–7	Dimethyl silicones and siloxanes, reaction products with silica
68037–74–1	Dimethylmonomethylpolysiloxanes

TABLE 4.—SILOXANES REMAINING ON THE PRIORITY TESTING LIST—Continued

CAS No.	Chemical Name
70131–67–8	Dimethyl silicones and siloxanes hydroxy terminated

[a]Alternate CAS numbers are listed for this chemical.

b. Isocyanates.

In its 26th Report, the ITC recommended a group of 43 isocyanates for physical and chemical property testing in response to a nomination from the EPA to support its TSCA New Chemicals Program (55 FR 23050, June 5, 1990). The ITC removed 28 of these isocyanates from the *Priority Testing List* in its 35th Report 59 FR 67596, December 29, 1994). The ITC is removing 5 more isocyanates from the *List* in this Report (Table 2). 3,4-Dichlorophenyl isocyanate and *p*-chlorophenyl isocyanate are being removed because 1993 production volumes were less than 10,000 pounds. Phenyl isocyanate is being removed because 1993 production volumes were less than 1,000,000 pounds and there are no currently identified U.S. Government data needs. *n*-Butyl isocyanate and cyclohexyl isocyanate are being removed because there are no currently identified U.S. Government data needs.

IV. Activities Related to Previously-Recommended Chemicals

A. High Production Volume Chemicals

The ITC solicited use and exposure data for 12 High Production Volume Chemicals (HPVCs) in its 36th report (60 FR 42982, August 17, 1995) and suggested a 60–day submission deadline from the FR publication date (October 17, 1995). In response to that solicitation, the ITC received a September 15, 1995, submission from Eastman Chemical Company for diethylene glycol monoethyl ether acetate (CAS No. 112–15–2), a September 19, 1995, offer from the Zeneca Corporation to provide use and exposure data for trichloromethane sulfenyl chloride (CAS No. 594–42–3) and an October 12, 1995, submission from Ferro Corporation for diethylene glycol dimethyl ether (CAS No. 111–96–6). The ITC will review the use and exposure data for these three HPVCs. The ITC appreciates these timely responses and encourages the manufacturers, processors, and users of the other nine HPVCs to contact the ITC with offers to provide use and exposure data.

B. Isocyanates

The ITC is soliciting consumer use data for the nine diisocyanates remaining on the *Priority Testing List* (Table 5). The data are being solicited to address the information needs of the Consumer Product Safety Commission (CPSC). For several of these isocyanates, the ITC is continuing its review of exposure, health effects and chemical fate information, including information based on structure-activity relationships (SARs), in response to concerns of the Department of Defense (DoD) and the EPA.

In its 26th Report, the ITC recommended a group of 43 isocyanates for physical and chemical property testing in response to a nomination from the EPA to support its TSCA New Chemicals Program (55 FR 23050, June 5, 1990). As noted above in section III(B)(2)(b) of this ITC Report, 33 of these isocyanates have been removed from the *Priority Testing List*. The 10 remaining isocyanates are listed in the following Table 5.

TABLE 5.—ISOCYANATES REMAINING ON THE PRIORITY TESTING LIST

CAS No.	Chemical Name
	Monoisocyanate
329–01–1	(α,α,α-Trifluoro-*m*-tolyl)isocyanate
	Diisocyanates
91–08–7	2,6-Toluene diisocyanate (2,6-TDI)
101–68–8	4,4′-Diphenylmethane diisocyanate (MDI)
584–84–9	2,4-Toluene diisocyanate (2,4-TDI)
4035–89–6	Tris(isocyanatohexyl)biuret
4098–71–9	Isophorone diisocyanate
5124–30–1	1,1'-Methylenebis(4-isocyanatocyclohexane)
5873–54–1	1-Isocyanato-2-((4-isocyanatophenyl)methyl)benzene
26447–40–5	1,1'-Methylenebis(isocyanatobenzene)
26471–62–5	Toluene diisocyanate (80% 2,4-TDI; 20% 2,6-TDI)

For these 10 isocyanates, the ITC is reviewing data on 1993 TSCA production and importation volumes, as well as published and unpublished (TSCA section 8(d), 8(e), FYI, etc.) data on physical and chemical properties, environmental fate and releases, health effects, occupational exposures and uses. For each of these isocyanates, the ITC is monitoring ongoing testing, including any testing that might be considered by the International Isocyanates Institute, the CMA or the OECD.

At this time, the ITC has determined that there are insufficient consumer use and exposure data to permit an accurate assessment of exposure or the need for additional testing of the diisocyanates listed in Table 5. The ITC is soliciting consumer use data on these as well as

any other commercially relevant diisocyanates (e.g., hexamethylene diisocyanate, CAS No. 822–06–0). Information on the presence of diisocyanates in commercially available products is needed as well as information on exposures that result from their use. The following specific information is solicited:

• Category of products in which diisocyanates (all forms) are present, such as rigid and flexible foams, coatings, and adhesives

• Specific diisocyanate present, by product category

• Chemical form of the diisocyanate (monomer, prepolymer, oligomer, polymer, etc.)

• Weight fraction of diisocyanate in the product and the relative amount of the different diisocyanate forms, particularly free monomer, oligomer, and prepolymer (a rough range of weight fraction is sufficient)

• Percent of total manufactured/imported volume (rough estimate is sufficient)

• Form of the product (liquid, aerosol, foam, etc.)

• General application of the product (sealant, paint, adhesive, insulation, etc.)

• Air monitoring or exposure simulation data for diisocyanates resulting from use of any of the indicated product categories

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TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

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Department of Commerce
Edward White, Member

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David R. Williams, Member
Lois Dicker, Alternate

National Cancer Institute
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Harry Seifried, Alternate

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[FR Doc. 96–1721 Filed 2–1–96; 8:45 am]

BILLING CODE 6560–50–F

federal register

Friday
February 2, 1996

Part IX

Department of Education

34 CFR Chapter VI

Federal Student Assistance Programs; Improved Oversight; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Federal Student Assistance Programs Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Secretary invites comments on the Department of Education's proposal for improved oversight of the student aid programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). An early draft of the proposal was posted on the World Wide Web on December 6, 1995. The Secretary particularly invites comments on the Department's plans to provide regulatory relief to institutions of higher education that have consistently demonstrated a very high level of performance in administering Title IV programs and strong financial responsibility.

The Secretary intends to develop a notice of proposed rulemaking, with an opportunity for further public comment, to implement parts of the draft proposal after considering the comments received in response to this advance notice. Other parts of the proposal may be implemented through administrative actions by the Department. Still others may require statutory changes.

DATES: Comments may be submitted until March 4, 1996.

ADDRESSES: Adam Ochlis, U.S. Department of Education, 600 Independence Avenue, SW (Room 4050, ROB–3), Washington, DC 20202 or, by e-mail, adam__ochlis@ed.gov

FOR FURTHER INFORMATION CONTACT: Adam Ochlis, telephone (202) 708–9104. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Department of Education has recently undertaken a series of initiatives to simplify regulations and administrative processes for the Federal student aid programs authorized by Title IV of the HEA and to ensure compliance with the requirements of those programs. In an effort to provide regulatory relief, on April 25, 1995, the Secretary invited institutions of higher education to submit proposals to reinvent the administration of those programs through the use of the experimental sites authority in section 487A(d) of the HEA. 60 FR 20326. In June 1995, the Secretary completed a page-by-page review of all student financial aid regulations to identify those that should be eliminated or improved and reported the results of the review to the President.

On August 8, 1995, the Secretary announced his intention to expand the Quality Assurance Program under section 487A of the HEA by increasing the number of participating institutions and using the experimental sites authority to encourage management innovation. 60 FR 40446.

In late November and early December 1995, the Secretary published several sets of regulations that will (1) reduce administrative and paperwork burdens on schools, students, and their families; (2) strengthen the Department's oversight of the student aid programs by focusing compliance efforts; (3) ensure that better consumer information is disclosed by schools to students and their families; and (4) make further improvements in the William D. Ford Federal Direct Loan Program. The Secretary will also consider whether to develop proposals for statutory amendments to eliminate unnecessary administrative burden.

At the same time, the Department has undertaken management initiatives to ensure that institutions participating in the student aid programs comply with administrative and fiscal requirements. Since January 1993, the Department has terminated the participation of more than 300 institutions—nearly twice the number of the previous seven years combined. The Secretary believes the Department's strengthened enforcement has both deterred unqualified institutions from applying to participate and improved compliance by participating institutions. The Department is developing a risk analysis system and case management techniques to further improve its ability to focus its monitoring and enforcement activities on institutions that pose the greatest risk to Federal funds.

Proposal for Improved Oversight in Federal Student Aid

The draft proposal on which the Secretary invites comments builds upon the Department's actions to date. Under the proposal, the Department would adopt regulations to provide further relief from administrative burden, particularly to institutions that have records of outstanding performance in administering Title IV programs and strong financial responsibility. Because such regulatory relief would permit a redeployment of resources, the Department would focus its monitoring and oversight activities on institutions that present a high risk to Federal funds. Finally, the Department would work to improve the ability of students to obtain information about the educational programs they are considering for enrollment.

On December 6, 1995, the Department posted the draft proposal on its World Wide Web home page under the subheading of the Office of Postsecondary Education. The Department has also presented the proposal to some national higher education associations and the National Advisory Committee on Institutional Participation and Oversight. Further presentations are planned for the National Advisory Committee on Student Financial Assistance and representatives of institutions, States, accrediting agencies, national higher education associations, and other members of the higher education community.

The Secretary welcomes comments on all aspects of the *Proposal for Improved Oversight in Federal Student Aid.* An updated version of the proposal appears immediately after the questions below. In particular, the Secretary requests comments on the following questions:

1. The proposal states the Department's intention to provide extensive regulatory relief to institutions that have consistently demonstrated outstanding administration of Title IV programs and strong financial responsibility.

(a) What criteria should the Department use to determine that an institution has consistently demonstrated outstanding administration of Title IV programs?

(b) What criteria should the Department use to determine that an institution is financially strong? How should the criteria for financial strength vary by sector (public institutions, private non-profit institutions, and private for-profit institutions)?

2. The proposal suggests examples of areas in which regulatory relief could be provided to institutions with outstanding records in administering Title IV programs and strong financial responsibility. In what other areas could administrative burden on these institutions be eased? How much lead time would institutions need before this relief was provided?

3. How should the Department ensure the continued administrative excellence and financial strength of the institutions that are provided extensive regulatory relief?

4. The proposal cites examples of administrative relief that the Department has provided and will provide to all participating institutions. In what other areas could administrative burden be reduced without statutory change or diminished accountability for Federal funds?

5. The proposal describes the Department's efforts to provide regulatory relief to institutions participating in the Quality Assurance program. Should the Department propose regulations to set eligibility criteria for specific forms of relief related to institutional performance in specific administrative areas?

6. The proposal describes management practices and possible statutory changes that the Department is considering to improve its oversight of institutions that pose a high risk to Federal funds. What other administrative and regulatory measures within current statutory authority should the Department consider to prevent unqualified institutions from participating in Title IV programs in the first instance and to terminate the participation of those that should not continue? What additional statutory changes should the Department consider for these purposes?

7. The proposal describes some characteristics of an institution that might indicate that it should be subjected to greater monitoring and oversight. Are there other indicators (for example, an adverse opinion on a financial statement, or a material finding on a compliance audit) that the Department should consider for this purpose?

8. The proposal describes efforts undertaken by the Department to improve students' access to information about educational programs. What other steps should the Department take to accomplish this objective? Should the Department use such student consumer information about performance, such as completion and graduation rates, in identifying institutions for regulatory relief or for heightened scrutiny?

An updated version of the draft proposal follows.

Proposal for Improved Oversight in Federal Student Aid (Draft—Updated January 1996)

The Department of Education is proposing to strengthen and restructure its oversight of institutions that are participating in Title IV student aid programs. Under this proposal, the Department would continue to increase its oversight of institutions that pose significant risks to Federal funds and of new institutions, which may experience problems in administering Title IV programs. The Department would also provide regulatory relief to institutions that have consistently demonstrated a very high level of performance in administering Title IV programs and strong financial responsibility. Because increased regulatory relief would reduce the Departmental resources needed to monitor institutions that pose little risk to Federal funds, the Department could concentrate its monitoring resources on institutions that pose greater risk. This proposal builds upon regulatory relief initiatives and efforts to strengthen the monitoring and oversight of at-risk institutions that are already underway in the Department.

The Department will use this proposal to advance discussions with Congress and the higher education community on the role of the Federal government in managing Title IV programs and providing better information to students. The Department requests comments and suggestions on this proposal and other ideas for improving the system of oversight of Federal student aid programs. The Department will work closely with the higher education community to develop the specifics of the proposal, including administrative and financial performance criteria to identify institutions eligible for regulatory relief and institutions needing increased oversight and support.

Regulatory Relief

Under the proposal, the Department would engage in regulatory relief on two levels. First, the Department would continue to reinvent its regulations to reduce administrative and paperwork burden on all institutions where overly restrictive requirements do not improve accountability or protect the Federal fiscal interest. The Department has already streamlined the recertification application and revised the FAFSA form to include all statutorily-required student certifications that were previously on separate forms. The Department is also developing a less complex refund policy for all institutions; ultimately, statutory changes would be necessary to simplify the refund policy to the extent desired.

Second, under this proposal, institutions that have consistently demonstrated outstanding administration of Title IV programs and strong financial responsibility would be eligible for additional regulatory relief. The Department would use its experimental sites authority to provide this flexibility.

Possible criteria for determining that an institution has demonstrated outstanding administration of Title IV programs could include—

- An unqualified opinion on financial statements;
- No material findings in compliance audits for the previous five years;
- Demonstrably sound internal controls (such as accounting, financial, and internal management controls);
- Low default rates (adjustments would be made for institutions with a small percentage of students borrowing);
- A history of successful participation in Title IV programs, as indicated by such factors as the duration and extent of participation in different kinds of Title IV programs (such as the student loan, Pell grant, and campus-based programs) and the quality of administrative performance in those programs;
- Full unqualified certification; and
- No adverse actions by accrediting agencies during the institution's last two full accreditation reviews.

To assess financial responsibility, the Department would develop different financial responsibility standards for different sectors. Because different accounting standards are applicable to different sectors, financial statements are not consistent across sectors. The Department would develop financial indicators that, although different, nevertheless measure financial health across all three sectors.

Institutions that met the criteria for strong administrative and financial performance would be eligible for such regulatory relief as less frequent recertification, less frequent submission of compliance audits, and exemption from certain regulatory requirements (such as those relating to multiple and delayed disbursement, verification, and entrance and exit counseling). A significant percentage of the departmental resources currently used to oversee and monitor the requirements for strong institutions would be used to focus more resources on at-risk institutions.

Institutions that did not meet all the criteria for strong Title IV administrative and financial performance would still be able to apply for selective regulatory relief. The Department is already providing regulatory relief on a case-by-case basis to a large number of institutions under the April 25, 1995 experimental sites initiative referred to earlier in this notice. Under the August 8, 1995 Quality Assurance Program initiative, also referred to earlier, participating institutions may request specific regulatory relief on the basis of their improved administrative capability.

Increased Monitoring and Oversight of At-Risk Institutions

Under the proposal, the Department would increase monitoring and oversight of at-risk institutions. At-risk institutions might include those subjected to a limitation, suspension, or termination action in the previous several years; those on provisional certification (including all new institutions); those on reimbursement; or those subject to termination because of high default rates (including institutions appealing these rates). At-risk institutions would be subject to the full set of Department regulations and increased oversight and would receive increased technical assistance from the Department. Examples of increased regulation and oversight for at-risk institutions that the Department could implement through changes in administrative practices include—

- At-risk institutions would face a higher probability of intensive program reviews by the Department;
- At-risk institutions with a history of deficiencies would be subject to termination actions by the Department unless they improved their performance in the administration of Title IV programs to adequate levels within specific time frames;
- At-risk institutions that had two or three major program review findings, such as failure to implement satisfactory progress standards or failure to adhere to the refund policy, would be terminated from participation in all Title IV programs; and
- New institutions that did not demonstrate good performance would remain on provisional certification for five years rather than for three years, as is currently required.

Some changes could be effected only by statutory amendments. Possible statutory changes that the Department is considering include—

- Requiring a personal financial guarantee against liabilities from the owner of any proprietary institution placed on provisional certification and holding individuals with financial authority and responsibility at proprietary institutions personally liable for an institution's unpaid refunds;
- Holding institutions that unsuccessfully appeal high default rates liable for the default costs and subsidies that are paid by the Department on loans to that school during the appeal process. The Department could also require a school that chooses to receive loans during the appeal process to post surety in an amount sufficient to cover these costs;
- Extending to all non-degree vocational programs the current requirement that short-term vocational programs graduate and place 70 percent of their students; and
- Permitting the Department to establish a new expiration date for a Program Participation Agreement for at-risk institutions and thus require a full application for recertification and enable the Department to make decisions based on current information.

The Department is developing the administrative and information systems needed to carry out the improved oversight of at-risk institutions. These will include a system of risk analysis incorporating a variety of factors (for example, high default rates and material findings in compliance audits or program reviews) that will help identify administrative and financial problems. The risk analysis system will enable the Department to improve its targeting of institutions for compliance reviews based on administrative and financial performance and concentrate resources on institutions with potentially serious problems. Making this system viable will require improvement of information in the Department's databases such as the National Student Loan Data System, the full development of the Postsecondary Education Participants System, and the development of good tracking systems. The Department is taking steps to increase data integrity and is committed to providing the systems required.

To improve its oversight of at-risk institutions, the Department is moving toward a new approach for monitoring institutional performance in Title IV programs. Currently, the Department reviews institutional performance through four largely independent processes—recertification, analysis of financial statements, review of compliance audits, and program review. While recertification requires some cross-analysis of these different areas, the system does not otherwise facilitate decisions based on all the information the Department has concerning an institution. The new system will consolidate these processes as much as possible by using case management as the core process. This will allow decision-making based on all information concerning a school that may be relevant to Title IV compliance, including information supplied by outside entities such as accrediting agencies.

Student Information

The improved oversight system would also ensure that institutions provide better information about educational programs for students to use in making informed decisions about where to enroll. This information would help ensure that market forces work better to eliminate inadequate institutions and programs from participation in Title IV programs and help students make better decisions.

Under the Student Right to Know Act, all institutions must make their completion and graduation rates available in their catalogs or other material readily available to all prospective students who request this information. The provision of this information should allow a prospective student to consider the likelihood of completing the program at an institution, the potential benefit to be derived from investing the required time and money in that program, and similar information about programs at other institutions. Final regulations to implement the Student Right to Know Act were published on December 1, 1995. 60 FR 61776. These regulations require institutions to begin disclosing completion and graduation rates for students who enter the institution after July 1, 1996. Completion and graduation rates will be calculated for full-time, undergraduate certificate- or degree-seeking students.

In addition to information required under the Student Right to Know Act, the Administration has proposed legislation that would require institutions that offer non-degree programs to report information about these programs and information on the outcomes of previous students to one-stop career centers that would provide this information to prospective students. This information could include completion rates, placement rates, licensure exam pass rates, or the percentage of graduates that meet certain skill standards. Although the specific provisions included in the Administration bill were not passed, the two versions of the job training bill being discussed by the Congress in late January included related provisions.

The Department will continue to develop and support legislation and efforts to improve information for students and families on the outcomes of both degree and non-degree programs at institutions participating in the Title IV student aid programs. The Department plans to continue this focus in specific proposals included in the next reauthorization of the HEA.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this draft proposal. Comments will be available for public inspection, during and after the comment period, in Room 4050, Regional Office Building 3,

7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Dated: January 29, 1996.

Richard W. Riley,

Secretary of Education.

[FR Doc. 96–2262 Filed 2–1–96; 8:45 am]

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federal register

Friday
February 2, 1996

Part X

The President

Executive Order 12987—Amendment to Executive Order No. 12964

Federal Register
Vol. 61, No. 23
Friday, February 2, 1996

Presidential Documents

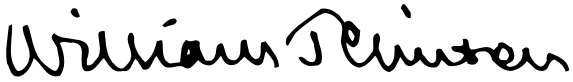
Title 3—

The President

Executive Order 12987 of January 31, 1996

Amendment to Executive Order No. 12964

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and to facilitate the work of the Commission on United States-Pacific Trade and Investment Policy, it is hereby ordered that Executive Order No. 12964 of June 21, 1995, is amended (i) in section 1(a) by inserting in the second sentence ''up to 20'' in place of ''15'', and (ii) in section 2(a) by inserting in the first sentence ''about December 31, 1996,'' in place of ''before February 1, 1996,''.



THE WHITE HOUSE,
January 31, 1996.

[FR Doc. 96–2407
Filed 2–1–96; 8:45 am]
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Federal Register

Vol. 61, No. 23

Friday, February 2, 1996

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The United States Government Manual	**523–5227**

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3539–3776 1
3777–4206 2

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR
Ch. III 3539

3 CFR
Proclamations:
6863 3777
Executive Orders:
12964 (Amended by EO 12987) 4205
12987 4205

5 CFR
530 3539
531 3539
534 3539
550 3539
575 3539
581 3539
582 3539
630 3539

7 CFR
Ch. XLII 3779
905 3544
944 3544
945 3546
1485 3548
1901 3779
1940 3779
1951 3779
2003 3779
4001 3787
4284 3779
Proposed Rules:
920 3604
999 3606
1980 3853
4279 3853
4287 3853

10 CFR
Proposed Rules:
72 3619
1035 3877
1036 3877

11 CFR
100 3549
104 3549
105 3549
109 3549
114 3549
Proposed Rules:
100 3621
110 3621
114 3621

12 CFR
701 3788
709 3788
741 3788

14 CFR
39 .....3550, 3792, 3793
97 .....3552, 3795, 3796, 3797
Proposed Rules:
39 3882
73 3884

15 CFR
771 3555
799 3555

16 CFR
22 3799

19 CFR
4 3568
132 3569
148 3569

21 CFR
80 3571
Proposed Rules:
101 3885

22 CFR
9b 3800

25 CFR
Proposed Rules:
Ch. VI 3623

29 CFR
Proposed Rules:
Ch. XIV 3624
1904 4030
1952 4030

30 CFR
206 3800
260 3800
Proposed Rules:
931 3625
943 3628

31 CFR
595 3805

32 CFR
311 3813
321 3814

34 CFR
668 3776
690 3776
Proposed Rules:
Ch. VI 4198
201 3772

40 CFR
52 .....3572, 3815, 3817, 3819, 3821, 3824
70 3827
80 .....3832, 3575, 3578, 3579, 3581, 3582, 3584, 3586, 3588, 3589, 3591
81 3591
281 3599
Proposed Rules:
52 .....3631, 3891, 3892
70 3893
76 3893
80 .....3894, 3632, 3633, 3634, 3635
81 3635

41 CFR
302–11 3838

44 CFR
Proposed Rules:
62 3635

46 CFR
Proposed Rule:
108 4132

110.....4132
111.....4132
112.....4132
113.....4132
161.....4132

47 CFR
15.....3600
90.....3600, 3841

Proposed Rules:
20.....3644
61.....3644
69.....3644
76.....3657

48 CFR
228.....3600
252.....3600
3509.....3846

Proposed Rules:
909.....3877

50 CFR
14.....3849
229.....3851
620.....3602
672.....3602

Proposed Rules:
23.....3894
285.....3666

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Economics Management Staff

Availability of information to the public; CFR part removed; published 2-2-96

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Peanuts domestically produced; published 1-3-96

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Rural technology and cooperative development grants; published 2-2-96

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Rural technology and cooperative development grants; published 2-2-96

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Rural technology and cooperative development grants; published 2-2-96

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Rural technology and cooperative development grants; published 2-2-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Marine mammals:

Commercial fishing operations--

Commercial fisheries authorization; list of fisheries categorized according tofrequency of incidental takes; delay of effective date; published 2-2-96

FEDERAL TRADE COMMISSION

Industry guides:

Hosiery industry; published 2-2-96

PANAMA CANAL COMMISSION

Acquisition regulations:

Debarment, suspension and ineligibility; published 2-2-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:

Special conditions--

Hamilton Standard model 568F propeller; published 1-3-96

TREASURY DEPARTMENT

Foreign Assets Control Office

Foreign assets control regulations:

Terrorism sanctions regulations; implementation; published 2-2-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Melons grown in Texas; comments due by 2-5-96; published 1-4-96

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase purchase programs:

Foreign markets for agricultural commodities; development agreements; comments due by 2-9-96; published 1-10-96

AGRICULTURE DEPARTMENT

Food and Consumer Service

Food distribution program:

Donation of foods for use in U.S., territories, and possessions, and areas under jurisdiction--

Disaster and distress situations; food assistance; comments due by 2-6-96; published 12-8-95

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Pacific Coast groundfish; comments due by 2-5-96; published 1-4-96

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Federal Power Act:

Real-time information networks and standards of conduct; comments due by 2-5-96; published 12-21-95

Practice and procedure:

Hydroelectric projects; relicensing procedures; rulemaking petition; comments due by 2-5-96; published 1-10-96

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Maleic hydrazide, etc.; comments due by 2-5-96; published 12-6-95

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Missouri; comments due by 2-5-96; published 12-20-95

Television broadcasting:

Cable television services; definitions for purposes of cable television must-carry rules; comments due by 2-5-96; published 1-24-96

FEDERAL RESERVE SYSTEM

International banking operations (Regulation K):

Foreign banks home state selection under Interstate Act; comments due by 2-5-96; published 12-28-95

Truth in lending (Regulation Z):

Consumer credit; finance charges; comments due by 2-9-96; published 12-21-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Additional supplier standards; comments due by 2-9-96; published 12-11-95

Physician fee schedule (1996 CY); payment policies and relative value unit adjustments; comments due by 2-6-96; published 12-8-95

Skilled nursing facilities and home health agencies; uniform electronic cost reporting requirements; comments due by 2-5-96; published 12-5-95

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Federal leases; natural gas valuation regulations; amendments

Meeting; comments due by 2-5-96; published 12-13-95

INTERIOR DEPARTMENT

National Park Service

National Park System:

Alaska; protection of wildlife and other values and purposes on all navigable waters within park boundaries, regardless of ownership of submerged lands; comments due by 2-5-96; published 12-5-95

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Underground coal mines--

Flame-resistant conveyor belts; requirements for approval; comments due by 2-5-96; published 12-20-95

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:

Plan assets; participant contributions; comments due by 2-5-96; published 12-20-95

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright claims; group registration of photographs; comments due by 2-9-96; published 1-26-96

NATIONAL LABOR RELATIONS BOARD

Requested single location bargaining units in representation cases; appropriateness; comments due by 2-8-96; published 1-22-96

PERSONNEL MANAGEMENT OFFICE

Employment:

Federal employment information; agency funding; comments due by 2-7-96; published 1-8-96

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Elementary or secondary school students, full-time; revisions; comments due by 2-5-96; published 12-7-95

Living in the same household (LISH) and lump-sum death payment (LSDP) rules; revision; comments due by 2-5-96; published 12-6-95

Supplemental security income:

Aged, blind, and disabled--

Income exclusions; comments due by 2-5-96; published 12-6-95

TRANSPORTATION DEPARTMENT

Coast Guard

Navigation aids:

Lights on artificial islands and fixed structures and other facilities; conformance to IALA standards; comments due by 2-9-96; published 1-10-96

Regattas and marine parades:

Permit application procedures; comments due by 2-9-96; published 12-26-95

TRANSPORTATION DEPARTMENT

Military personnel:

Coast Guard Military Records Correction Board; final decisions reconsideration; comments due by 2-9-96; published 12-11-95

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 2-5-96; published 12-5-95

British Aerospace; comments due by 2-7-96; published 1-3-96

Jetstream; comments due by 2-9-96; published 11-28-95

Sensenich Propeller Manufacturing Co., Inc.; comments due by 2-5-96; published 12-7-95

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Public lands highways funds; elimination; CFR part removed; comments due by 2-5-96; published 12-6-95

Motor carrier safety standards:

Driver qualifications--

Vision and diabetes; limited exemptions; comments due by 2-7-96; published 1-8-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Manufacturers' obligations to provide notification and remedy without charge to owners of vehicles or items not complying with safety standards; comments due by 2-5-96; published 1-4-96

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Hazardous liquid transportation--

Open head fiber drum packaging; extension of authority for shipping; comments due by 2-5-96; published 1-9-96

TREASURY DEPARTMENT

Comptroller of the Currency

National banks; extension of credit to insiders and transactions with affiliates; comments due by 2-9-96; published 12-11-95

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Payments under Judgments and Private Relief Acts; claims procedures; comments due by 2-7-96; published 1-8-96

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**. A cumulative list of Public Laws for the First Session of the 104th Congress was published in Part II of the **Federal Register** on February 1, 1996.

Last List January 30, 1996