

# Federal Register

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- FOR: Any person who uses the Federal Register and Code of Federal Regulations.
- WHO: Sponsored by the Office of the Federal Register.
- WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- 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.

CHICAGO, IL

- WHEN: June 11, 1996 at 9:00 am
- WHERE: Metcalfe Federal Building, Conference Room  
328, 77 West Jackson, Chicago, Illinois  
60604
- RESERVATIONS: 1-800-688-9889

WASHINGTON, DC

[Two Sessions]

- WHEN: June 18, 1996 at 9:00 am, and  
June 25, 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)
- RESERVATIONS: 202-523-4538



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**Reader Aids**

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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.

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# Rules and Regulations

Federal Register

Vol. 61, No. 103

Tuesday, May 28, 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

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 95-089-2]

#### Mexican Fruit Fly Regulations; Addition of Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations by adding California to the list of quarantined States and by designating portions of Los Angeles County and San Diego County, CA, as regulated areas. The interim rule was necessary to impose certain restrictions on the interstate movement of regulated articles from the regulated areas in California in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States.

**EFFECTIVE DATE:** The interim rule was effective on January 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247; or e-mail: mstefan@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

In an interim rule effective January 22, 1996, and published in the Federal Register on January 26, 1996 (61 FR 2391-2393, Docket No. 95-089-1), we amended the Mexican fruit fly regulations in 7 CFR 301.64 by quarantining the State of California and designating as regulated areas portions

of Los Angeles County and San Diego County, CA.

Comments on the interim rule were required to be received on or before March 26, 1996. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, the National Environmental Policy Act, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 61 FR 2391-2393 on January 26, 1996.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 21st day of May 1996.

William S. Wallace,

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96-13282 Filed 5-24-96; 8:45 am]

BILLING CODE 3410-34-P

#### Farm Service Agency

#### 7 CFR Part 703

RIN 0560-AE83

#### Wetlands Reserve Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes obsolete regulations pertaining to the Wetlands Reserve Program (WRP). Under the Department of Agriculture Reorganization Act of 1994, Public Law 103-354, WRP program authority was transferred to the Natural Resources

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

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Zavodny, Chief, Conservation Programs Branch, Conservation and Environmental Protection Division, USDA, FSA, P.O. Box 2415, Ag Box 0513, Washington, DC 20013-2415 or call 202-720-7333.

#### SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of these determinations.

#### Environmental Evaluation

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

#### Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

#### Executive Order 12372

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

**Paperwork Reduction Act**

The amendments to 7 CFR Part 703 set forth in this final rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

**Background**

This final rule removes 7 CFR Part 703 pertaining to the Wetlands Reserve Program (WRP). WRP program authority was transferred from the Farm Service Agency to the Natural Resource Conservation Service under the Department of Agriculture Reorganization Act of 1994, Public Law No. 103-354. Therefore, 7 CFR Part 703 is obsolete. Regulations for the WRP are now located in 7 CFR Part 620.

**List of Subjects in 7 CFR Part 703**

Administrative practices and procedures, agriculture, Flood plains, Grant programs—Agriculture, Grant programs—natural resources, Reporting and recordkeeping requirements, Technical assistance, Wetlands.

**PART 703—[REMOVED]**

Accordingly, under the Authority of 7 U.S.C. 2202 and 7 CFR 2.42, 7 CFR Part 703 is removed.

Signed at Washington, DC, on May 20, 1996.

Bruce R. Weber,

*Administrator, Farm Service Agency.*

[FR Doc. 96-13211 Filed 5-24-96; 8:45 am]

BILLING CODE 3410-05-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 96-CE-07-AD; Amendment 39-9593; AD 96-09-17]

RIN 2120-AA64

**Airworthiness Directives; Jetstream Aircraft Limited Jetstream Models 3101 and 3201 Airplanes; Correction**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action makes a correction to Airworthiness Directive (AD) 96-09-17 concerning all Jetstream Aircraft Limited (Jetstream) Models 3101 and 3201 airplanes, which published in the Federal Register on May 7, 1996 (61 FR 20644). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently

requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the lower surface of the wing. The word "lower" is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the "upper" surface of the wing. This action corrects the AD to reflect this change.

**EFFECTIVE DATE:** June 11, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

**SUPPLEMENTARY INFORMATION:** On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96-09-17, Amendment 39-9593 (61 FR 20644, May 7, 1996), which applies to Jetstream Models 3101 and 3201 airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the lower surface of the wing aft of the protected area.

**Need for the Correction**

The AD incorrectly references the "\* \* \* lower surface of the wing \* \* \*" instead of the upper surface of the wing. Jetstream Models 3101 and 3201 airplanes are designed with the wings sitting low on the body of the airplane, which would not allow the pilot to visually check the lower surface of the wings on the airplane during flight without exiting the airplane.

**Correction of Publication**

Accordingly, the publication of May 7, 1996 (61 FR 20644), of Amendment 39-9593; AD 96-09-17, which was the subject of FR Doc. 96-10727, is corrected as follows:

**§ 39.13 [Corrected]**

On page 20646, in the first column, § 39.13, paragraph (a)(1) of the AD, line 26 from the top of the column, correct "—Accumulation of ice on the lower surface" to read "—Accumulation of ice on the upper surface".

Action is taken herein to clarify this requirement of AD 96-09-17 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,  
*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 96-13063 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-U

**14 CFR Part 39**

[Docket No. 96-CE-06-AD; Amendment 39-9592; AD 96-09-16]

RIN 2120-AA64

**Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes; Correction**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action makes a correction to Airworthiness Directive (AD) 96-09-16 concerning all Fairchild Aircraft (Fairchild) SA226 and SA227 series airplanes, which published in the Federal Register on May 7, 1996 (61 FR 20643). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the lower surface of the wing. The word "lower" is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the "upper" surface of the wing. This action corrects the AD to reflect this change.

**EFFECTIVE DATE:** June 11, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

**SUPPLEMENTARY INFORMATION:** On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96-09-16, Amendment 39-9592 (61 FR 20643, May 7, 1996), which applies to Fairchild SA226 and SA227 series airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the lower surface of the wing aft of the protected area.

**Need for the Correction**

The AD incorrectly references the “\* \* \* lower surface of the wing \* \* \*” instead of the upper surface of the wing. Fairchild SA226 and SA227 series airplanes are designed with the wings sitting low on the body of the airplane, which would not allow the pilot to visually check the lower surface of the wings on the airplane during flight without exiting the airplane.

**Correction of Publication**

Accordingly, the publication of May 7, 1996 (61 FR 20643), of Amendment 39-9592; AD 96-09-16, which was the subject of FR Doc. 96-10724, is corrected as follows:

**§ 39.13 [Corrected]**

On page 20644, in the second column, § 39.13, paragraph (a)(1) of the AD, line 20 from the top of the column, correct “—Accumulation of ice on the lower surface” to read “—Accumulation of ice on the upper surface”.

Action is taken herein to clarify this requirement of AD 96-09-16 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,  
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-13062 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-U

**14 CFR Part 39**

[Docket No. 96-CE-01-AD; Amendment 39-9587; AD 96-09-11]

RIN 2120-AA64

**Airworthiness Directives; de Havilland, Inc. DHC-6 Series Airplane; Correction**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

**SUMMARY:** This action makes a correction to Airworthiness Directive (AD) 96-09-11 concerning de Havilland DHC-6 series airplanes, which was published in the Federal Register on May 7, 1996 (61 FR 20616). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the upper surface of the wing. The word “upper”

is wrong in the second cue. The intent of the AD in paragraph (a) (1), first bullet, second cue, is to require the pilot or crew member look at the “lower” surface of the wing. This action corrects the AD to reflect this change.

**EFFECTIVE DATE:** June 11, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

**SUPPLEMENTARY INFORMATION:** On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96-09-11, Amendment 39-9587 (61 FR 20616, May 7, 1996), which applies to de Havilland DHC-6 series airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bullet paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the upper surface of the wing aft of the protected area.

**Need for the Correction**

The AD incorrectly references the “upper surface of the wing” instead of the lower surface of the wing. The de Havilland DHC-6 series airplanes are designed with the wings sitting high on the body of the airplane, which would not allow the pilot to visually check the upper surface of the airplane during flight without exiting the airplane.

**Correction of Publication**

Accordingly, the publication of May 7, 1996 (61 FR 20616), of Amendment 39-9587; AD 96-09-11, which was the subject of FR Doc. 96-10728, is corrected as follows:

**§ 39.13 [Corrected]**

On page 20635, in the third column, § 39.13, paragraph (a) (1) of the AD, the 19th line from the bottom of the column, correct “—Accumulation of ice on the upper surface” to read “—Accumulation of ice on the lower surface”.

Action is taken herein to clarify this requirement of AD 96-09-11 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,  
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-13057 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-U

**14 CFR Part 39**

[Docket No. 96-CE-05-AD; Amendment 39-9591; AD 96-09-15]

RIN 2120-AA64

**Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes; Correction**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

**SUMMARY:** This action makes a correction to Airworthiness Directive (AD) 96-09-15 concerning all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes, which was published in the Federal Register on May 7, 1996 (61 FR 20641). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the upper surface of the wing. The word “upper” is wrong in the second cue. The intent of the AD in paragraph (a) (1), first bullet, second cue, is to require the pilot or crew member to look at the “lower” surface of the wing. This action corrects the AD to reflect this change.

**EFFECTIVE DATE:** June 11, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

**SUPPLEMENTARY INFORMATION:** On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96-09-15, Amendment 39-9591 (61 FR 20641, May 7, 1996), which applies to all Cessna Models 208 and 208B airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the upper surface of the wing aft of the protected area.

**Need for the Correction**

The AD incorrectly references the “. . . upper surface of the wing. . .” instead of the lower surface of the wing. Cessna Models 208 and 208B airplanes are designed with the wings sitting high on the body of the airplane, which would not allow the pilot to visually check the upper surface of the wings on the airplane during flight without exiting the airplane.

**Correction of Publication**

Accordingly, the publication of May 7, 1996 (61 FR 20641), of Amendment 39-9591; AD 96-09-15, which was the subject of FR Doc. 96-10729, is corrected as follows:

**§ 39.13 [Corrected]**

On page 20642, in the third column, § 39.13, paragraph (a)(1) of the AD, line 15 from the top of the column, correct “—Accumulation of ice on the upper surface” to read “—Accumulation of ice on the lower surface”.

Action is taken herein to clarify this requirement of AD 96-09-15 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,  
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-13061 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-U

**14 CFR Part 39**

[Docket No. 96-CE-04-AD; Amendment 39-9590; AD 96-09-14]

RIN 2120-AA64

**Airworthiness Directives; Dornier 228 Series Airplanes; Correction**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action makes a correction to Airworthiness Directive (AD) 96-09-14 concerning all Dornier 228 series airplanes, which was published in the Federal Register on May 7, 1996 (61 FR 20639). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the upper surface of the wing. The word “upper”

is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the “lower” surface of the wing. This action corrects the AD to reflect this change.

**EFFECTIVE DATE:** June 11, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

**SUPPLEMENTARY INFORMATION:** On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96-09-14, Amendment 39-9590 (61 FR 20639, May 7, 1996), which applies to all Dornier 228 series airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the upper surface of the wing aft of the protected area.

**Need for the Correction**

The AD incorrectly references the “\* \* \* upper surface of the wing \* \* \*” instead of the lower surface of the wing. Dornier 228 series airplanes are designed with the wings sitting high on the body of the airplane, which would not allow the pilot to visually check the upper surface of the wings on the airplane during flight without exiting the airplane.

**Correction of Publication**

Accordingly, the publication of May 7, 1996 (61 FR 20639), of Amendment 39-9590; AD 96-09-14, which was the subject of FR Doc. 96-10722, is corrected as follows:

**§ 39.13 [Corrected]**

On page 20641, in the first column, § 39.13, paragraph (a)(1) of the AD, line 12 from the top of the column, correct “—Accumulation of ice on the upper surface” to read “—Accumulation of ice on the lower surface”.

Action is taken herein to clarify this requirement of AD 96-09-14 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,  
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-13060 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-U

**14 CFR Part 39**

[Docket No. 96-CE-03-AD; Amendment 39-9589; AD 96-09-13]

RIN 2120-AA64

**Airworthiness Directives; Beech Aircraft Corporation Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D Airplanes; Correction**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action makes a correction to Airworthiness Directive (AD) 96-09-13 concerning Beech Aircraft Corporation (Beech) Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes, which published in the Federal Register on May 7, 1996 (61 FR 20638). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the lower surface of the wing. The word “lower” is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the “upper” surface of the wing. This action corrects the AD to reflect this change.

**EFFECTIVE DATE:** June 11, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

**SUPPLEMENTARY INFORMATION:** On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96-09-13, Amendment 39-9589 (61 FR 20638, May 7, 1996), which applies to Beech Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references

accumulation of ice on the lower surface of the wing aft of the protected area.

#### Need for the Correction

The AD incorrectly references the “\* \* \* lower surface of the wing \* \* \*” instead of the upper surface of the wing. Beech Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes are designed with the wings sitting low on the body of the airplane, which would not allow the pilot to visually check the lower surface of the airplane during flight without exiting the airplane.

#### Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20638), of Amendment 39-9589; AD 96-09-13, which was the subject of FR Doc. 96-10723, is corrected as follows:

#### § 39.13 [Corrected]

On page 20639, in the second column, § 39.13, paragraph (a)(1) of the AD, line 10 from the top of the column, correct “—Accumulation of ice on the lower surface” to read “—Accumulation of ice on the upper surface”.

Action is taken herein to clarify this requirement of AD 96-09-13 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996

Michael Gallagher,  
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-13059 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-U

#### 14 CFR Part 39

[Docket No. 96-CE-02-AD; Amendment 39-9588; AD 96-09-12]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileiro de Aeronautico, S.A. Models EMB-110P1 and EMB-110P2 Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

**SUMMARY:** This action makes a correction to Airworthiness Directive (AD) 96-09-12 concerning Empresa Brasileiro de Aeronautico, S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 airplanes, which published in the Federal Register on May 7, 1996 (61 FR 20636). That publication

incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the lower surface of the wing. The word “lower” is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the “upper” surface of the wing. This action corrects the AD to reflect this change.

**EFFECTIVE DATE:** June 11, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

**SUPPLEMENTARY INFORMATION:** On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96-09-12, Amendment 39-9588 (61 FR 20636, May 7, 1996), which applies to EMBRAER Models EMB-110P1 and EMB-110P2 airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the lower surface of the wing aft of the protected area.

#### Need for the Correction

The AD incorrectly references the “\* \* \* lower surface of the wing \* \* \*” instead of the upper surface of the wing. The EMBRAER Models EMB-110P1 and EMB-110P2 airplanes are designed with the wings sitting low on the body of the airplane, which would not allow the pilot to visually check the lower surface of the airplane during flight without exiting the airplane.

#### Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20636), of Amendment 39-9588; AD 96-09-12, which was the subject of FR Doc. 96-10725, is corrected as follows:

#### § 39.13 [Corrected]

On page 20637, in the second column, § 39.13, paragraph (a) (1) of the AD, the second to the last line from the bottom of the column, correct “—Accumulation of ice on the lower surface” to read “—Accumulation of ice on the upper surface”.

Action is taken herein to clarify this requirement of AD 96-09-12 and to add

this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri, on May 17, 1996.

Michael Gallagher,  
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-13058 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-U

#### 14 CFR Part 39

[Docket No. 95-SW-32-AD; Amendment 39-9634; AD 96-11-09]

RIN 2120-AA64

#### Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters, that requires 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 amendment 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 this 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.

**EFFECTIVE DATE:** July 2, 1996.

**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:** 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 Robinson Model R44 helicopters was published in the Federal Register on February 2, 1996 (61 FR 3882). That action proposed to 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.

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

Two comments were received. One commenter supports the proposal. The other commenter states that the proposal should not be issued since it is unnecessary with little impact on safety. The commenter notes that Robinson Helicopter R44 Service Bulletin SB-7A, revised June 8, 1995, already requires all helicopters to be updated with the low RPM warning horn threshold between 96% to 98% RPM. Additionally, the commenter states that all U.S. registered aircraft have the current revision of the R44 Rotorcraft Flight Manual (RFM) incorporating the governor off limitation.

The FAA does not concur. Manufacturer's Service Bulletins are not mandatory for Part 91 operators. Similarly, flight manual revisions are not required to be inserted in the RFM unless the revision is required by an AD. The FAA has determined that AD action should be taken to ensure that all U.S. operators have incorporated the revision to the Limitations section of the FAA-approved R44 RFM regarding operation of the governor.

The same commenter also disagrees with the proposed action requiring an instructor pilot to be present with a high-time experienced pilot while practicing emergency procedures with the governor off. The commenter notes that since the R44 RFM requires the governor off for autorotations, high-time experienced pilots would only be allowed to practice autorotations with an instructor pilot present. The commenter believes that a pilot should be able to practice autorotations without an instructor.

The FAA concurs. Pilots should be able to reinforce their training by practicing maneuvers in which they have already demonstrated proficiency. Pilots who have received an endorsement from a certified flight instructor to act as a pilot in command of a Robinson R44 helicopter should be allowed to practice emergency procedures training without the assistance of a flight instructor. This final rule is revised to require the Limitations section of the R44 RFM to read "Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for revisions to paragraph (b) to delete the words "with an instructor pilot" from the requirement "flight prohibited with 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 will be affected by this AD, that it will take approximately 0.2 work hour per helicopter to accomplish the actions, and that the average labor rate is \$60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$240.

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, 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 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 96-11-09 Robinson Helicopter Company; Amendment 39-9634. 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 applicable maintenance manual.

(b) Insert page 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 page 2-7 to add the word "inflight" before "system malfunction," and change "and" to "or," so that the affected limitation will state "Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

(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, 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.

(e) This amendment becomes effective on July 2, 1996.

Issued in Fort Worth, Texas, on May 15, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96-13207 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-P

#### 14 CFR Part 39

[Docket No. 95-SW-27-AD, Amendment 39-9633; AD 96-11-08]

RIN 2120-AA64

#### Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters, that currently requires installing a low-rotor RPM caution light and resetting the low-RPM warning unit to activate the warning horn and caution light at 94% to 96% revolutions-per-minute (RPM). This amendment requires installation of an improved throttle governor; an adjustment to the low RPM warning unit threshold to increase the RPM at which the warning horn and caution light activate; and, revisions to the R22 Rotorcraft Flight Manual that prohibit flight with the improved throttle governor selected off, except in certain situations. This amendment is prompted by an FAA Technical Panel review of Model R22 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 this AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter.

**EFFECTIVE DATE:** July 2, 1996.

**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:** A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) by superseding AD 82-23-51, Amendment 39-4645, (48 FR 21894, May 16, 1983), which is applicable to Robinson Helicopter Model R22 helicopters, was published in the Federal Register on December 14, 1995 (60 FR 64129). That action proposed to require installation of an improved throttle governor; an adjustment to the warning unit threshold to increase the RPM at which the warning horn and caution light activate; and, revisions to the R22 Rotorcraft Flight Manual.

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

#### Discussion of Comments

Eight commenters responded to the NPRM. These commenters are the National Transportation Safety Board (NTSB), Helicopter Association International (HAI), Helicopter Association of Australia, Civil Aviation Safety Authority Australia, the Robinson Helicopter Association, the manufacturer, and two helicopter operators. Comments were received on the proposal to increase the threshold of the low rotor RPM warning unit, the proposal to require installation of the improved throttle governor, the proposal to limit operations with the governor selected off, and proposed Rotorcraft Flight Manual (RFM) changes and other general comments. The commenters' positions and the FAA response to each of these positions are summarized as follows:

#### Increase in Threshold of Warning Unit

Three commenters support and no commenters object to the proposal to increase the low rotor RPM warning unit horn and caution light threshold from 95±1% RPM to between 96% and 97% RPM. Therefore, the proposal is adopted as proposed.

#### Installation of Improved Throttle Governor

Three commenters support and five commenters oppose the proposal to require installation of a throttle governor on all Model R22 helicopters. The two commenters from Australia oppose mandating installation of a throttle governor and state that although the throttle governor would reduce pilot workload and enhance public safety, mandatory installation of the governor is unnecessary since no conclusive evidence exists to indicate that a Model R22 accident in their country was caused by abnormally low RPM. Therefore, very few accidents would

have been prevented with a governor installed. Additionally, these two commenters suggest that the FAA allow more time to determine whether implementation of Special Federal Aviation Regulation (SFAR 73) on March 27, 1995, mandating awareness training for low time pilots and special training requirements for flight instructors, will necessitate any further safety action.

Another commenter states that the improved throttle governor is not necessary based upon their analysis of the National Transportation Safety Board (NTSB) accident data for the Model R22 from January 1992 to December 1995. The commenter noted that the overall number of R22 accidents declined with the implementation of SFAR 73 and the issuance of Airworthiness Directive 95-11-09, effective July 14, 1995, prohibiting low "g" maneuvers.

Another commenter states that recent accident statistics show that no R22 accident in 1995 could be attributed to low rotor RPM. The commenter states that the awareness training has had a positive effect and that mechanical solutions should be deleted or put on hold until evidence is available which indicates that the proposed changes are necessary.

A fifth commenter states that the proposal to require installation of the improved throttle governor may not increase safety in any way and may cause additional accidents since some low time pilots may become too reliant on the governor and not realize other difficulties such as carburetor icing.

The FAA does not concur. Although accident data presented indicates that low rotor stall due to improper throttle management has not resulted in recent R22 accidents, several of the 31 fatal accidents in the period from 1981 to the present involving main rotor to fuselage contact have exhibited signs of low rotor stall due to low rotor RPM. Accident records provided by the NTSB indicate that there were 33 non-fatal accidents in a 10 year period, from June 1985 to June 1995, in which failure to maintain rotor RPM was a casual factor. These accidents all resulted in at least substantial damage to the airframe. The FAA's recently completed study indicates that the potential exists for these types of accidents due to throttle mismanagement. Installation of the improved throttle governor will reduce the possibility of throttle mismanagement.

Even with the improved training, as stipulated in SFAR 73, the possibility of M/R stall due to throttle mismanagement still exists. The current

R22 fleet consists of helicopters that have no governors, and that have either throttle/collective governors or throttle governors. The FAA considers issuance of this AD to be necessary due to the different operating characteristics and associated safety implications of this mixed fleet, particularly in the training environment. The differences in flight operating characteristics between the governor configurations are significant and could cause confusion and an unsafe condition for students and low-time pilots, especially while operating in adverse flying conditions. Based on these safety concerns, the proposal to install or upgrade, as appropriate, a governor on the Model R22 helicopters is adopted as proposed.

Another commenter, although supportive of the proposal to require a throttle governor, states that installation of a governor caution light should be mandatory to indicate governor failure.

The FAA does not concur. A governor caution light is not necessary since the main rotor RPM gage and low rotor RPM warning horn and light should provide sufficient information to the pilot to indicate that a governor failure has occurred. This suggestion is beyond the scope of the proposal, is unnecessary, and is not adopted.

#### Operations With the Governor Selected Off

One commenter supports the proposed rule to prohibit flight with the throttle governor selected off, except for system malfunction and emergency procedures training with an instructor pilot. Three commenters oppose this action.

Two commenters state that pilots should be allowed to operate without the throttle governor during all dual training operations with a qualified helicopter flight instructor to ensure the continuing acceptance of the R22 helicopter as a generic piston helicopter trainer.

The FAA does not concur. The FAA considers flight with the governor off to be emergency procedures training and disagrees that the governor should remain off during all flight with a qualified flight instructor to support training for flight in other piston helicopters.

One commenter states that the proposed action is too restrictive and may have a negative impact on safety in that it precludes low-time pilots from continuing to reinforce their training through hands-on flying.

The FAA does not concur. The proposed action does not preclude a low time pilot from practicing flight with the governor selected off when that pilot is

with an instructor. Therefore, there is still the opportunity to continue to reinforce flight training with the governor selected off.

#### RFM Changes and Other General Comments

The manufacturer comments that the R22 Rotorcraft Flight Manual (RFM) requires the governor be selected off for autorotations. It further states that a high time experienced pilot should be able to practice autorotations without an instructor.

The FAA concurs. Pilots should be able to reinforce their training by practicing maneuvers in which they have already demonstrated proficiency. Persons who have received an endorsement from a certified flight instructor to act as a pilot in command of a Robinson R22 helicopter should be allowed to practice emergency procedures training without the assistance of a flight instructor. This final rule is revised to require the Flight and Maneuver Limitations section of the R22 RFM to read "Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

The manufacturer states that the cost estimate in the proposal is \$1,000,000 too high, since only one-half of the 1,014 helicopters will require the complete governor at a cost of \$2,150 per helicopter.

The costs stated in the proposal are estimates. Since it is unknown how many Model R22's will require the upgrade to the throttle/collective governor, there are no data to support a change and therefore the estimated total cost in the proposal will remain unchanged.

The manufacturer also states that the reference to the July 6, 1995 date, the revision date of the Rotorcraft Flight Manual (RFM), in paragraph (d) of the NPRM should be omitted. Additionally, the manufacturer states that the requirement to add page 2-2 to the FAA approved R22 RFM is not appropriate since it is already in the earlier revision to the RFM and is not related to the proposed actions.

The FAA concurs. Changes to page 2-2 of the FAA approved RFM, revised July 6, 1995, do not pertain to the actions of this AD. Therefore, the reference to page 2-2 of the RFM is omitted in this final rule. Also, since the proposal indicated that page 2-7 would be inserted into the RFM, it was necessary to state the revision date, July 6, 1995, of that change. However, this final rule only requires that a specific statement be inserted into the Flight and

Maneuver Limitations section of the RFM and not that the manufacturer's specific revised page be inserted into the RFM; hence, the revision date of July 6, 1995 is no longer needed. Therefore, with the exception of omitting the reference to page 2-2 and reorganization of the requirement to add a statement to the Flight and Maneuver Limitations section of the RFM, this action is adopted as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rules as proposed except for revisions to paragraph (d) to delete the words "with an instructor pilot" from the requirement "flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot," deletion of page 2-2 as referenced, and deletion of the reference to page 2-7.

The FAA estimates that 1,014 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours to install the improved throttle governor, or 7 hours to upgrade the throttle/collective governor, and approximately 0.2 work hour to accomplish the adjustment of the light/warning horn RPM, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$2,150 per helicopter to install the improved throttle governor, or approximately \$500 for upgrading the throttle/collective governor per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,678,988. This cost estimate assumes that no helicopters are currently equipped with a governor and all will need the improved throttle governor installed.

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, 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 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39-4645 (48 FR 21894, May 16, 1983), and by adding a new airworthiness directive (AD), Amendment 39-9633, to read as follows:

AD 96-11-08 Robinson Helicopter Company: Amendment 39-9633. Docket No. 95-SW-27-AD. Supersedes AD 82-23-51, Amendment 39-4645.

*Applicability:* Model R22 helicopters, serial numbers (S/N) 0002 to 2537, 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 (e) 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) revolutions-per-minute (RPM), which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569-1 or -5 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 R22 maintenance manual.

(b) For Model R22 helicopters that do not have a governor currently installed, install a Robinson Helicopter Company KI-67-2 Governor Field Installation Kit in accordance with the kit instructions.

(c) For Model R22 helicopters that have a throttle/collective governor currently installed, upgrade the governor with a Robinson Helicopter Company KI-67-3 Governor Upgrade Kit in accordance with the kit instructions.

(d) Upon accomplishment of paragraphs (b) or (c) of this AD, revise the FAA-approved Robinson Helicopter Company R22 Rotorcraft Flight Manual (RFM) to include the following statement in the Flight and Maneuver Limitations section. This may be accomplished by inserting a copy of this AD into the RFM.

"Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

(e) 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, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through FAA Principal Maintenance Inspectors, 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.

(f) 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 May 15, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96-13206 Filed 5-24-96; 8:45 am]

**BILLING CODE 4910-13-P**

### **14 CFR Part 71**

**[Airspace Docket No. 95-AWA-7]**

### **Modification of the Offutt AFB, Class C Airspace Area; NE**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule will modify the Class C airspace area at Offutt AFB, NE, by eliminating the 1-mile exclusion around the South Omaha Airport due to its closure. In addition, this action will reduce controller workload.

**EFFECTIVE DATE:** 0901 UTC, August 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Bil Nelson, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3075.

#### **SUPPLEMENTARY INFORMATION:**

##### History

On November 1, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace area at Offutt AFB, NE (60 FR 55498). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received concerning the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document will be published subsequently in the Order.

##### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace area at Offutt AFB, NE. This amendment eliminates the 1-mile exclusion around the South Omaha Airport due to its closure. The action returns this airspace to the surface area of the established Class C airspace.

##### Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures.

This final rule will modify the Class C airspace area at Offutt AFB, NE. The

rule will delete the 1-mile airspace exclusion around South Omaha Airport and standardize air traffic operations.

*Costs*

The FAA has determined that the implementation of the final rule to modify the Class C airspace area at Offutt AFB, NE, will result in little or no cost to either the agency or aircraft operators. The elimination of the 1-mile airspace exclusion around the South Omaha Airport will not reduce aviation safety nor increase the risk of a midair collision because that airport is closed. Also, the revision to aeronautical charts to reflect the airspace modification will be part of the routine and periodic updating of charts. Finally, the FAA will not incur any additional administrative costs for either personnel or equipment.

*Benefits*

The final rule will generate benefits for system users and the FAA primarily in the form of enhanced operational efficiency. The final rule will provide additional controlled airspace for aircraft landing at and departing from the Offutt AFB, NE. Air traffic controllers will gain operational efficiency as they will be able to standardize air traffic operations.

*Final Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a final rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for

implementing the RFA. Small entities are independently owned and operated small businesses and small not-for-profit organizations. A substantial number of small entities is defined as a number that is 11 or more and which is more than one-third of the small entities subject to this final rule.

The FAA determined that revising the Class C airspace area at Offutt AFB will not result in a significant economic impact on a substantial number of small entities. This determination was made because there are little or no costs associated with this final rule.

*International Trade Impact Assessment*

This final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States. This final rule will not impose costs on aircraft operators or aircraft manufacturers in the United States or foreign countries. The modification of the Class C airspace area will only affect U.S. terminal airspace operating procedures at and in the vicinity of Offutt AFB, NE. This final rule will not have international trade ramifications because it is a domestic airspace matter that will not impose additional costs or requirements on affected entities.

*Conclusion*

In view of the minimal cost of compliance, the benefits of enhanced aviation safety, and increased operational efficiency of air traffic controllers, the FAA believes that this final rule is cost-beneficial.

*List of Subjects in 14 CFR Part 71*

Airspace, Incorporation by reference, Navigation (air).

*Adoption of the Amendment*

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

**PART 71—[AMENDED]**

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

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

**§ 71.1 [Amended]**

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

*Paragraph 4000—Subpart C—Class C Airspace*

\* \* \* \* \*

ACE NE C Offutt AFB, NE [Revised]  
Offutt AFB, NE

(lat. 41°07'06"N, long. 95°54'45"W.)

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of Offutt AFB, and that airspace extending upward from 2,500 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the Offutt AFB excluding that airspace designated as the Eppley Airfield, Omaha, NE, Class C airspace area.

\* \* \* \* \*

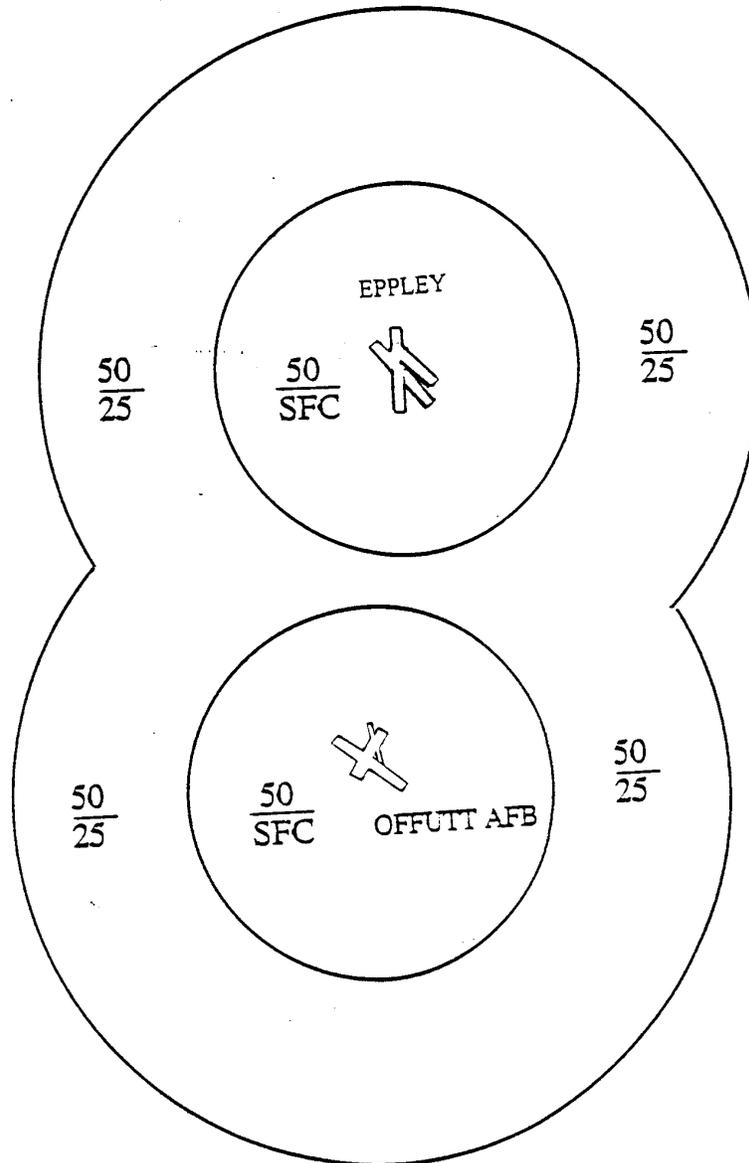
Issued in Washington, DC, on May 13, 1996

Harold W. Becker,  
*Acting Program Director for Air Traffic,  
Airspace Management.*

BILLING CODE 4910-13-P

# OFFUTT AFB, NEBRASKA CLASS C AIRSPACE AREA

(Not to be used for navigation)



Prepared by the  
FEDERAL AVIATION ADMINISTRATION  
Publications Branch  
ATP-210

**14 CFR Part 71****[Airspace Docket No. 95-AGL-4]****Removal of Class D Airspace; K.I. Sawyer (AFB), MI****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This action removes Class D airspace at K.I. Sawyer (AFB), MI. On August 31, 1995, the Air Force closed Sawyer AFB and ceased all operations. As a result, Class D airspace at this location is no longer necessary.

**EFFECTIVE DATE:** 0901 UTC, August 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Peter H. Salmon, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

**SUPPLEMENTARY INFORMATION:****History**

On January 31, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove Class D airspace at K.I. Sawyer AFB, MI (61 FR 3346).

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

**The Rule**

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class D airspace at K.I. Sawyer AFB, MI. On August 31, 1995 the Air Force closed Sawyer AFB and ceased all operations. As a result Class D airspace at this location is no longer necessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

**PART 71—[AMENDED]**

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

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

**§71.1 [Amended]**

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

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

\* \* \* \* \*

AGL MI D K.I. Sawyer, MI [Removed]

\* \* \* \* \*

Issued in Des Plaines, Illinois on May 2, 1996.

Maureen Woods,

*Acting Manager, Air Traffic Division.*

[FR Doc. 96-13253 Filed 5-24-96; 8:45 am]

**BILLING CODE 4910-13-M**

**14 CFR part 73****[Docket No. 27400; Amendment No. 73-8]****Special Use Airspace****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; technical amendment.

**SUMMARY:** This action replaces the title of the Director, Office of Air Traffic System Management, with Program Director for Air Traffic Operations. This change is necessary to make the regulation consistent with the current Air Traffic organizational structure.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph C. White, Air Traffic Rules,

ATA-431, Airspace and Rules Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

**SUPPLEMENTARY INFORMATION:****Background**

On April 1, 1996, the Air Traffic Services of the FAA underwent a reorganization that affected the Washington headquarters and regional offices. One result of the reorganization was a realignment of functions with corresponding changes in office names. Section 73.19, Reports by Using Agency, of Title 14, Code of Federal Regulations (14 CFR) requires agencies using special use airspace to report their annual use of assigned restricted areas to the Director, Office of Air Traffic System Management. The office with current responsibility for managing those reports now is the Program Director for Air Traffic Operations. This technical amendment updates the rule to reflect the change in office name.

Because this action is merely a technical amendment reflecting the change in the name of an office, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 5553(d) for making this amendment effective upon publication.

The FAA has determined that this regulation; (1) is not “significant” 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 minimal. Since this is a routine matter that will affect only air traffic procedures, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 73**

Air safety, Air traffic control, Air transportation, Airmen, Airports, Aviation safety.

**The Amendment**

In consideration of the above, the FAA amends 14 CFR Part 73 as follows:

**PART 73—SPECIAL USE AIRSPACE**

1. The authority citation for Part 73 continues to read as follows:

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

2. In Section 73.19, paragraphs (a) and (c) are revised as follows:

**§ 73.19 Reports by using agency.**

(a) Each using agency shall prepare a report on the use of each restricted area assigned thereto during any part of the preceding 12-month period ended September 30, and transmit it by the following January 31 of each year to the Manager, Air Traffic Division in the regional office of the Federal Aviation Administration having jurisdiction over the area in which the restricted area is located, with a copy to the Program Director for Air Traffic Operations, Federal Aviation Administration, Washington, DC 20591.

\* \* \* \* \*

(c) If it is determined that the information submitted under paragraph (b) of this section is not sufficient to evaluate the nature and extent of the use of a restricted area, the FAA may request the using agency to submit supplementary reports. Within 60 days after receiving a request for additional information, the using agency shall submit such information as the Program Director for Air Traffic Operations considers appropriate. Supplementary reports must be sent to the FAA officials designated in paragraph (a) of this section.

\* \* \* \* \*

Issued in Washington, DC, on May 17, 1996.  
 Harold W. Becker,  
*Acting Program Director for Air Traffic  
 Airspace Management.*  
 [FR Doc. 96-13256 Filed 5-24-96; 8:45 am]  
 BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Parts 611 and 620**

[Docket No. 960222043-6131-02; I.D. 111595B]

RIN 0648-AC61

**Foreign and Domestic Fishing; Scientific Research Activity and Exempted Fishing**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues new and revised definitions for certain regulatory terms to distinguish clearly among scientific research activities, exempted fishing, and exempted educational activities; to

clarify and standardize issuance procedures for letters of acknowledgement of notification of scientific research activity and exempted fishing permits (EFPs); and to facilitate scientific research activities.

**EFFECTIVE DATE:** June 27, 1996.

**ADDRESSES:** Comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Management and Budget, Paperwork Reduction Project (0648-0214), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** William D. Chappell at 301-713-2341

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) authorizes the Secretary of Commerce (Secretary) to conserve and manage fishery resources in the exclusive economic zone (EEZ) by regulating "fishing." Excluded expressly from the definition of "fishing," and therefore from the Magnuson Act's purview, is "scientific research activity which is conducted by a scientific research vessel." However, the Magnuson Act does not define "scientific research activity" or "scientific research vessel." The legislative history provides little guidance on Congress' intent in exempting scientific research conducted from a scientific research vessel from the Magnuson Act's requirements. In this rule, NMFS defines "scientific research activity," "scientific research vessel," and related terms.

"Exempted fishing," an activity that has been regulated under fishery management plans (FMPs) prepared by Regional Fishery Management Councils (Councils) or the Secretary, is defined in this rule for domestic vessels only. NMFS anticipates that individual FMPs that currently authorize "experimental fishing" will be amended, as necessary, to replace existing references to "experimental fishing" with references to "exempted fishing," and to standardize terminology and procedures for issuance of EFPs by replacing existing regulatory text with references to these rules. In the absence of specific regulations for each fishery, these procedures will be followed. Authority to allow exempted fishing in any regulated fishery would be established through the governing FMP and/or its implementing regulations.

In addition, NMFS proposes to define "exempted educational activity" for the domestic fishing regulations to distinguish between commercially oriented exempted fishing and those activities of very limited scope and duration, conducted by educational institutions, that may involve activities that are not in accordance with regulations implemented under authority of an FMP. In the absence of specific regulations for each fishery, these procedures will be followed.

NMFS published a proposed rule at 61 FR 10712, March 15, 1996, requesting comments by April 15, 1996. No comments from the general public or other agencies were received. The following addresses internal comments generated during review.

Throughout the rule, the term "Center Director" is replaced by the term "Science and Research Director" to reflect accurately the title of the Directors of NMFS's Fishery Science Centers.

Under the definition of the term "scientific research plan" for both the foreign and domestic regulations, paragraph (5) has been revised to include expected quantities of fish to be taken instead of an absolute amount, retaining some flexibility for researchers.

In § 620.10(b)(1), the authority of the Regional Director to issue EFPs is expanded to include reasons of health and safety, environmental cleanup, and hazard removal. This provision allows an exemption for fishing gear to be used in oil rig removal cleanup, oil spill cleanup, or other contingencies not directly related to fishing.

In § 620.10(b)(3)(i), the requirement for a comment period on EFPs is modified to allow comment to be taken at a Council meeting instead of, or in conjunction with, a more formal comment period. This allows some Councils to continue their current practice, which has proven sufficient for public comment and is more efficient in providing timely response to the applicants.

In § 620.10(d)(3)(ii)(F), the paragraph is corrected to reference exempted educational activity instead of EFP.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

**Classification**

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published at 61 FR 10712, March 15, 1996. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule contains a collection-of-information requirement subject to the PRA. The collection of this information has been approved by the OMB, OMB Control Number 0648-0309. The public reporting burden for this collection of information is estimated: (1) To average 1 hour per response to send NMFS a copy of a scientific research plan and provide a copy of the cruise report or research publication; (2) to average 1 hour per response to complete an application for an EFP or authorization for an exempted educational activity; and (3) to average 1 hour per response to collect information and provide a report at the conclusion of exempted fishing. Send comments regarding this burden estimate, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 620

Fisheries, Fishing.

Dated: May 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
50 CFR.	
611.14 .....	—0309
620.10 .....	—0309

50 CFR CHAPTER VI

PART 611—FOREIGN FISHING

3. The authority citation for part 611 is revised to read as follows:

Authority: 16 U.S.C. 971 *et seq.*, 1361 *et seq.*, 1801 *et seq.*, and 22 U.S.C. 1971 *et seq.*

4. In § 611.2, the definition for “Center Director” is removed and definitions for “Director”, “Science and Research Director”, “Scientific cruise”, “Scientific research activity”, “Scientific research plan”, and “Scientific research vessel”, are added, in alphabetical order, to read as follows:

§ 611.2 Definitions.

*Director* means the Director of the Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910.

*Science and Research Director* means the Director of one of the five NMFS Fisheries Science Centers described in Table 1 of Appendix A to this subpart, or a designee.

*Scientific cruise* means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake

the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

*Scientific research activity* is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

*Scientific research plan* means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

- (1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.
- (2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used, and a description of sampling equipment.
- (3) The geographical area(s) in which the project is to be conducted.
- (4) The expected date of first appearance and final departure of the research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, and telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used including, but not limited to, the vessel's name, official documentation number and IRCS, home port, and name, address, and telephone number of the owner and master.

*Scientific research vessel* means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in

accordance with a scientific research plan.

\* \* \* \* \*

5. In §611.7, paragraphs (a)(27) and (a)(28) are redesignated as paragraphs (a)(29) and (a)(30), respectively, and new paragraphs (a)(27) and (a)(28) are added to read as follows:

**§611.7 Prohibitions.**

(a) \* \* \*

(27) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson Act;

(28) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state, territorial, or Federal regulations;

\* \* \* \* \*

6. Section 611.14 is revised to read as follows:

**§611.14 Scientific research activity.**

(a) *Scientific research activity.*

Persons planning to conduct scientific research activities in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and

distinct from any permit required under any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research activity but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports.* Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

7. Table 1 to Appendix A to subpart A of part 611 is revised to read as follows:

Appendix A to Subpart A—Addresses, Areas of Responsibility and Communications

TABLE 1.—ADDRESSES

NMFS regional directors	NMFS Fisheries Science Center directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298; Telex: 940007; Telephone: 508-281-9300; FAX: 508-281-9333.	Director, Northeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water Street, Woods Hole, MA 02543-1097, Attn: Observer Program; Telex: 322200; Telephone: 508-548-5123; FAX: 508-548-5124.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, NY 10004; Telex: 126831; Telephone: 212-668-7877.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Exec. Center Drive N., St. Petersburg, FL 33702; Telephone: 813-570-5301; FAX: 813-570-5300.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149-1003; Telephone: 305-361-5761; FAX: 305-361-4219.	Commander, Atlantic Area, U.S. Coast Guard, New York, NY 10004; Telex: 126831; Telephone: 212-668-7877.
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115; Telex: 9104442786; Telephone: 206-526-6150; FAX: 206-526-6426.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Boulevard East, Seattle, WA 98112-2097; Telephone: 206-442-1872; FAX: 206-442-4304.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501; Telex: 172343; Telephone: 510-437-3700; FAX: 510-437-3017.
Director, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 1668, Juneau, AK 99802-1668; Telex: 09945377; Telephone: 907-586-7221; FAX: 907-586-7249.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115-0070; Telex: 329422; Telephone: 206-526-4000; FAX: 206-526-4004.	Commander, Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, AK 99801; Telex: 45305; Telephone: 907-586-7200 after hours: 907-586-7350.

TABLE 1.—ADDRESSES—Continued

NMFS regional directors	NMFS Fisheries Science Center directors	U.S. Coast Guard commanders
Director, Southwest Region National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802-4213; Telephone: 310-980-4001; FAX: 310-980-4018.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038-0271; Telephone: 619-546-7000; FAX: 619-546-7003.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96813; Telex: 392401; Telephone: 808-546-7597.

**PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES**

8. The authority citation for part 620 continues to read as follows:

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

9. In § 620.2, definitions for “Director”, “Exempted educational activity”, “Exempted or experimental fishing”, “Regional Director”, “Science and Research Director”, “Scientific cruise”, “Scientific research activity”, “Scientific research plan”, and “Scientific research vessel”, are added, in alphabetical order, to read as follows:

**§ 620.2 Definitions.**

\* \* \* \* \*

*Director* means the Director of the Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910.

\* \* \* \* \*

*Exempted educational activity* means an activity, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by part 285 or chapter VI of this title, but that is authorized by the appropriate Director or Regional Director for educational purposes.

*Exempted or experimental fishing* means fishing from a vessel of the United States that involves activities otherwise prohibited by part 285 or chapter VI of this title, but that are authorized under an exempted fishing permit (EFP). These regulations refer exclusively to exempted fishing. References in 50 CFR part 285 and elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

\* \* \* \* \*

*Regional Director* means the Director of one of the five NMFS Regions.

\* \* \* \* \*

*Science and Research Director* means the Director of one of the five NMFS Fisheries Science Centers.

*Scientific cruise* means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake

the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

*Scientific research activity* is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish that is outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures.

*Scientific research plan* means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

- (1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.
- (2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used (including the name and tonnage of vessel as soon

as identified), and a description of sampling equipment.

(3) The geographical area(s) in which the project is to be conducted.

(4) The expected date of first appearance and final departure of any research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used, including, but not limited to, the vessel’s name, official documentation number or state registration number, home port, and name, address, and telephone number of the owner and master.

*Scientific research vessel* means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. To meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in accordance with a scientific research plan.

\* \* \* \* \*

10. In § 620.7, paragraphs (i) through (l) are added to read as follows:

**§ 620.7 General prohibitions.**

\* \* \* \* \*

- (i) Fish in violation of the terms or conditions of any permit or

authorization issued under the Magnuson Act.

(j) Fail to report catches as required while fishing pursuant to an exempted fishing permit.

(k) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state or Federal regulations.

(l) Trade, barter, or sell; or attempt to trade, barter, or sell fish possessed or retained while fishing pursuant to an authorization for an exempted educational activity.

11. Section 620.10 is added to read as follows:

**§ 620.10 Scientific research activity, exempted fishing, and exempted educational activity.**

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing*—(1) *General.* A NMFS Regional Director or Director may

authorize, for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Director or Director in accordance with the criteria and procedures specified in this section. The Regional Director or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Director or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Director or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.
- (iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.
- (iv) For each vessel to be covered by the EFP as soon as the information is available and before operations begin under the EFP:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Director or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Director or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Director or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the Federal Register with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Director or Director also will forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any total allowable catch.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Director or Director may consult with the appropriate Council(s)

concerning the permit application during the period in which comments have been requested. The Council(s) or the Director or Regional Director shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Director or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Director or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the Federal Register describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Director or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures as set out at part 603 of this chapter. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(5) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their

catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Director or Director, as specified in the EFP.

(d) *Exempted educational activities—*

(1) *General.* A NMFS Regional Director or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Director or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Director or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Director or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Director or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Director or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures at part 603 of this chapter. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activity as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer.

Activities that meet the definition of "fishing," despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

[FR Doc. 96-13288 Filed 5-24-96; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 75

RIN 1219-AA11

#### Safety Standards for Underground Coal Mine Ventilation

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule; corrections.

**SUMMARY:** This document corrects errors in the final rule for safety standards for underground coal mine ventilation which appeared in the Federal Register on March 11, 1996 (61 FR 9764).

**EFFECTIVE DATE:** June 10, 1996.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 11, 1996, MSHA published a final rule to revise its safety standards for underground coal mine ventilation. This document corrects several errors that appeared in the preamble discussion and in the final rule.

In the preamble discussion to § 75.313 Main mine fan stoppage with persons underground, on page 9774, the second column, 25 lines from the bottom, the phrase "in nonventilated areas" inadvertently appears. This correction notice deletes the phrase from the preamble.

The final rule language of § 75.322, Harmful quantities of noxious gases, is incorrect. No changes were proposed to § 75.322 and the current version of § 75.322 that appears in the 1995 compilation of the Code of Federal

Regulations is correct. Therefore, § 75.322 is corrected to be the version that appears in the 1995 compilation of the Code of Federal Regulations.

The final rule language of § 75.325 Air quantity, inadvertently omits the last sentence of existing § 75.325(b). No changes were proposed to § 75.325(b) and the current version of § 75.325(b) that appears in the 1995 compilation of the Code of Federal Regulations is correct. Therefore, § 75.325(b) is corrected to be the version that appears in the 1995 compilation of the Code of Federal Regulations.

Paragraph (h) of § 75.333(h) Ventilation controls, deals with the maintenance of ventilation controls. In the preamble and the rule, the word "permanent" inadvertently appears. This correction notice deletes the word "permanent" from § 75.333(h) and from the preamble of the rule in the last sentence of the second column of page 9782. The preamble discussion in columns 1 and 2 of page 9784 makes it clear that § 75.333(h) is to apply to temporary controls as well as permanent controls, and that the word "permanent" therefore appeared in error. As correctly stated on page 9784, "Given the importance of temporary control devices in providing for adequate ventilation, the final rule requires all ventilation controls, both permanent and temporary, including all doors and seals, to be maintained to serve the purpose for which they were built."

The preamble for paragraph (g)(2) of § 75.362 On-shift examination, is inconsistent with the language appearing in the final rule. This correction notice clarifies the intent of the Agency that a certified person must certify that the examination has been completed. At page 9799 of the preamble discussion, the preamble correctly states that: "The final rule deletes the word 'certified,' permitting on-shift examinations of dust controls to be conducted by one or more persons who are not certified individuals. However, the examination must still be conducted under the direction of a person designated by the operator and as set out in paragraph (g)(2), a certified person must certify that the examination has been completed \* \* \*." The last sentence at page 9801 in the preamble discussion of the rule is inconsistent with this explanation and this correction document corrects the sentence. Also, the word "certified" is added to the rule.

In the last sentence of the final rule language of paragraph (a)(2) of § 75.362 On-shift examination, on page 9839, the second column, the word —additional—

inadvertently appears. This correction notice deletes the word from the rule.

The second sentence of the final rule language of paragraph (a) of § 75.363 Hazardous conditions; posting, correcting and recording, inadvertently contains a phrase which limits the application of the rule. The phrase would exclude the application of posting and correcting requirements of § 75.363 when a hazardous condition is found during a preshift examination or during a preshift type examination conducted following a fan stoppage and restart under § 75.313(d)(1)(i). As proposed, MSHA's intent is that the § 75.363 requirements for posting or immediately correcting hazardous conditions do apply to the preshift examination and to preshift-type examinations conducted following a fan stoppage and restart under § 75.313(d)(1)(i). It is only the recording requirements of § 75.363 that do not extend to the § 75.360 and § 75.364 examinations since these examinations contain their own recording requirements. This correction notice deletes the phrase that inadvertently appears in the rule. Also, this correction notice makes a conforming change to the preamble of the rule. On page 9802 of the preamble to the final rule, the second sentence of the second paragraph in the first column is corrected by this notice.

In the preamble to § 75.380 Escapeways; bituminous and lignite mines, on page 9813, the second column, 14 lines from the top, the date "September 15, 1992" is incorrect. The correct date is "November 16, 1992," which was the effective date of the 1992 final ventilation rule. This correction notice deletes the incorrect date and replaces it with the correct date. In addition, a portion of the preamble discussion for § 75.380 is inadvertently repeated almost verbatim and is deleted by this correction notice. Specifically, the repetition of the preamble discussion of § 75.380 begins with the third full paragraph of the middle column on page 9816 (the paragraph begins, "Like the proposal, the final rule \* \* \*") and continues through the end of the preamble discussion for § 75.380.

**Correction of Publication**

The preamble and final rule for safety standards for underground coal mine ventilation that appeared in the Federal Register on March 11, 1996 (61 FR 9764) are corrected as follows:

1. In the preamble, on page 9774, in the second column, 25 lines from the bottom, the phrase "in nonventilated areas" is removed.

2. In the preamble, on page 9782, in the second column, last paragraph, the last sentence is correctly revised to read as "New paragraph (h) requires all ventilation controls, including seals, to be maintained to serve the purpose for which they were built".

3. In the preamble, on page 9801, in the last column, last paragraph, the last sentence is correctly revised to read as "Under (g)(2), the certified person directing the on-shift examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan must certify by initials, date, and time that the examination was made."

4. In the preamble, on page 9802, in the first column, the second sentence of the second paragraph is correctly revised to read as, "It specifies that hazardous conditions shall be corrected immediately or posted until the conditions are corrected."

5. In the preamble, on page 9813, in the second column, 14 lines from the top, remove "September 15, 1992", and add "November 16, 1992".

6. In the preamble, beginning on page 9816, in the second column, the third full paragraph, through page 9820, to the end of the first column is removed.

7. In the rule, on page 9832, in the first column, § 75.322 is correctly revised to read as:

**§ 75.322 Harmful quantities of noxious gases.**

Concentrations of noxious or poisonous gases, other than carbon dioxide, shall not exceed the threshold limit values (TLV) as specified and applied by the American Conference of Governmental Industrial Hygienists in "Threshold Limit Values for Substance in Workroom Air" (1972). Detectors or laboratory analysis of mine air samples shall be used to determine the concentrations of harmful, noxious, or poisonous gases. This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Mine Safety and Health Administration, Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203 and at every Coal Mine Health and Safety District and Subdistrict Office. The material is available for examination at the Office of the Federal Register, 800 N. Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

**§ 75.325 [Corrected]**

8. In the rule, on page 9833, in the second column, § 75.325(b), a sentence

is added following the last sentence of the first paragraph to read as follows:

\* \* \* \* \*

(b) \* \* \* This minimum also applies to sections which are not operating but are capable of producing coal by simply energizing the equipment on the section.

\* \* \* \* \*

**§ 75.333 [Corrected]**

9. In the rule, on page 9835, in the first column, § 75.333, paragraph (h), is correctly revised to read as follows:

\* \* \* \* \*

(h) All ventilation controls, including seals, shall be maintained to serve the purpose for which they were built.

**§ 75.362 [Corrected]**

10. In the rule, on page 9839, in the second column, the last sentence, § 75.362, paragraph (a)(2), is correctly revised to read as follows:

(a) \* \* \*

(2) \* \* \* Measurements of the air velocity and quantity, water pressure and flow rates are not required if continuous monitoring of these controls is used and indicates that the dust controls are functioning properly.

\* \* \* \* \*

11. In the rule, on page 9839, in the third column, § 75.362, paragraph (g)(2), is correctly revised to read as follows:

\* \* \* \* \*

(g) \* \* \*

(2) The certified person directing the on-shift examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan shall certify by initials, date, and time that the examination was made.

\* \* \* \* \*

**§ 75.363 [Corrected]**

12. In the rule on page 9839, in the third column, the second sentence of § 75.363, paragraph (a), is correctly revised to read as follows:

(a) \* \* \* A hazardous condition shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. \* \* \*

\* \* \* \* \*

Dated: May 17, 1996.

J. Davitt McAteer,  
Assistant Secretary for Mine Safety and Health.

[FR Doc. 96-13275 Filed 5-22-96; 3:08 pm]

BILLING CODE 4510-43-P

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 914**

[SPATS No. IN-112-FOR; Amendment No. 92-7C]

**Indiana Regulatory Program****AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.**ACTION:** Final rule; clarification/approval of amendment.

**SUMMARY:** OSM is clarifying the previous approval, and noted deferrals therein, of an amendment to the Indiana permanent regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consisted of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning the control of subsidence caused by underground mining operations. The amendment was submitted to revise the Indiana program to be consistent with SMCRA and to incorporate State initiatives.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204-1521, Telephone (317) 226-6166.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Indiana Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Indiana Program**

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

**II. Submission of the Proposed Amendment**

By letter dated December 2, 1992 (Administrative Record No. IND-1175), the Indiana Department of Natural

Resources (IDNR) submitted a proposed amendment (#92-7) to the Indiana program. Amendment #92-7 proposed changes to the Indiana surface mining rules concerning subsidence liability.

On May 17, 1993, OSM approved, with two exceptions, amendment #92-7 (58 FR 28775). By letter dated March 18, 1994 (Administrative Record Number IND-1340), Indiana submitted to OSM a notice of the final adoption of amendment #92-7 as published in the Indiana Register, Volume 17, Number 6, pages 1086-1089 (March 1, 1994).

The final adopted language of amendment #92-7 differed in some ways from the language approved by OSM on May 17, 1993. Therefore, OSM reopened the public comment period and invited comment on the substantive differences.

OSM announced receipt of the proposed amendment (i.e., the adopted language of #92-7) in the April 22, 1994, Federal Register (59 FR 19155), and in the same document opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 23, 1994.

On April 20, 1995, OSM approved the amendment with deferrals on decisions in three areas until July 31, 1995, when OSM was to address the enforcement of SMCRA section 720 and 30 CFR 784.20 and 817.121 (60 FR 19669). The deferrals related to the above enforcement provisions during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of the corresponding Indiana statute IC 13-4.1-9-2.5 (June 30, 1994).

On July 28, 1995, OSM announced its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana (60 FR 38680). After consultation with Indiana and consideration of public comments, OSM decided that initial enforcement in Indiana would be accomplished through joint Indiana and OSM enforcement. OSM, however, did not specifically address the deferrals of the April 20, 1995, approval (60 FR 19669).

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the deferrals contained in the original approval of the proposed amendment (60 FR 19669). These findings are based on the original proposed amendment and the April 20, 1995, approval and deferrals related to the enforcement scheme as published

on July 28, 1995. It should be noted that the July 28, 1995, decision addressed only the initial enforcement schemes for water replacement (30 CFR 817.41(j)) and subsidence damage repair/compensation (30 CFR 817.121(c)(2)) provided for under section 720 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776(1992). In addition to the basic water supply replacement requirement and the related subsidence damage repair requirement, the implementing Federal regulations that became effective March 31, 1995, contain other related supporting and permitting provisions. OSM anticipates that these other requirements will become effective in the same way as other revisions to the permanent program regulations; i.e., in primacy states such as Indiana, upon adoption of counterpart State regulatory program provisions (60 FR 16722). This process will be initiated separately by OSM under the provisions of 30 CFR 732.17(d).

**1. 310 IAC 12-3-87.1 Subsidence Control Plan**

**310 IAC 12-3-87.1(c)(2).** In the April 20, 1995, Federal Register, the Director approved the language at subsection 87.1(c)(2) to the extent that it met the requirements of SMCRA section 720 and 30 CFR 784.20 from June 30, 1994. However, the Director deferred a decision until July 31, 1995, on the enforcement of the provisions of SMCRA section 720 and 30 CFR 784.20 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of the corresponding Indiana statute IC 13-4.1-9-2.5 (June 30, 1994).

On July 28, 1995, OSM announced its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana (60 FR 38680). After consultation with Indiana and consideration of public comments, OSM decided that initial enforcement in Indiana would be accomplished through joint Indiana and OSM enforcement. In discussions leading to this decision, Indiana indicated that Indiana law at IC 13-4.1-9-2.5 incorporates the substantive language of section 620 of SMCRA and applies to underground mining operations conducted after June 30, 1994. For underground mining operations conducted in Indiana in the interim period between October 24, 1992 (the effective date of the Energy Policy Act of 1992 and SMCRA section 720), and June 30, 1994 (the effective

date of Indiana law counterpart to the Energy Policy Act of 1992), the State concluded that the existing Indiana program provisions provide the IDNR with sufficient authority to impose the requirements of the Energy Policy Act of 1992 with respect to underground mining operations conducted in Indiana during the interim period. The State concluded, however, that although it believes that the IDNR has sufficient authority to impose the requirements of the Energy Policy Act of 1992 during the interim period, joint State and OSM enforcement in Indiana should be the chosen enforcement scheme in Indiana, as it would assure protection for the citizens of Indiana during the interim period (Administrative Record Number IND-1494). Under this scheme, the IDNR would enforce the requirements of the Energy Policy Act of 1992 in Indiana from June 30, 1994, and during the interim period to the extent permissible under Indiana law. OSM would enforce the requirements of the Energy Policy Act of 1992 in the interim period only if a situation arose where the State could not so enforce.

Based on the discussion above, the Director finds that 310 IAC 12-3-87.1(c)(2) is no less effective than 30 CFR 784.20 and no less stringent than SMCRA section 720, to the extent that IC 13-4.1-9-2.5 meets the requirements of SMCRA section 720 and 30 CFR 784.20 from June 30, 1994, and the enforcement scheme approved July 28, 1995, meets the requirements of SMCRA section 720 and 30 CFR 784.20 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13-4.1-9-2.5 (June 30, 1994).

### 2. 310 IAC 12-5-130.1 Subsidence Control; General Requirements

310 IAC 12-5-130.1(c)(2). In the April 20, 1995, Federal Register, the Director approved the language at subsection 130.1(c)(2) to the extent that it met the requirements of SMCRA section 720 from June 30, 1994. However, the Director deferred a decision until July 31, 1995, on the enforcement of the provisions of SMCRA section 720 and 30 CFR 817.121 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of the corresponding Indiana statute IC 13-4.1-9-2.5 (June 30, 1994).

As discussed in Finding 1 above, on July 28, 1995, OSM announced its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana (60 FR 38680). OSM decided that initial enforcement would be accomplished through joint

Indiana and OSM enforcement. The IDNR would enforce the requirements of the Energy Policy Act of 1992 in Indiana from June 30, 1994, and during the interim period (October 24, 1992-June 30, 1994) to the extent permissible under Indiana law. OSM would enforce the requirements of the Energy Policy Act of 1992 in the interim period only if a situation arose where the State could not so enforce.

Based on the above discussion, the Director finds that 310 IAC 12-5-130.1(c)(2) is no less effective than 30 CFR 817.121(c)(2) and no less stringent than SMCRA section 720, to the extent that IC 13-4.1-9-2.5 meets the requirements of SMCRA section 720 from June 30, 1994, and the enforcement scheme approved July 28, 1995, meets the requirements of SMCRA section 720 and 30 CFR 817.121(c)(2) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13-4.1-9-2.5 (June 30, 1994).

### 3. Repeal of 310 IAC 12-5-132

Indiana proposed the repeal of 310 IAC 12-3-87, 310 IAC 12-5-130, 310 IAC 12-5-131, and 310 IAC 12-5-132 because the provisions were replaced by 310 IAC 12-3-87.1, 310 IAC 12-5-130.1, and 310 IAC 12-5-131.1. The Director deferred decision on the repeal of 310 IAC 12-5-132 until July 31, 1995, when OSM was to address the enforcement of the provisions of SMCRA section 720 and 30 CFR 784.20 and 817.121 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13-4.1-9-2.5 (June 30, 1994).

As discussed in Findings 1 and 2 above, on July 28, 1995, OSM announced its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana (60 FR 38680), finding that initial enforcement would be accomplished through joint Indiana and OSM enforcement. IDNR would enforce the requirements of the Energy Policy Act of 1992 in Indiana from June 30, 1994, and during the interim period (October 24, 1992-June 30, 1994) to the extent permissible under Indiana law. OSM would enforce the requirements of the Energy Policy Act of 1992 in the interim period only if a situation arose where the State would not so enforce.

Based on the above discussion, the Director is approving the repeal of 310 IAC 12-5-132 because appropriate provisions are replaced by 310 IAC 12-3-87.1 and 310 IAC 12-5-130.1 and the repeal does not render the Indiana program less effective than the

counterpart Federal requirements to the extent that IC 13-4.1-9-2.5 meets the requirements of SMCRA section 720 from June 30, 1994, and the enforcement scheme approved July 28, 1995, meets the requirements of SMCRA section 720 and 30 CFR 784.20 and 817.121(c)(2) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13-4.1-9-2.5 (June 30, 1994).

### IV. Summary and Disposition of Comments

Comments on the initial submittal were solicited from Federal agencies and the public on January 14, 1993 (58 FR 4372), and on the adopted language of the approved changes on April 22, 1994 (59 FR 19155). Comments received were discussed in the related Federal Registers of May 17, 1993 (58 FR 28775), and April 20, 1995 (60 FR 19669), respectively. As this current action is based on language of the previous submittals, the solicitation of additional comments is not necessary; refer to the Federal Registers identified above for the discussion of comments received.

### V. Director's Decision

Based on the findings above, the Director is approving the three provisions of Indiana's program amendment concerning subsidence, as originally submitted by Indiana on March 18, 1994, and for which the decisions were deferred in the April 20, 1995, Federal Register (60 FR 19669). As discussed above in Finding 1 concerning 310 IAC 12-3-87.1(c)(2) and Finding 2 concerning 310 IAC 12-5-130.1(c)(2), the Director is approving the proposed deference to State law to the extent that IC 13-4.1-9-2.5 meets the requirements of SMCRA section 720 from June 30, 1994, and the enforcement scheme approved July 28, 1995, meets the requirements of SMCRA section 720 and 30 CFR 784.20 and 817.121(c)(2) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13-4.1-9-2.5 (June 30, 1994). As discussed in Finding 3, the Director is also approving the repeal of 310 IAC 12-5-132.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision.

### VI. Procedural Determinations

#### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

### Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

### PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding paragraph (qqq) to read as follows:

#### § 914.15 Approval of regulatory program amendments.

\* \* \* \* \*

(qqq) The revised provisions at 310 IAC 12-3-87.1(c)(2) and 310 IAC 12-5-130.1(c)(2) and the repeal of 310 IAC 12-5-132 contained in Indiana's program amendment concerning subsidence, as originally submitted by Indiana on March 18, 1994, and for which the decisions were deferred on April 20, 1995, are approved effective May 28, 1996.

[FR Doc. 96-13264 Filed 5-24-96; 8:45 am]

BILLING CODE 4310-05-M

### 30 CFR Part 925

[SPATS No. MO-026-FOR]

### Missouri Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with a reporting stipulation, a proposed amendment to the Missouri regulatory program (hereinafter referred to as the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Revised Statutes of Missouri (RSMo) and the Code of State Regulations (CSR) along with supporting documentation and information pertaining to Missouri's

alternative bonding system. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations and SMCRA.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois, 62002 Telephone: (618) 463-6460.

### SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program  
II. Submission of the Proposed Amendment  
III. Director's Findings  
IV. Summary and Disposition of Comments  
V. Director's Decision  
VI. Procedural Determinations

### I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

### II. Submission of the Proposed Amendment

By letter dated March 7, 1995, Missouri submitted a proposed amendment to its program pursuant to SMCRA (Administrative record No. MO-617). Missouri submitted the proposed amendment in response to a January 30, 1986, letter (Administrative record No. MO-351) that OSM sent to Missouri in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 925.16(g). The provisions of the Revised Statutes of Missouri (RSMo) and the Code of State Regulations (CSR) that Missouri proposed to revise were: RSMO 444.805, Definition of Phase I reclamation bond; RSMO 444.830, Bond requirements, when a bond must be filed, the amount of a bond, and allowance for bond substitution; RSMO 444.950, Phase I reclamation bond requirements; RSMO 444.960, Establishment, purpose, and duties of the Coal Mine Land Reclamation Fund (CMLR Fund); RSMO 444.965.1, Assessment for fund; 10 CSR 40-7.011, Bond requirements; 10 CSR 40-7.021, Duration and release of reclamation liability; 10 CSR 40-7.041, Form and administration of the CMLR Fund. In addition, Missouri submitted: (1) A

narrative explaining the current and projected balances of the bond pools (Fund A and Fund B) of the CMLR Fund; (2) a discussion of how each outstanding required program amendment codified in the final rule in the May 8, 1991, Federal Register (56 FR 21281) will be resolved (Administrative Record No. MO-536); (3) an explanation of how the deficiencies identified in OSM's issue letter dated March 9, 1994 (Administrative Record No. MO-592) will be resolved; (4) a table of reclamation cost estimates for all permits except those that represent a minimal liability to the bond pools; (5) a statement from the Missouri Attorney General that explains the legal basis for using Abandoned Mine Land Funds for the reclamation of Bill's Coal Forfeiture Project; and (6) copies of the revised bond forms utilized by Missouri.

By letter dated March 28, 1995 (Administrative Record No. MO-623), Missouri informed the OSM Kansas City Field Office of an inadvertent omission in its program amendment request, and requested inclusion in the proposed amendment of statutory revisions at RSMO 444.805 that removes the definition for "full cost bond" and revises the definition for "Phase I reclamation bond." These changes correspond to regulation changes at 10 CSR 40-7.011 and have been incorporated into this amendment.

By letter dated February 21, 1996, (Administrative Record No. MO-636), Missouri informed OSM it was removing the proposed revisions concerning administrative rulemaking procedures at RSMO 444.950(2)-(8).

The main provisions of the amendment propose to:

- Eliminate the option to post a "full cost bond" and require mandatory participation in Missouri's alternative bonding program.
- Require that up to 20 percent of Phase I reclamation bond be held until Phase III liability is released.
- Establish minimum rate adjustable Phase I reclamation bond amounts.
- Establish the CMLR Fund as part of the alternative bonding system (ABS), with 40 percent of the assessments placed in Fund A for reclamation of permits revoked prior to September 1, 1988, and 60 percent of the assessments placed in Fund B for reclamation of permits revoked after September 1, 1988.
- Allow expenditure of CMLR funds for completion of Phase I reclamation.
- Allow expenditure of Phase I reclamation bond for any phase of reclamation.

OSM published a notice in the March 27, 1995, Federal Register (58 FR 15728) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended April 26, 1995. The public hearing scheduled for April 21, 1995, was not held because no one requested an opportunity to testify.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

#### A. Revisions to Missouri's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

Missouri proposes revisions to the following regulations that contain language that is identical in meaning to the counterpart Federal regulations (Federal regulation counterparts are indicated in brackets): 10 CSR 40-7.11(1)(H), Definition of Surety bond [30 CFR 800.5(a)]; 10 CSR 40-7.011(2), Requirement to file a bond [30 CFR 800.11]. The Director, therefore, finds these proposed revisions to Missouri's regulations are no less effective than the federal regulations.

#### B. Required Program Amendments

Missouri submitted proposed revisions in response to required program amendments that the Director placed on the Missouri program at 30 CFR 925.16(g) on May 8, 1991 (56 FR 21281).

##### 1. Required Program Amendments Satisfied by Statute or Regulation Changes in the Proposed Amendment

The Director finds that the proposed revisions to the following State statutes and regulations satisfy the indicated required program amendments and are not inconsistent with the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e) of the Federal regulations. Missouri's proposed revisions and accompanying fiscal demonstration indicate these revisions will resolve the issues associated with currently approved alternative bonding provisions. Therefore, the Director is approving them. For clarity, the required program amendments are listed below, verbatim, along with Missouri's proposed revisions.

a. *30 CFR 925.16(g)(1)*. At RSMo 444.830.1; 444.965.1; 10 CSR 40-7.011(2)(B); and 10 CSR 40-7.041(1)(A); demonstrate that the resulting financial aspect of the proposed optional participation by an applicant of either a full-cost bond or Phase I bond will ensure that the ABS can meet the requirements of 30 CFR 800.11(e) or remove this provision.

To satisfy 30 CFR 925.16(g)(1), Missouri proposes (1) at RSMo 444.830.1 to delete the option that allows an applicant to file a full-cost bond and pay a one time assessment to the CMLR Fund (the one time assessment only being required until September 1, 1993), thereby making participation in the ABS mandatory; (2) at RSMo 444.950.1 to remove the reference to a full-cost bond and to require all applicants to file a Phase I reclamation bond; (3) at RSMo 444.965.1 to delete language related to the option to file a full-cost bond; (4) at 10 CSR 40-7.011(2) (B) and (C) to delete provisions concerning filing of a full-cost bond; and (5) at 10 CSR 40-7.041(1) to delete provisions concerning assessment lump sum payments by permittees who file full cost bonds.

These proposed revisions satisfy the concerns raised by 30 CFR 925.16(g)(1), and the Director is removing this paragraph.

b. *30 CFR 925.16(g)(2)*. At RSMo 444.950.1 and 10 CSR 40-7.011(4) (A), (B), (C), and (D) to ensure that the Phase I reclamation bond amounts will cover the cost of reclamation and maintain the flexibility of conventional bonds in all situations and that the open pit minimum bond will be sufficient to assure the completion of the required reclamation in all cases.

At the time this required amendment was imposed, Missouri's program would not allow expenditure of bond pool moneys on Phase I reclamation. Missouri proposes in this amendment to (1) at RSMo 444.950.1 and 10 CSR 40-7.011(5) establish adjustable Phase I reclamation bond rates; (2) at RSMo 444.950.4 and 10 CSR 40-7.021(2)(D)1 allow retention of up to 20 percent of Phase I bond until completion of Phase III reclamation; and (3) at RSMo 444.960.5 and 10 CSR 40-7.041(4)(A)1 allow expenditure of CMLR funds for completion of Phase I reclamation.

The proposed revisions add flexibility to Missouri's alternative bonding system to ensure coverage of the cost of reclamation, and the Director is removing the required amendment at 30 CFR 925.16(g)(2).

c. *30 CFR 925.16(g)(4)*. AT RSMo 444.950.3 and 444.830.3 to require the Secretary of the Interior's approval

before adopting an alternative bonding system or delete the provision.

In response to the required program amendment at 30 CFR 925.16(g)(4), Missouri proposes to modify its requirements at RSMO 444.830.3 and 444.950.3 regarding the ability of the commission to approve an alternative bonding system by adding the language, “\* \* \* and which is consistent with or pursuant to the purposes of Public Law 95-87, the Surface Mining Control and Reclamation Act.”

Section 509(c) of SMCRA specifically requires that the Secretary of the Interior must approve an alternative bonding system prior to a State being able to adopt the system. In a letter to Missouri dated March 9, 1994 (Administrative Record No. MO-592), OSM stated its interpretation of Missouri's intent in making this change to its statute was to indicate Missouri's agreement that the Secretary of the Interior's approval is required and Missouri would first obtain the Secretary's approval prior to implementing any alternative bonding system. Missouri's response letter dated April 4, 1994 (Administrative Record No. MO-594), confirmed that OSM's interpretation was correct and Missouri agrees that the Secretary of the Interior's approval is required prior to implementing any alternative bonding system. therefore, the Director is removing the required program amendment at 30 CFR 925.16(g)(4).

d. *30 CFR 925.16(g)(5)*. At RSMo 444.960.1 to clarify how the CMLR Fund may be expended.

At RSMo 444.960.1, Missouri's currently approved statute states that moneys within the CMLR Fund will be used by the Land Reclamation Commission (LRC) to complete the reclamation plan for any permitted lands after the proceeds from any applicable performance bond for such reclamation have been exhausted. This would conceivably allow use of moneys in the CMLR Fund to complete Phases I, II, and III reclamation requirements. However, the existing statute at RSMO 444.960.5, while allowing moneys within the 40 percent fund (Fund A) to be used for any aspect of reclamation, stipulates that moneys within the 60 percent fund (Fund B) may be used for Phases II and III reclamation only.

To satisfy 30 CFR 925.16(g)(5), Missouri proposes at RSMO 444.960.5 to allow moneys from both Fund A and Fund B to be used for all phases of reclamation. The proposed revision clarifies how the CMLR Fund may be expended, and the Director is removing the required amendment at 30 CFR 925.16(g)(5).

e. *30 CFR 925.16(g)(6)*. At RSMo 444.960.5 and 10 CSR 40-7.041(4)(A)1, to ensure that the 40 percent fund portion (Fund A) will provide sufficient funding to fully reclaim those sites forfeited prior to September 1, 1988, and demonstrate that the 60 percent fund portion (Fund B) generation of monies will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e).

To satisfy 30 CFR 925.16(g)(6), Missouri proposes at RSMo 444.960.5, 10 CSR 40-7.041(1)(A), and 10 CSR 40-7.041(4)(A)1 to require that moneys paid into the CMLR Fund be allocated so that 40 percent of the assessments would be used for reclaiming permits revoked by the LRC prior to September 1, 1988 (Fund A), and 60 percent of the assessments would apply to reclamation of permits revoked by the LRC after September 1, 1988 (Fund B). Moneys that existed in the CMLR Fund as of September 1, 1988, would be allocated to Fund A, as would 40 percent of all moneys assessed for the CMLR Fund after September 1, 1988, until such time that the accumulation of money in Fund A would be sufficient to complete reclamation of those permits revoked by the commission prior to September 1, 1988, after which time all moneys assessed for the CMLR Fund would be allocated to Fund B. In addition, moneys from both Fund A and Fund B would be used on any aspect of reclamation. Missouri also proposes language changes at 10 CSR 40-7.041(1)(B), (C), and (E) to maintain consistency with the proposed changes at 10 CSR 40-7.041(1)(A) and 10 CSR 40-7.041(4)(A)1.

These proposed changes will allow Fund A to accrue additional moneys to assure sufficient funding is available to fully reclaim those sites forfeited prior to September 1, 1988. The portion of 30 CFR 925.16(g)(6) that requires a demonstration that Fund B generation of moneys will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e) is incorporated into and discussed in Finding B.2 since it is redundant with 30 CFR 925.16(g)(3), which also requires a demonstration that Missouri's ABS will meet the requirements of SMCRA. Therefore, since Missouri's proposed changes satisfy the Fund A portion of the required amendment and the Fund B portion is a redundant requirement, the Director is removing 30 CFR 925.16(g)(6) in its entirety.

f. *30 CFR 925.16(g)(8)*. At RSMo 444.965.3 and 10 CSR 40-7.041(1)(B) 3, 4, 5, and 6; demonstrate that the buy out option would still allow the ABS to meet the requirements of 30 CFR 800.11(e)(1) or remove this option.

In response to 30 CFR 925.16(g)(8), Missouri proposes to delete RSMO 444.965.3 and 10 CSR 40-7.041(1)(B)3, 4, 5, and 6, all of which either provide for or relate to a buy out option. The removal of the buy out option provisions from the Missouri program satisfies OSM's concerns, and the Director is removing the required amendment at 30 CFR 925.16(g)(8).

g. *30 CFR 925.16(g)(20)*. At 10 CSR 40-7.021(2)(D)1. to clarify that its Phase I bond release for an ABS is consistently defined and used throughout its program and to provide a legal opinion of its Phase I reclamation bond release and bond coverage liability.

Missouri proposes to revise 10 CSR 40-7.021(2)(D)1 to reduce Phase I bond by 80 percent when Phase I liability is released and to clarify the remaining bond is permit specific. For consistency throughout its program, Missouri also proposes (1) at 10 CSR 40-7.011(1)(D) to modify the definition of Phase I bond to include release of 80 percent of the bond upon successful completion of Phase I reclamation of a permit area; (2) at RSMo 444.805(15), recodified from 444.805(16), to modify the definition of Phase I reclamation bond to include release of no less than 80 percent of the bond upon successful completion of Phase I reclamation of a permit area; and (3) at RSMo 444.950.4 to allow for release of no less than 80 percent of Phase I reclamation bond upon completion of Phase I reclamation.

These proposed changes assure that Missouri's Phase I bond release for its ABS is consistently defined and used throughout its program. The Federal regulations at 30 CFR 800.40(c)(1), in reference to a conventional bonding system, allow for release of 60 percent of the bond when Phase I reclamation requirements are satisfied. Since Missouri proposes mandatory participation in its alternative bonding system, which will allow moneys to be used in any phase of reclamation, release of 80 percent of the Phase I reclamation bond upon completion of Phase I reclamation would be no less effective than the Federal requirement to release 60 percent of a full cost bond upon completion of Phase I reclamation.

Replacement of the word “mine” with the word “permit” and addition of the word “remaining” at 10 CSR 40-7.021(2)(D)1 clarifies that Phase I reclamation bond release is permit specific. Therefore, a legal opinion of Missouri's Phase I reclamation bond release and bond coverage liability is no longer necessary.

Based upon the above discussions, the Director is removing the required

program amendment at 30 CFR 925.16(g)(20).

## 2. Required Program Amendments Satisfied by Missouri's Fiscal Demonstration

Missouri's fiscal demonstration satisfies the required program amendments at 30 CFR 925.16(g)(3), the Bond B portion of 30 CFR 925.16(g)(6), and 30 CFR 925.16(g)(7), which are set forth in the May 8, 1991, Federal Register (56 FR 21281). For clarity, the required program amendments are listed below.

30 CFR 925.16(g)(3). \* \* \*, demonstrate that the combination of bond liability between the operator's Phase I bond and the CMLR Fund bond will meet the requirements of SMCRA.

30 CFR 925.16(g)(6). \* \* \*, demonstrate that the 60 percent fund portion (Fund B) generation of moneys will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e).

30 CFR 925.16(g)(7). \* \* \*, to assure that the fee assessment structure of the CMLR Fund will ensure that the Fund will operate in a financially solvent manner as required by 30 CFR 800.11(e).

In response to these three required program amendments, Missouri submitted the report entitled "Evaluation of Missouri's Alternative Bonding System." Information in this demonstration shows that as of February 1, 1996, Missouri's projected CMLR Fund assets exceed liabilities in both Fund A and Fund B. In addition, projection tables in the report indicate continued assessment fee payments to the Fund will enable the State to reclaim all forfeiture sites and meet contractual commitments in a timely manner without the Fund incurring a deficit through September 1998.

Section 509(c) of SMCRA and 30 CFR 800.11(e) both require that under an alternative bonding system, the regulatory authority must have available sufficient money to complete the reclamation plan for any site that may be in default at any time. An alternative bonding system cannot be allowed to incur a deficit if it is to have available adequate revenues to complete the reclamation of all outstanding bond forfeiture sites. Since Missouri's demonstration shows that the CMLR Fund has sufficient funds to fund the reclamation of forfeiture sites that may be in default at any time, the Director finds that Missouri's alternative bonding system meets the requirements of 30 CFR 800.11(e), and it is achieving the objectives and purposes of the conventional bonding program set forth in section 509 of SMCRA. However, due to the possibility of future unanticipated

bond forfeitures or increased reclamation costs on pending or existing forfeiture sites that could have significant impacts on solvency of Missouri's CMLR Fund, OSM must have a means of monitoring continued solvency of the Fund. Therefore, the Director is removing the required program amendments at 30 CFR 925.16(g)(3), (g)(6), and (g)(7), with the stipulation that Missouri submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

## C. Revisions to Missouri's Statutes That Are Not Substantively Identical to the Corresponding Provisions of the Federal Statutes

### 1. RSMo 444.805—Definitions

Missouri proposes to recodify this section, delete the definition of "full-cost bond," and revise the definition of "Phase I reclamation bond."

a. *Full-Cost Bond.* Missouri proposes to delete the term "full-cost bond" previously defined at subsection (8), as this term is no longer used in the revised statutes. Operators will no longer have the option of posting a "full-cost bond," but will be required to post a "Phase I reclamation bond" at a minimum rate of \$2,500 an acre and pay assessments to the CMLR fund. The requirement for mandatory participation in Missouri's alternative bonding program will make the term "full-cost bond" obsolete. The Director finds that Missouri's deletion of the definition of "full-cost bond" does not render RSMo 444.805 less stringent than the requirements of SMCRA for performance bonds at section 509(a). The Director is, therefore, approving Missouri's proposal to delete the definition of "full-cost bond" at RSMo 444.805(8).

b. *Phase I Reclamation Bond.* At recodified subsection (15), previously codified subsection (16), Missouri redefines the term "Phase I reclamation bond" to mean "a bond for performance filed by a permittee pursuant to section 444.450 that may have no less than eighty percent released upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan, with the rest of the bond remaining in effect until Phase III liability is released." The previous definition for "Phase I reclamation bond" allowed Missouri to release all Phase I reclamation bond upon the successful completion of Phase I

reclamation. By requiring the retention of 20 percent of the Phase I bond until after Phase III liability is released, the revised definition provides incentive for operators to successfully complete Phase II and Phase III reclamation as required by 30 CFR 800.11(e)(2). There is no Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds this definition is not inconsistent with Federal program requirements. Therefore, the Director is approving Missouri's proposed revision to its definition of "Phase I reclamation bond" at RSMo 444.805(15).

### 2. RSMo 444.830—Filing Phase I Reclamation Bond

Missouri proposes to remove a provision from RSMo 444.830.1 and insert the provision at RSMo 444.850.1. This provision concerns the factors to be considered when determining the required Phase I bond amount. Since the provision is to be inserted in RSMo 444.950.1, the Director finds this change does not render the previously approved provisions at RSMo 444.830.1 and 444.950.1 less stringent than the requirements for performance bonds at section 509(a) of SMCRA and is approving the provision move.

### 3. RSMo 444.950—Phase I Reclamation Bond Requirements

a. *Adjustable Phase I Bond.* (1) *Minimum Adjustable Rate Phase I Reclamation Bond.* At RSMo 444.950.1, Missouri proposes to establish a minimum Phase I reclamation bond rate of \$2,500 per acre for all permitted acreage, except for coal preparation areas for which the minimum bond rate would be \$10,000 per permitted acre. OSM previously approved the \$2,500 per acre Phase I bond amount in the February 26, 1988, Federal Register (53 FR 5766) and the \$10,000 per acre bond requirement for coal preparation areas in the October 31, 1988, Federal Register (53 FR 43866) for unbonded acreage under new permits, after April 30, 1986, or permits undisturbed as of that date. Both approvals were considered to be adequate partial responses to OSM's January 30, 1986, 30 CFR part 732 notification to Missouri.

Missouri's proposal includes provisions that would allow annual adjustments of up to \$250 for the \$2,500

minimum rate and \$500 for the \$10,000 minimum rate, with maximum bond rates of \$5,000 and \$15,000, respectively. Bond amount adjustments would have to be approved through rulemaking.

Establishment of adjustable Phase I bond rates is an improvement over the previously approved fixed rates. Adjustable rates will provide the necessary flexibility to accommodate changes in the cost of future reclamation, a component essential to ensure the CMLR Fund's solvency and hence its ability to meet the criteria of 30 CFR 800.11(e). Therefore, the Director finds these revised provisions at RSMo 444.950.1 are not inconsistent with the requirements of section 509(a) of SMCRA, and he is approving them.

(2) *Factors Used to Determine Phase I Reclamation Bond Amounts.* Missouri proposes to insert a provision at RSMo 444.950.1, that was removed from RSMo 444.830.1, with no substantive changes in language. This provision concerns the factors to be considered when determining the required Phase I reclamation bond amount. These factors will be used to assess all mine sites annually to determine if an adjustment in the Phase I reclamation bond amount is necessary. The Director finds that the addition of this previously approved provision does not render the provisions at RSMo 444.950.1 less stringent than the Federal requirements for performance bonds at section 509(a) of SMCRA. Therefore, the Director is approving Missouri's proposed change.

(3) *Minimum Amount of Phase I Reclamation Bond.* Missouri proposes to remove the language "permitted surface coal mining operation" and add the word "permit" in that portion of the provision which currently requires a minimum of \$10,000 of Phase I reclamation bond be posted by an operator. The \$10,000 minimum will now apply to each permit instead of a surface coal mining operation, which might include multiple permits. Missouri also proposes to delete the language "at two thousand five hundred dollars per acre" in that portion of the provision which requires a minimum bond equivalent to 20 acres of Phase I reclamation bond be posted for each acre of open pit. This change is necessary to be consistent with Missouri's proposal to establish adjustable Phase I reclamation bond amounts. These changes are not inconsistent with section 509 of SMCRA, and represent an improvement to Missouri's alternative bonding system. Therefore, the Director is approving these revisions to RSMo 444.950.1.

b. *Acceptance of Phase I Reclamation Bond.* At RSMo 444.950.3, Missouri proposes to add the language "Phase I reclamation." This change is necessary to maintain consistency with Missouri's proposal to delete the term "full-cost bond" and revise the term "Phase I reclamation bond" at section 444.805. This proposed change is nonsubstantive and does not render section 444.950.3 less stringent than section 509(c) of SMCRA. Therefore, the Director is approving the proposed change.

c. *Release of Phase I Reclamation Bond.* At RSMo 444.950.4, Missouri proposes to add language which would allow retention of up to 20 percent of Phase I reclamation bond after completion of Phase I reclamation with the retained bond remaining in effect until completion of Phase III reclamation. This is an improvement over the existing provision which requires all Phase I bond to be released on completion of Phase III reclamation. This is an improvement over the existing provision which requires all Phase I bond to be released on completion of Phase I reclamation, and it would provide the economic incentive required by 30 CFR 800.11(e)(2) for permittees to comply with all reclamation provisions.

Missouri further proposes to allow Phase I reclamation bond be available for all phases of reclamation in the event of forfeiture. This is an improvement in the event of forfeiture. This is an improvement over the existing provision which allows the expenditure of Phase I reclamation bond only for Phase I reclamation in the event of forfeiture. Section 509(a) of SMCRA requires that the amount of the bond be sufficient to assure the completion of the reclamation plan in the event of forfeiture.

Based on the above discussions, the Director finds the proposed changes at RSMo 444.950.4 are not inconsistent with sections 509 and 519 of SMCRA, and represent an improvement in the Missouri alternative bonding program. Therefore, the Director is approving Missouri's proposed changes.

#### 4. RSMo 444.960—Coal Mine Land Reclamation Fund

Section 509(c) of SMCRA provides that "in lieu of establishment of a bonding program, as set forth in this section, the Secretary may approve \* \* \* an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section." As stated in section 509(a) of SMCRA, one of the key objectives and purposes of the bonding program is "to assure the completion of the

reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture \* \* \*." In furtherance of this objective, 30 CFR 800.11(e)(1) provides, in pertinent part, that OSM may approve an alternative bonding system if the alternative assures that "the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Reclamation liability under a bond pool must be continuous. The liability and obligation of an ABS does not disappear if the bond pool finds itself unable to meet its obligations as they mature, its existing capital structure is impaired, or its ability to perform any of its obligations is impaired.

To meet the requirements of 30 CFR 800.11(e), an alternative bonding system must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time, and must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

In this proposed program amendment submittal, Missouri proposes several changes to its statutes to strengthen its ABS and meet requirements of section 509 of SMCRA and 30 CFR 800.11(e).

a. *Fund A.* At RSMo 444.960, Missouri established Fund A in response to the Director's January 30, 1986, letter that required the State to outline plans to reclaim its backlog of forfeited sites. The proposed fee structure of Fund A allocates moneys that existed in the CMLR Fund as of September 1, 1988, to Fund A and allocates 40 percent of all moneys assessed for the CMLR Fund after September 1, 1988, to Fund A until such time that the accumulation of money in Fund A would be sufficient to complete reclamation of those permits revoked by the commission prior to September 1, 1988.

In addition, at the time this proposed amendment was submitted, Missouri submitted a letter from its Attorney General that explains the legal basis for using Abandoned Mine Land Funds for the reclamation of Bill's Coal Forfeiture Project. When the proposed amendment was submitted, Missouri's statutes were silent on expenditure of Abandoned Mine Land Funds (AML Funds) on forfeiture sites where the surety became insolvent. Since then, OSM approved a proposed amendment in which Missouri made changes to its statutes to specifically allow use of AML Funds on sites where insolvency of the surety occurred (60 FR 43972, August 24, 1995). Approval of this amendment assures Missouri's statute includes

language which allows use of AML Funds on the Bill's Coal Forfeiture Project. Use of AML Funds at this site would lessen the financial burden on Fund A, thereby reducing the time period for which assessments to Fund A must continue.

Separation of Fund A from Fund B in the CMLR Fund system as proposed by Missouri will allow the funds necessary to reclaim the backlog of sites forfeited prior to September 1, 1988, and is not inconsistent with section 509(c) of SMCRA. Therefore, the Director finds that Missouri's proposed establishment of Fund A under section RSMo 444.960.1 is no less stringent than section 509(c) of SMCRA and is no less effective than 30 CFR 800.11(e). Accordingly, the Director is approving Missouri's proposed establishment of Fund A in the ABS.

b. *Fund B.* Missouri's proposed Fund B will be used to fund reclamation of sites where forfeiture occurred after September 1, 1988. The proposed fee structure requires that 60 percent of the moneys assessed for the CMLR Fund be allocated to Fund B until enough moneys accrue in Fund A to complete reclamation of sites where forfeiture occurred prior to September 1, 1988, after which Fund B will receive 100 percent of the CMLR Fund assessments.

Missouri proposes other changes which will specifically strengthen Fund B. At RSMo 444.830.1, Missouri proposes to remove the option of operators to file a full cost bond. This would require all permittees to participate in the ABS program, thereby providing potential for increased assessments to the CMLR Fund. At RSMo 444.950.4, Missouri proposes to allow retention of up to 20 percent of Phase I reclamation bond after completion of Phase I reclamation with the retained bond remaining in effect until completion of Phase III reclamation. Also at RSMo 444.950.4, Missouri proposes to allow the expenditure of Phase I reclamation bond for all phases of reclamation in the event of forfeiture. The existing provisions at RSMo 444.950.4 allow release of all Phase I bond on completion of Phase I reclamation and the expenditure of Phase I reclamation bond only for Phase I reclamation in the event of forfeiture. These changes would potentially lessen the burden on Fund B when forfeitures occur. As previously discussed in this final rule, all of these proposed changes are being approved by the Director.

The Director finds that Missouri's proposed concept of Fund B is not inconsistent with section 509(c) of SMCRA or 30 CFR 800.11(e). Therefore,

the Director is approving Missouri's proposed establishment of Fund B under section RSMo 444.960.

#### 5. RSMo 444.965—Payments to the CMLR Fund

a. *Redesignations.* In Missouri's proposed amendment, RSMo 444.965.4 is redesignated 444.965.3, section 444.965.5 is redesignated section 444.965.4, and section 444.965.6 is redesignated section 444.965.5. These changes do not render the previously approved provisions of RSMo 444.965 less stringent than the requirements of section 509 of SMCRA. Therefore, the Director is approving the redesignations.

b. *CMLR Fund Adjustment.* Proposed language at newly codified RSMo 444.965.4, recodified from section 444.965.5, would require that after the date when enough moneys have accumulated in the 40 percent pool (Fund A) to complete reclamation on sites revoked prior to September 1, 1988, whenever the fund balance falls below \$7 million, tonnage assessments would resume at the rate of 25 cents per ton for the first 50,000 tons and 15 cents per ton for the second 50,000 tons of coal sold, shipped, or otherwise disposed of in a calendar year by a permittee, and the assessments would remain in effect until the fund balance once again achieved at least \$7 million dollars at the close of the State's fiscal year.

Missouri's proposed tonnage rate assessments at section 444.965.4 would allow reductions in the assessment rates provided at section 444.965.2. Such fee assessments reductions would probably not jeopardize solvency of the CMLR Fund because at the time of such reductions, enough moneys would already have accumulated to reclaim the backlog of forfeited sites where revocation occurred prior to September 1, 1988. The Director finds the changes proposed by Missouri are not inconsistent with the requirements of section 509(c) of SMCRA. Therefore, the Director is approving Missouri's proposed changes at section 444.965.4.

c. *CMLR Fund Balance Below \$2 Million.* At newly codified RSMo 444.965.5, recodified from section 444.965.6, Missouri proposes that: "After September 1, 1998, whenever the fund balance falls below \$2 million, the assessment rate established in subsection 2 of the section [RSMo 444.965.2] shall increase to a per ton rate of 30 cents per ton for the first 50,000 tons and 20 cents per ton for the second 50,000 tons of coal sold, shipped, or otherwise disposed of in a calendar year by a permittee. The increased tonnage assessment shall

remain in effect until the fund balance is at least \$3 million at the close of the State's fiscal year, at which time the assessment rate will revert to the rate established pursuant to subsection 4 of this section [RSM 444.965.4]." The proposed increase in assessment rates after September 1, 1998, whenever the fund balance falls below \$2 million will increase Missouri's ability to adjust the fee schedule for the CMLR Fund when necessary. The Director finds the changes proposed by Missouri are not inconsistent with the requirements of section 509(c) of SMCRA. Therefore, the Director is approving the changes proposed by Missouri at section 444.965.5.

#### D. Revisions to Missouri's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

##### 1. 10 CSR 40-7.011—Bond Requirements

a. *10 CSR 40-7.011(1), Definitions.* (1) *Redesignations.* In Missouri's proposed amendment, 10 CSR 40-7.011(1)(B) is redesignated 10 CSR 40-7.011(1)(A), 10 CSR 40-7.011(1)(C) is redesignated 10 CSR 40-7.011(1)(B), 10 CSR 40-7.011(1)(D) is redesignated 10 CSR 40-7.011(1)(C), 10 CSR 40-7.011(1)(E) is redesignated 10 CSR 40-7.011(1)(D), 10 CSR 40-7.011(1)(F) is redesignated 10 CSR 40-7.011(1)(G), and 10 CSR 40-7.011(1)(G) is redesignated 10 CSR 40-7.011(1)(H). These changes do not render the previously approved provisions at 10 CSR 40-7.011(1) less effective than the Federal regulations. Therefore, the Director is approving the redesignations.

(2) *Definition of "Full Cost Bond."* At 10 CSR 40-7.011(1)(A), Missouri proposes to delete the definition of "full-cost bond." Deletion of this definition is discussed in Finding C.1.a. of this document. In that finding, the Director is approving Missouri's proposal to delete the definition of "full-cost" bond from its statutes. Therefore, the Director is also approving Missouri's proposal to delete the definition of "full-cost bond" from its regulations at 10 CSR 40-7.011(1)(A).

(3) *Definition of "Phase I Bond."* At 10 CSR 40-7.011(1)(D), previously designated 10 CSR 40-7.011(1)(E), Missouri proposes to redefine the term "Phase I reclamation bond." Redefinition of this term is discussed in Finding C.1.b. of this document. In that finding, the Director is approving Missouri's proposal to redefine the term in its statutes. Since the definition in Missouri's regulation is substantively the same as the definition in its statute,

the Director is also approving Missouri's proposal to redefine the term "Phase I bond" in its regulation at 10 CSR 40-7.011(1)(D).

(4) *Definition of "Phase II Bond."* At 10 CSR 40-7.011(1)(E), Missouri proposes to add a definition for "Phase II bond." It is defined as "performance bond conditioned on the release of Phase II liability." There is no direct Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds Missouri's proposed definition of "Phase II bond" is not inconsistent with the Federal regulation requirements. Therefore, the Director is approving Missouri's proposal to add a definition for "Phase II bond" at 10 CSR 40-7.011(1)(E).

(5) *Definition of "Phase III Bond."* At 10 CSR 40-7.011(1)(F), Missouri proposes to add a definition for "Phase III bond." It is defined as "performance bond conditioned on the release of Phase III liability." There is no direct Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds Missouri's proposed definition of "Phase III bond" is not inconsistent with the Federal regulation requirements. Therefore, the Director is approving Missouri's proposal to add a definition for "Phase III bond" at 10 CSR 40-7.011(1)(F).

b. *10 CSR 40-7.011(3), Incremental Bonding.* (1) *Filing Incremental Bond.* At 10 CSR 40-7.011(3)(A), Missouri proposes to add the provision, "Disturbance is prohibited on succeeding increments, underground shafts, tunnels, or operations prior to acceptance of bond." This provision is substantially the same as that found at 10 CSR 40-7.011(c). Therefore, the Director finds that addition of this provision does not render 10 CSR 40-7.011(3)(A) less effective than the Federal regulations, and he is approving the addition as proposed by Missouri.

(2) *Identification of Increments for Bonding.* At 10 CSR 40-7.011(3)(D),

Missouri proposes to add the language, "'\* \* \* submit an incremental bonding schedule and \* \* \*.'" Although the counterpart Federal regulation at 30 CFR 800.11(b)(3) does not require submission of an incremental bonding schedule, the Federal regulation at 30 CFR 800.11(d)(3) does require the applicant to submit an incremental bond schedule if he elects to bond in increments. Therefore, the Director finds that addition of this requirement to 10 CSR 40-7.011(3)(D) does not render it less effective than 30 CFR 800.11(b)(3), and is approving the addition of language as proposed by Missouri.

(c) *10 CSR 40-7.011(4), Bond Amounts.* (1) *Minimum per Acre Phase I Bond Amounts.* At 10 CSR 40-7.011(4)(A), Missouri proposes to make language changes and deletions to retain consistency with proposed changes at RSMo 444.950.1 concerning minimum Phase I reclamation bond amounts. Missouri, also, proposes to add the provision now found at 10 CSR 40-7.011(4)(C) which establishes the minimum amount of Phase I reclamation bond required for each acre of coal preparation area. The proposed revisions to Missouri's statute requirements for minimum Phase I reclamation bond amounts are discussed in Finding C.3.a.(1) in this document. In that finding, the Director approved Missouri's proposed changes to its statute at RSMo 444.950.1. Therefore, the Director is also approving Missouri's proposed language changes, additions, and deletions as proposed at 10 CSR 40-7.011(4)(A), since they are consistent with the approved statute revisions at RSMo 444.950.1.

(2) *Minimum Phase I Bond for a Permit.* At existing 10 CSR 40-7.011(4)(D), redesignated as 10 CSR 40-7.011(4)(B), Missouri proposes to change language so that the minimum amount of Phase I bond required for mines with fewer than 1,000 acres shall be \$10,000, or the equivalent of 20 acres of bond for each acre of open pit area, for a single permit instead of mine, and remove the definition of a "single mine." The Federal regulations at 30 CFR 800.14(b) set a minimum bond requirement of \$10,000 for the entire area under one permit. Missouri's proposed changes at 10 CSR 40-7.011(4)(B) would also establish a minimum bond rate of \$10,000 for the area under one permit. Therefore, the Director finds Missouri's proposed changes are no less effective than the Federal regulations at 30 CFR 800.14(b), and he is approving Missouri's proposed changes at redesignated 10 CSR 40-7.011(4)(B).

(3) *Deleted Regulations.* Missouri proposes to delete existing 10 CSR 40-7.011(4) (B), (C), (E), (F), (G), (H), and (I).

(a) At existing 10 CSR 40-7.011(4)(B), the provision allows for a lesser amount of bond per acre than the \$2,500 minimum bond per acre set by 10 CSR 40-7.011(4)(A). Deletion of existing 10 CSR 40-7.011(4)(B) will allow bond on any permitted acreage to be no less than the \$2,500 bond per acre required by 10 CSR 40-7.011(4)(A). The Director finds deletion of existing 10 CSR 40-7.011(4)(B) will not render 10 CSR 40-7.011(4) less effective than the Federal requirements at 30 CFR 800.14(b).

(b) The provision at 10 CSR 40-7.011(4)(C) is being added to 10 CSR 40-7.011(4)(A). The Director finds deletion of 10 CSR 40-7.011(4)(C) and insertion of the provision at 10 CSR 40-7.011(4)(A) will not render 10 CSR 40-7.011(4) less effective than the Federal requirements at 30 CFR 800.14(b).

(c) The provisions at 10 CSR 40-7.011(4) (E), (F), (G), (H), and (I) all pertain to full-cost bonding. Deletion of the option to file a full-cost bond in the Missouri statutes is discussed in Finding B.1.a. In that finding, the Director approved Missouri's proposal at RSMo 444.830.1 to delete the option to file a full-cost bond. Therefore, the Director is approving Missouri's proposal to delete existing regulations pertaining to full-cost bond at 10 CSR 40-7.011(4) (B), (C), (E), (F), (G), (H), and (I).

d. *10 CSR 40-7.011(5), Adjustment of Bond Amounts.* Missouri proposes to add new section 10 CSR 40-7.011(5), which includes provisions at subsections (A), (B), (C), (D), and (E), that would allow the State to adjust Phase I bond rates to ensure adequate bonding amounts. The provisions at proposed new section 10 CSR 40-7.011(5) are substantially the same as the proposed provisions of Missouri's statute at RSMo-444.950.1, which are discussed in Finding C.3.a.(1). In that finding, the Director is approving Missouri's proposed statute provisions concerning adjustment of Phase I bond amounts. Therefore, the Director is approving Missouri's proposed regulation provisions at 10 CSR 40-7.011(5).

## 2. 10 CSR 40-7.021 Duration and Release of Reclamation Liability

a. *10 CSR 40-7.021(2) Criteria and Schedule for Release of Reclamation Liability.* (1) *General.* At 10 CSR 40-7.021(2), Missouri proposes to remove the provision concerning retention of bond on unreclaimed temporary structures, such as roads, sediment ponds, diversions, and stockpiles where

Phase I, II, and III liabilities under the alternative bonding system apply and on a reclamation cost estimate basis where full-cost bonding applies. Missouri is proposing to move that portion of the provision pertaining to Phase I bond to 10 CSR 40-7.021(2)(A), and is proposing to delete that portion of the provision pertaining to full-cost bonding. As discussed in Finding B.1.a., the Director is approving Missouri's proposal to delete the option to file a full-cost bond. Therefore, none of the existing Missouri program provisions are rendered less effective by this proposed move and deletion, and the Director is approving Missouri's proposed revision at 10 CSR 40-7.021(2).

(2) *10 CSR 40-7.021(2)(A) Qualification for Release of Phase I Liability.* As discussed above, Missouri proposes to move the requirement that Phase I bond be retained on unreclaimed temporary structures, such as roads, sediment ponds, diversions, and stockpiles from 10 CSR 40-7.021(2) to 10 CSR 40-7.021(2)(A). Retention of bond for unreclaimed temporary structures is not addressed as separate requirements in the Federal regulations for bond release; however, Phase I bond release may not be approved until backfilling, grading, and drainage control in accordance with the reclamation plan is complete. Since 10 CSR 40-7.021(2)(A) retains its requirement for completion of backfilling, grading, and drainage control prior to Phase I bond release, the existing regulation provisions are not rendered less effective by the inclusion of the requirement for retention of bond for unreclaimed temporary structures. Therefore, the Director finds the proposed revision is no less effective than the Federal regulations at 30 CFR 800.40(c)(1), and is approving Missouri's proposed change at 10 CSR 40-7.021(2)(A).

(3) *10 CSR 40-7.021(2)(D)1 Release of Phase I Bond When Phase I Reclamation is Completed.* In addition to the proposed changes at 10 CSR 40-7.021(2)(D)1 previously discussed in Finding B.1.b., Missouri proposes to add language to require that after 80 percent of Phase I bond is released, the total remaining bond for a single permit shall not be below the amount required by 10 CSR 40-7.011(4)(B). As discussed in Finding D.1.c.(2), the Director is approving new 10 CSR 40-7.011(4)(B) which requires that the minimum amount of Phase I bond applied to a single permit shall be \$10,000, or the equivalent of 20 acres of bond for each acre of open pit area, whichever is greater. The Director finds Missouri's

proposed change does not render 10 CSR 40-7.021(2)(D)1 less effective than the requirements of 30 CFR 800.40(c)(1), and he is approving it.

(4) *10 CSR 40-7.021(2)(D)2 Release of Remaining Phase I Reclamation Bond.* At 10 CSR 40-7.021(2)(D)2, Missouri proposes to delete language pertaining to release of full-cost bonds and to add the following language pertaining to release of Phase I reclamation bond: "The remaining amount of the bonds shall be released when Phase III liability is released." Deletion of the option to file a full-cost bond is discussed in Finding B.1.a. In that finding, the Director approved Missouri's proposal to delete the option to file a full-cost bond from its statutes. Retention of a portion of Phase I bond until completion of Phase III reclamation is discussed in Finding C.3.c. In that finding, the Director approved Missouri's provision in its statutes to retain up to 20 percent of Phase I bond until completion of Phase III reclamation. These changes proposed by Missouri are necessary to maintain consistency in its program and are not inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Missouri's proposed changes at 10 CSR 40-7.021(2)(D)2.

(5) *10 CSR 40-7.021(2)(E) Release of Bond from Undisturbed Areas.* At 10 CSR 40-7.021(2)(E), Missouri proposes to clarify its provision for release of bond liability from undisturbed areas which are adjacent to disturbed lands by specifying that the bond "may" be released instead of "shall" be released and by adding language pertaining to surface mining disturbances: "All bonding liability may be released in full from undisturbed areas when further disturbances from surface mining have ceased." In addition, Missouri proposes to clarify that "The permit shall terminate on all areas where all bonds have been released." Federal regulations at 30 CFR 800.15(c) allow reduction of bond liability for undisturbed land. Although the Federal regulations for undisturbed areas do not contain specific language pertaining to permit termination, the Director finds the proposed changes would not render 10 CSR 40-7.021(2)(E) inconsistent with SMCRA or the Federal regulations and is approving them.

b. *10 CSR 40-7.021(5) Requirement to File an Affidavit.* On the State's initiative, additional requirements for bond release are proposed to be added to the Missouri program. Specifically, Missouri proposes to add a new section 10 CSR 40-7.021(5) which would require an operator who is seeking a Phase III bond release to file an affidavit

with the recorder of deeds in the county where mining occurred describing the parcel(s) of land where operations such as underground mining, auger mining, covering of slurry ponds, or other underground activities occurred which could impact or limit future use of the land. This requirement would be applicable to mined land where Phase I reclamation was completed on or after September 1, 1992. There is no Federal counterpart to the proposed provision for Phase III bond release at section 519 of SMCRA or 30 CFR 800.40(c). The Director finds the additional requirements would not adversely impact the Missouri program as none of the existing program provisions are rendered less effective than the Federal regulations by the inclusion of the additional requirements. Therefore, he is approving 10 CSR 40-7.021(5) as proposed.

### 3. 10 CSR 40-7.041 Form and Administration of the Coal Mine Land Reclamation Fund

Missouri proposes to delete 10 CSR 40-7.041(4)(A)2. This provision stipulates that Reclamation Fund moneys cannot be expended for reclamation or areas bonded by full-cost bonds. Since Missouri also proposes in this amendment to remove the option to file a full-cost bond, this proposed deletion is necessary to maintain consistency in the Missouri program. As discussed in Finding B.1.a., the Director is approving the deletion of the option to file a full-cost bond from the Missouri program. Therefore, the Director finds Missouri's proposed deletion of 10 CSR 40-7.041(4)(A)2 will not render 10 CSR 40-7.041(4)(A) less effective than the Federal regulations.

## IV. Summary and Disposition of Comments

### *Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because on one requested an opportunity to speak at a public hearing, no hearing was held.

### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Missouri program. No comments from Federal agencies were received.

### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written

concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

None of the revisions that Missouri proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment (Administrative Record Nos. MO-621 and MO-624). EPA did not respond to OSM's request.

#### V. Director's Decision

Based on the above findings, the Director is approving, with a reporting stipulation, the proposed amendment as submitted by Missouri on March 7, 1995, and March 28, 1995. This stipulation requires Missouri to submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

The changes approved in this rulemaking strengthens the Missouri program and, as such, are consistent with SMCRA and the Federal regulations at 30 CFR 732.17(g).

The Director approves the regulations and statutes as proposed by Missouri with the provision that they be fully promulgated in identical form to the regulations and statutes submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri program, are being amended to implement this decision. With respect to those changes in State laws and regulations approved in this document, the Director is making the final rule effective immediately.

#### *Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. In the oversight of the Missouri program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

#### VI. Procedural Determinations

##### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

##### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

##### List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

#### **PART 925—MISSOURI**

1. The authority citation for Part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (t) to read as follows:

##### **§ 925.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(t) Revisions to the following statutes and regulations, as submitted to OSM on March 7 and March 28, 1995, are approved effective May 28, 1996, with a reporting stipulation that requires Missouri to submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

(1) Revisions to the Revised Statutes of Missouri (RSMo).

RSMo 444.805—Deletion of the definition of full-cost bond and revision of the definition of Phase I reclamation bond.

RSMo 444.830.1—Deletion of option to file a full-cost bond and revision to Phase I reclamation bond filing requirements.

RSMo 444.830.3—Commission's adoption of an alternative bonding system.

RSMo 444.950.1—Phase I reclamation bond amount requirements, including annual adjustments proposed through the Missouri rulemaking process.

- RSMo 444.950.3—Self-bonding requirements and adoption of an alternative bonding system.
- RSMo 444.950.4—Phase I reclamation bond liability.
- RSMo 444.960.1—Establishment of the CMLR Fund.
- RSMo 444.960.5—Allocation and use of the A (40%) and B (60%) portions of the CMLR Fund.
- RSMo 444.965.1—CMLR initial assessments.
- RSMo 444.965.3—Deletion of buy-out option.
- RSMo 444.965.4—CMLR Fund Adjustment.
- RSMo 444.965.5—CMLR assessment increase.
- (2) Revisions to the Missouri Code of Regulations (CSR) at 10 CSR 40–7.
- 10 CSR 40–7.011(1)—Deletion of the definition of full-cost bond, revision of the definition of Phase I bond, and addition of definitions for Phase II and Phase III bond.
- 10 CSR 40–7.011(2)—Revision of requirements to file a bond.
- 10 CSR 40–7.011(3)—Filing of incremental bond and identification of increments for bonding.
- 10 CSR 40–7.011(4)—Minimum per acre Phase I bond amounts, minimum Phase I bond for a permit, and deletion of full-cost bonding provisions.
- 10 CSR 40–7.011(5)—Annual adjustment of Phase I bond amounts.
- 10 CSR 40–7.021(2)—Concerning criteria and schedule for release of reclamation liability, qualification for release of Phase I liability, release of Phase I bond when Phase I reclamation is completed, and release of bond from undisturbed areas.
- 10 CSR 40–7.021(5)—Requirement to file an affidavit at Phase III release of underground mining acreage.
- 10 CSR 40–7.041(1)—Payment to the 40 percent pool, assessment rates, continuation of monthly assessments, and reinstatement rates.
- 10 CSR 40–7.041(4)—Expenditure of reclamation fund moneys.

#### § 925.16 [Amended]

3. Section 925.16 is amended by removing and reserving paragraphs (g)(1) through (g)(8) and (g)(20).

[FR Doc. 96–13261 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–05–M

#### 30 CFR Part 925

[SPATS No. MO–025–FOR]

#### Missouri Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with certain exceptions, a proposed amendment to the Missouri regulatory program (hereinafter referred to as the “Missouri program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a proposed set of revegetation success guidelines and a rulemaking that eliminates the reference to an earlier set of guidelines that was never approved by OSM. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460.

#### SUPPLEMENTARY INFORMATION:

- I. Background on the Missouri Program
- II. Submission of the Proposed Amendment
- III. Director’s Findings
- IV. Summary and Disposition of Comments
- V. Director’s Decision
- VI. Procedural Determinations

#### I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning Missouri’s program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

#### II. Submission of the Proposed Amendment

By letter dated December 14, 1995 (Administrative Record no. MO–633), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment in response to the required program amendments at 30 CFR 925.16 (a) and (p)(6). The

provisions of the Code of State Regulations (CSR) that Missouri proposes to amend are: 10 CSR 40–3.120/3.270(c)(B)2.A–H., Specific revegetation success standards for postmining land uses. Specifically, Missouri proposes revisions to its approved program for evaluating revegetation success. Missouri revised its regulations for the specific standards for each of its approved land uses to delete the reference to an earlier set of guidelines that had not been approved by OSM and reference the guidelines as currently proposed in this amendment. The proposed revegetation success guidelines consist of eight separate guidance documents that establish the revegetation success standards by land use. These documents are titled the: (1) Phase II and Phase III revegetation standards for prime farmland; (2) Phase III revegetation standards for cropland; (3) Phase III revegetation standards for pasture and previously mined areas; (4) Phase III revegetation standards for wildlife habitat; (5) Phase III revegetation standards for woodland; (6) Phase III revegetation standards for industrial/commercial revegetation; (7) Phase III revegetation success standards for residential land use; and (8) Phase III revegetation success standards for recreation land use. Each set of guidelines elaborates by land use type the revegetation success standards, measurement frequency, sampling procedures, data submission and analysis, maps, and mitigation plan requirements. The guidance documents follow the approved Missouri program regulations at 10 CSR 40–3.120/3.270(6).

OSM announced receipt of the proposed amendment in the January 26, 1996, Federal Register (61 FR 2459), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 26, 1996.

#### III. Director’s Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director’s findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

**1. 10 CSR 40-3.120/3.270(6)(B)—  
Specific Standards for Postmining Land  
Uses**

The required amendment at 30 CFR 925.16(p)(6) requires Missouri to amend its program at 10 CSR 40-3.120/3.270(6)(B) 2.A through H to remove the reference to the Land Reclamation Commission's June 1990 Phase III Liability Release Guidelines.

Missouri proposes to revise each land use specific revegetation success guidance document which it incorporated by reference into its regulations. Measurement, for applicable land use specific levels of ground cover, production, or stocking shall be performed in accordance with the criteria contained in the current land use specific guidelines of the Land Reclamation Commission.

Although there is not an exact counterpart Federal regulation concerning the incorporation by reference of revegetation success guidance documents, the Federal regulations at 30 CFR 816/817.116(a)(1) require a State to include its standards for success and statistically valid sampling techniques for measuring revegetation success in its approved regulatory program. Missouri is proposing to accomplish this by incorporating eight land use specific guidance documents by reference in its regulations at 10 CSR 40-3.120/3.270(6)(B). The Director finds that Missouri's proposal to include these documents by reference into its approved program is not inconsistent with the Federal regulation requirements. Accordingly, the Director is removing the required program amendment from the Missouri program as codified at 30 CFR 925.16(p)(6).

**2. *Revegetation Success Guidelines***

The required amendment at 30 CFR 925.16(a) requires Missouri to amend its program to include those technical guidance procedures that the State considers acceptable for use in evaluating revegetation success.

**a. Phase III Revegetation Success Standards for Woodland**

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Woodland." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as Woodland pursuant to 10 CSR 40-3.120/3.270(6) and (7).

Missouri proposes that revegetation success on woodland be determined on the basis of: the general revegetation

requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to the director of Missouri Land Reclamation Program (MLRP) for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40-3.120/3.270. Sampling procedures are to use statistically valid random sampling methods using a 90 percent statistical confidence limit. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittees for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittees can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover; example of sample adequacy determination for tree/shrub stocking; statistical analysis for ground cover and tree/shrub stocking; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal

regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for woodland. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

**b. Phase III Success Standards for Industrial/Commercial Revegetation**

Missouri proposes to adopt a guidance document entitled "Phase III Success Standards for Industrial/Commercial Revegetation." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as industrial/commercial pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on industrial/commercial be determined on the basis of: the general revegetation requirements of the approved permit; and ground cover density. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover based on the regulatory requirements of 10 CSR 40-3.120/3.270. Sampling procedures are to use statistically valid random sampling methods using a 90 percent confidence interval. Ground cover is to be measured by the line-point transect method. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are

statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover; statistical analysis for ground cover; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for industrial/commercial land uses. The Director finds that the guidance document is not inconsistent with and is no less effective than the Federal regulations.

#### c. Phase III Revegetation Success Standards for Cropland

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Cropland." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as cropland pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on cropland be determined on the basis of ground cover and crop production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and crop production based on the regulatory requirements of 10 CSR 40-3.120/3.270. The crop production standard is to be determined with a reference area or the use of a technical standard. Approved technical standards include the county average or target yield established by the U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS). Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Crop production is to be measured utilizing sampling frames for forage production or whole area harvest for forage or row crop production. Manual sampling of row crops is only allowed when weather or other factors prevent mechanical harvest and must have prior approval by the director of MLRP. The guidance document also establishes a method for establishing representative test plots for use with row crop production. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; summary data

forms for sampling frames; data forms for crop production data; T-table; example of sample adequacy determination for hay production measurements; statistical analysis for sampling frame data; data form for forage crop production data harvested as baled hay; statistical analysis of whole release area harvesting; yield adjustments for release areas due to differing soil series; yield adjustments for moisture; crop surveyor's affidavit of qualifications and crop production yields; grasses of acceptable plant species for permanent ground cover on agricultural areas; procedure for manually sampling row crops; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for cropland. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

#### d. Phase III Revegetation Success Standards for Wildlife Habitat

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Wildlife Habitat." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as wildlife habitat pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on wildlife habitat be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the

data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40-3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover; example of sample adequacy determination for tree/shrub stocking; statistical analysis for ground cover and tree/shrub stocking; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover,

production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for wildlife habitat. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

#### e. Phase III Revegetation Success Standards for Pasture and Previously Mined areas

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Pasture and Previously Mined Areas." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as pasture and previously mined land pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on pasture and previously mined land be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Any previously mined land that was remined or redistributed and reclaimed to a land use of pasture, must achieve the same success standard for cover as land that was not previously disturbed by mining. However if the area is not reclaimed to the requirements of 10 CSR 40-3.120(6)(B), the vegetation cover shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion. This ground cover standard must have been determined and incorporated into the permit prior to disturbance. There is no productivity standard for previously mined land. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/3.270(1). Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and production based on the regulatory requirements of 10 CSR 40-3.120/3.270. The forage production standard is to be

determined with a reference area or a current USDA/NRCS high management target yield. Sampling procedures are to use statistically valid random sampling methods at a 90 percent statistical confidence interval. Ground cover is to be measured by the line-point transect method. Forage production is to be measured utilizing sampling frames or whole area harvest. The guidance document also establishes a method for establishing representative test plots. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fourth year after completion of last augmented seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line point transects; summary data forms for sampling frames; T-table; data form for forage crop production data harvested as baled hay; example use of sample adequacy formula for ground cover measurements and hay production measurements; statistical analysis on sampling frame data and whole release area harvesting; yield adjustments for release areas due to differing soil series; grasses of acceptable plant species for permanent ground cover on agricultural areas; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be

considered equal to the approved success standard then they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for pasture and previously mined land. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

**f. Phase II/III Revegetation Success Standards for Prime Farmland**

Missouri proposes to adopt a guidance document entitled "Phase II/III Revegetation Success Standards for Prime Farmland." This document describes the criteria and procedures for determining Phase II and III success standards for areas being restored as prime farmland pursuant to 10 CSR 40-3.120/3.270 (6) and (7) and 10 CSR 40-4.030.

Missouri proposes that revegetation success on prime farmland be determined on the basis of crop production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. Ground cover must be established following soil replacement with approved species to effectively control erosion. The guidance document sets out specific success standards and measurement frequencies for crop production based on the regulatory requirements of 10 CSR 40-3.120/3.270 and 10 CSR 40-4.030. The crop production standard is to be determined with a reference area or the use of a technical standard. Approved technical standards include the county average or target yield established by the USDA NRCS. Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area.

Sampling procedures are to use statistically valid random sampling methods. Crop production is to be measured utilizing sampling frames for forage production or whole area harvest for forage or row crop production. Manual sampling of row crops is only allowed when weather or other factors prevent mechanical harvest and must have prior approval by the director of MLRP. The guidance document also establishes a method for establishing

representative test plots for use with row crop production. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee cannot demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities, then the 5-year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; summary data forms for sampling frames; data forms for crop production data; T—table; example of sample adequacy determination for hay production measurements; statistical analysis for sampling frame data; data form for forage crop production data harvested as baled hay; statistical analysis of whole release area harvesting; yield adjustments for release areas due to differing soil series; yield adjustments for moisture; crop surveyor's affidavit of qualifications and crop production yields; grasses of acceptable plant species for permanent ground cover on agricultural areas; procedure for manually sampling row crops; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulation at 30 CFR 823.15 establishes the revegetation and restoration requirements for soil productivity on prime farmland.

Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for prime farmland. The Director finds that portion of the prime farmland guidance document that establishes the revegetation standards and sampling techniques is not inconsistent with and no less effective than the Federal regulations and is

approving it with the following exception.

As previously discussed, Missouri proposes in its prime farmland guidance document one option for establishing a success standard by utilizing approved technical standards including the county average or target yield established by the USDA NRCS. Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area. The Federal regulation at 30 CFR 823.15(b)(7) requires that reference crop yields for a given crop season are to be determined from \* \* \* (ii) the average county yields recognized by the USDA, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop. The Director finds that Missouri's proposal to utilize county averages of production is less effective than the Federal regulations because county averages would not have been adjusted by the U.S. Soil Conservation Service to remove the influence of other nonprime soils that produce the reference crop. The Director finds that portion of the prime farmland guidance document concerning Missouri's option for establishing a revegetation success standard for prime farmland soils with county averages that do not distinguish between nonprime and prime soil is less effective than the Federal regulations and is not approving its use.

**g. Phase III Revegetation Success Standards for a Recreation Land Use**

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for a Recreation land use." This document describes the criteria and procedures for determining Phase III success standards for areas being restored for a recreation land use pursuant to 10 CSR 40-3.120/3.270 (6) and (7).

Missouri proposes that revegetation success for a recreation land use be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40-3.120/

3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involved augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; T—table; example of sample adequacy determination for ground cover; statistical analysis for ground cover; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be

used by the permittee to measure revegetation success for a recreation land use. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

#### h. Phase III Revegetation Success Standards for Residential Land Use

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Residential land use." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as industrial/commercial pursuant to 10 CSR 40–3.120/3.270 (6) and (7).

Missouri proposes that revegetation success for a residential land use be determined on the basis of: the general revegetation requirements of the approved permit; ground cover density; and if approved in the permit, tree and shrub stocking. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40–3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period

will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover measurements and tree/shrub counts; statistical analysis for ground cover and tree/shrub data; accepted plan species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for a residential land use. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

Based on the above findings, the Director is removing the required program amendment from the Missouri program as codified at 30 CFR 925.16(a).

#### IV. Summary and Disposition of Comments

##### *Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

##### *Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Missouri program. No comments were received.

##### *Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written

concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. MO-634). EPA did not respond to OSM's request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. Since the proposed amendment would not have any effect on historic properties, OSM did not solicit comment from the SHPO or ACHP.

**V. Director's Decision**

Based on the above findings, the Director approves, with certain exceptions, the proposed amendment as submitted by Missouri on December 14, 1995.

The Director does not approve, as discussed in: finding No. 2.f, Phase II/III Revegetation Success Standards for Prime Farmland, Missouri's proposal to utilize county averages of production as one method of establishing a target yield for prime farmland. This is less effective than the Federal regulations at 30 CFR 823.15(b)(7) because the county averages would not have been adjusted by the U.S. Soil Conservation Service to remove the influence of other nonprime soils that produce the reference crop. Missouri must not use the option for utilizing a county average as a success standard for prime farmland soils unless and until it is revised consistent with the Federal regulations and approved by OSM.

The Director approves, as discussed in: finding No. 1, 10 CSR 40-3.120/3.270(6)(B) concerning Specific standards for postmining land uses; finding No. 2.a, concerning its Phase III Revegetation Success Standards for Woodland; finding No. 2.b, concerning its Phase III Success Standards for Industrial/Commercial Revegetation; finding No. 2.c, concerning its Phase III Revegetation Success Standards for Cropland; finding No. 2.d, concerning its Phase III Revegetation Success

Standards for Wildlife Habitat; finding No. 2.e, concerning its Phase III Revegetation Success Standards for Pasture and Previously Mined Areas; finding No. 2.f, concerning its Phase II/III Revegetation Success standards for Prime Farmland, with the exception noted above; finding No. 2.g, concerning its Phase III Revegetation Success Standards for a Recreation land use; finding No. 2.h, concerning its Phase III Revegetation Success Standards for Residential land use.

The Director approves the rules and guidance documents as proposed by Missouri with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Missouri program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Missouri of only such provisions.

**VI. Procedural Determinations**

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of

that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 731.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

## List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 925—MISSOURI**

1. The authority citation for Part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (u) to read as follows:

**§ 925.15 Approval of regulatory program amendments.**

\* \* \* \* \*

(u) With the exception of that portion of the Phase II/III Revegetation Success Standards for Prime Farmland, concerning the option to utilize county averages of production as one method of establishing a target yield for prime farmland, the addition of the following revegetation success guidelines: Phase III Revegetation Success Standards for Woodland; Phase III Success Standards for Industrial/Commercial Revegetation; Phase III Revegetation Success Standards for Cropland; Phase III Revegetation Success Standards for Wildlife Habitat; Phase III Revegetation Success Standards for Pasture and Previously Mined Areas; Phase II/III Revegetation Success Standards for Prime Farmland; Phase III Revegetation Success Standards for a Recreation land use; Phase III Revegetation Success Standards for Residential land use; and the revision of the rules at 10 CSR 40-3.120/3.270(6)(B) concerning specific standards for postmining land uses, as submitted to OSM on December 14, 1995, are approved effective May 28, 1996.

**§ 925.16 [Amended]**

3. Section 925.16 is amended by removing and reserving paragraphs (a) and (p)(6).

[FR Doc. 96-13263 Filed 5-24-96; 8:45 am]

BILLING CODE 4310-05-M

**30 CFR Part 936**

[SPATS No. OK-015-FOR]

**Oklahoma Abandoned Mine Land Reclamation Plan**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Oklahoma abandoned mine land reclamation plan (hereinafter referred to as the "Oklahoma plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions and additions to its rules and to sections of the Oklahoma plan pertaining to definitions, contractor responsibility, eligible lands and waters, reclamation project objectives and priorities, project ranking, public participation, organizational structure, and coordination of reclamation with other agencies. The amendment is intended to revise the Oklahoma plan to be consistent with the corresponding Federal regulations and SMCRA, to incorporate the additional flexibility afforded by the revised Federal regulations, and to improve operational efficiency.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: 918 581-6430.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Oklahoma Plan  
II. Submission of the Proposed Amendment  
III. Director's Findings  
IV. Summary and Disposition of Comments  
V. Director's Decision  
VI. Procedural Determinations

**I. Background on the Oklahoma Plan**

On January 21, 1982, the Secretary of the Interior approved the Oklahoma plan. Background information on the Oklahoma plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 21, 1982, Federal Register (47 FR 2989). Subsequent actions concerning Oklahoma's plan and amendments to the plan can be found at 30 CFR 936.25.

**II. Submission of the Proposed Amendment**

By letter dated November 13, 1995 (Administrative Record No. OAML-63),

Oklahoma submitted a proposed amendment to its plan pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a September 26, 1994, letter from OSM in accordance with 30 CFR 884.15 (Administrative Record No. OAML-65) and at its own initiative. Oklahoma proposed to amend its administrative rules at OAC 155:15, Oklahoma Abandoned Mine Land Program, and its reclamation plan at section 884.13(c)1, Goals and Objectives; 884.13(c)2, Project Ranking and Selection; 884.13(c)3, Interagency Coordination; 884.13(c)5, Eligible Lands and Waters; 884.13(c)7, Public Participation; and 884.13(d)1, Administrative and Management Structure.

OSM announced receipt of the proposed amendment in the December 21, 1995, Federal Register (60 FR 66244), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 22, 1996.

During its review of the amendment, OSM identified concerns relating to Oklahoma's proposal to revise the administrative regulations at OAC 155.15-1-5, Eligible Lands and Water, and the Oklahoma plan at section 884.13(c)5, Eligible Lands and Water. These revisions were intended to allow expenditure of funds for reclamation of certain lands and water affected by mining after August 3, 1977, the effective date of SMCRA. OSM notified Oklahoma of the concerns by telephone on March 15, 1996, and by telefax on March 19, 1996 (Administrative Record Nos. OAML-71 and OAML-72).

Oklahoma responded in a letter dated March 21, 1996, by submitting revisions to its amendment (Administrative Record No. OAML-69).

Based upon the revisions to the proposed plan amendment submitted by Oklahoma, OSM reopened the public comment period in the April 8, 1996, Federal Register (61 FR 15435) and provided opportunity for public comment on the adequacy of the revised amendment. The public comment period closed on April 23, 1996.

**III. Director's Findings**

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive editorial changes, punctuation, grammatical, or revised cross-references and paragraph

notations to reflect organizational changes resulting from this amendment.

*A. OAC 155:15, Oklahoma Abandoned Mine Land Reclamation Program*

1. *OAC 155:15-1-2.* This section is amended to revise the definitions for "Act"; "Fund"; "Program"; and "Secretary." The revised definitions are not inconsistent with the definition contained in the Federal regulations at 30 CFR 870.5. Therefore, the Director is approving the proposed revisions at OAC 155:15-1-2.

2. *OAC 155:15-1-3.* This section is changed to add subsection (4) that requires all successful bidders for AML construction contracts to be found eligible to receive funding using the OSM automated Applicant/Violator System (AVS). This is a required amendment as specified in the September 26, 1994, letter from the Director. The Director finds the proposed provision is in compliance with the requirements of the Federal regulations at 30 CFR 874.16 and 875.20. Therefore, the Director is approving the proposed revision to OAC 155:15-1-3.

3. *OAC 155:15-1-5.* Subsections (b), (c), and (d) are added to OAC 155:15-1-5. These subsections incorporate the requirements of the Federal regulations at 30 CFR 874.12 (d), (g), and (h). These new subsections expand the definition of lands and waters eligible for funding to include certain sites mined after August 4, 1977. Review of the original amendment determined that the Oklahoma plan or regulations must also make provisions for the requirements of 30 CFR 874.12(e) and (f), in order for the plan to be consistent with the provisions of SMCRA and the Federal regulations. OSM notified Oklahoma of this concern on March 15, 1996, and advised that the additional provisions may be included in either the State regulations at OAC 155:15-1-5 or in the Oklahoma Plan. Oklahoma submitted an additional revision to the plan on March 21, 1996.

The Director finds that the proposed regulations at OAC 155:15-1-5 (b), (c), and (d) are substantially the same as the Federal counterpart regulations at 30 CFR 874.12 (d), (g), and (h). Counterparts to the Federal Regulations at 30 CFR 874.12 (e) and (f) are included in the Oklahoma plan at Section 884.13(c)5. Therefore, the Director finds the post-SMCRA eligibility provisions of this amendment to be consistent with SMCRA and the Federal regulations, and he is approving them.

4. *OAC 115:15-1-6.* A new first paragraph is added to OAC 115:156-1-6 which incorporates the revised

requirements of 30 CFR 874.13 and outlines reclamation project objectives and priorities. New provisions require that State reclamation projects be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects", published March 6, 1980.

Old subsections (4) and (7) of 155:15-1-6 were deleted and the remaining subsections renumbered (4) and (5). Old subsection (4) identified "projects for research and demonstration relating to reclamation and water quality control" as the fourth priority for funding, an old subsection (7) identified "construction of public facilities in mining impacted communities" as the seventh priority of reclamation funding. The deletion of these two subsections is consistent with the deletion of the Federal counterpart subsections on May 31, 1994 (59 FR 28136). The revised regulation at OAC 155:15-1-6 is substantially the same as the Federal counterpart regulation at 30 CFR 874.13 and SMCRA section 403(a). Therefore, the Director finds it is consistent with SMCRA and the Federal regulations, and he is approving it.

5. *OAC 115:15-1-14.* This section is added to incorporate the requirements of 30 CFR 874.14, authorizing repair and replacement of water supplies damaged by abandoned mines. The proposed regulation at OAC 115:15-1-14 is substantially the same as the Federal counterpart regulation at 30 CFR 874.14 and SMCRA section 403(a). Therefore, the Director finds it is consistent with SMCRA and the Federal regulations, and he is approving it.

6. *OAC 155:15-1-15.* This section is added to allow Oklahoma to receive and use future set-aside funds. The proposed regulation at OAC 155:1-15 is substantially the same as the Federal counterpart regulation at 30 CFR 873. Therefore, the Director is approving OAC 155:15-1-15.

7. *OAC 155:15-1-16.* This section is added to authorize the establishment of an Acid Mine Drainage Trust Fund and to outline the requirements for acid mine drainage projects. The proposed regulation at OAC 155:15-1-16 is substantively the same as the Federal counterpart regulation at 30 CFR 876. Therefore, the Director is approving OAC 155:15-1-16.

*B. Oklahoma Abandoned Mine Land Reclamation Plan*

1. *Section 884.13(c)1, Goals and Objectives.* This section is changed to reflect new language in the "objectives and priorities" section of the Federal regulation at 30 CFR 874.13 and the elimination of two reclamation priorities in SMCRA section 403. The

new introductory paragraph outlines reclamation project objectives and priorities and states that "generally, projects of a lower priority should not be undertaken until all known higher priority coal projects have either been accomplished, are in the process of being reclaimed, or have been approved by the secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a higher priority site." This adds clarification to the section and is in compliance with new language in 30 CFR 874.13.

The seven priority objectives outlined in the original version of the State plan are revised to five priority objectives. Old priority objectives (4) and (7) of this section were deleted and the remaining objectives renumbered (4) and (5). Old objective (4) identified as the fourth priority for funding, projects for research and demonstration relating to reclamation and water quality control. Old objective (7) identified construction of public facilities in mining impacted communities as the seventh priority of reclamation funding. The deletion of these two objectives is consistent with the deletion of the Federal regulation counterpart objectives on May 31, 1994 (59 FR 28136).

At the State's initiative, detailed discussions of generic AML problem types, corrective measures, conservation practices, funding considerations, anticipated benefits, possible adverse effects, and time frames covered by the plan are all deleted from the State reclamation plan through this revision. These discussions are not a required part of this section and many were out of date because of changes to the State program, changes to SMCRA, the advancement of reclamation technology, and completion of many of the State's highest priority projects.

The Director finds that Section 884.13(c)1 is substantially the same as the Federal counterpart regulation at 30 CFR 874 and SMCRA section 403(a). Therefore, he is approving it. This revision also accurately reflects changes to the Oklahoma Administrative Code at OAC 115:15-1-6.

2. *Section 884.13(c)2, Specific Criteria for Ranking and Identifying Projects To Be Funded.* A new provision is added to the first paragraph that provides for publication of public notices in 16 coal counties and provides opportunity for the public to attend one of four annual public meetings. The Project Selection Matrix is replaced with a new one. Table 3 which outlines the general procedure for project ranking and selection is replaced. It clarifies the process and clearly outlines the

responsibilities of each of the parties involved in project selection. Input from the general public is placed at the head of the process. This public involvement was not explicit in the previously approved procedure.

The proposed changes are voluntary on the part of the State program and improve opportunities for public involvement in the project selection process. There are no comparable components in SMCRA or the Federal regulations. However, 30 CFR 884.13(c)(2) does require that States describe the project ranking procedures in their State reclamation plans. Therefore, the Director finds the new provisions are consistent with SMCRA and the Federal regulation requirements, and he is approving the proposed revision.

3. *Section 884.13(c)3, Coordination of Reclamation Work Between The State, The Soil Conservation Service And Other Reclamation Agencies.* The list of agencies which will be represented on the State Reclamation Committee is revised. The sections entitled "Purpose of the State Reclamation Committee" and "Role of the State Reclamation Committee" are consolidated into one "Purpose" section. The proposed changes are voluntary on the part of the State program. There are no comparable components in SMCRA or the Federal regulations. However, 30 CFR 884.13(c)(3) does require that States describe coordination of reclamation work among the State reclamation program, the Rural Abandoned Mine Program, the reclamation programs of any Indian tribes, and OSM reclamation programs. Therefore, the Director finds this part of the State plan is consistent with and satisfies the requirements of 30 CFR 884.13(c)(3), and he is approving the proposed revisions.

4. *Section 884.13(c)5, Policies and Procedures Regarding Reclamation on Private Land.* The subsection entitled "Eligible Lands and Water" is revised to make certain mine lands, abandoned after passage of SMCRA, eligible for reclamation funding under the Abandoned Mine Land Program. A new sub-part (B) is added to the "Eligible Lands and Waters" subsection which incorporates the requirements of 30 CFR 874.12 (d), (e), (f), (g), and (h). The changes to Section 884.13(c)5 are substantially the same as the Federal counterpart regulations. Therefore, the Director is approving the proposed revision.

5. *Section 884.13(c)7, Public Participation And Involvement In The Preparation Of The State Reclamation Plan And In The State Reclamation Program.* Subsection (2) of the public

participation policies is changed to provide more and earlier opportunity for the public to become involved in the AML project selection process. This is a voluntary change initiated by the State. There is no direct counterpart Federal regulation. However, a description of public participation policies is required by 30 CFR 884.13(c)(7). Therefore, the Director finds this revised section meets this Federal requirement, and he is approving it.

6. *Section 884.13(d)1, A Description Of The Administrative And Management Structure To Be Used In Conducting The Reclamation Program.* Figure 7, "Organizational Chart of the Oklahoma Conservation Commission", is replaced with a new chart dated July 1, 1995. Supplemental charts are included which depict the various sub-parts of the Conservation Commission. The subsection entitled "State Agencies Which May Become Involved in the State Reclamation Program" is replaced with a new list of agencies. Figure 8, "Organization Chart of the Oklahoma Executive Branch", is deleted. This chart is not required by Federal regulations.

There is no direct counterpart Federal regulation. However, a description of the organization of the designated agency and its relation ship to other State organizations or officials is required by 30 CFR 884.13(d)(1). The Director finds this revised section meets this Federal requirement, and he is approving it.

#### IV. Summary Disposition of Comments

##### *Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

##### *Federal Agency Comments*

Pursuant to 884.14(a)(2) and 884.15(a), the Director solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Oklahoma plan (Administrative Record No. OAML-64 and OAML-70). The U.S. Department of Interior, Bureau of Mines, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the Oklahoma Historical Society responded with expressions of "no comment" (Administrative Record Nos. OAML-66, OAML-67, OAML-73, OAML-74, and OAML-75). No other comments were received.

#### V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Oklahoma on November 13, 1995 and revised on March 21, 1996.

The Director is taking this opportunity to correct the date of program approval from July 20, 1981, to January 21, 1982, at 30 CFR 936.20, Approval of Oklahoma Abandoned Mine Land Reclamation Plan, and to add the date a previous amendment was approved on July 20, 1990, at 30 CFR 936.25, Approval of Abandoned Mine Land Reclamation Plan Amendments.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

#### VI. Procedural Determinations

##### *Executive Order 12866*

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and 30 CFR Parts 884 and 888.

##### *National Environmental Policy Act*

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the

Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 936—OKLAHOMA**

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.20 is revised to read as follows:

**§ 936.20 Approval of Oklahoma abandoned mine land reclamation plan.**

The Oklahoma Abandoned Mine Land Reclamation Plan, as submitted on July 30, 1981, is approved effective January 21, 1982 (47 FR 2989–2991, January 21, 1982). Copies of the approved Plan and Amendments are available at:

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 470, Tulsa, OK 74135

Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma 73505

3. Section 936.25 is added to read as follows:

**§ 936.25 Approval of Abandoned Mine Land Reclamation Plan Amendments.**

(a) The proposed amendment pertaining to the Oklahoma abandoned mine land reclamation plan, as submitted to OSM on August 24, 1989, is approved effective July 20, 1990.

(b) The proposed amendment pertaining to the Oklahoma abandoned mine land reclamation plan, as submitted to OSM on November 13, 1995, and revised on March 21, 1996, is approved effective May 28, 1996.

[FR Doc. 96–13262 Filed 5–24–96; 8:45 am]  
BILLING CODE 4310–05–M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 0**

[DA 96–396]

**Delegation of Authority to General Counsel To Act Upon Applications for Determination of Exempt Telecommunications Company Status**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This amendment changes the Commission's rules to reflect delegation of authority to the General Counsel to act on applications for determination of exempt telecommunications company status.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Lawrence J. Spiwak, Office of General Counsel, (202) 418–1880.

**SUPPLEMENTARY INFORMATION:**

1. Through this order in DA 96–396, adopted May 14, 1996 and released May 15, 1996, we amend part O of the Commission's rules to reflect a delegation of authority to the General Counsel to act upon applications for "exempt telecommunications company" ("ETC") status filed with the Commission under new section 34(a)(1) of the Public Utility Holding Company Act of 1935.<sup>1</sup> This authority was

<sup>1</sup> 15 U.S.C. 79–79z–5b, as added by section 103 of the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996).

delegated by the Commission in an order granting the application of CSW Communications, Inc. for a determination of ETC status.<sup>2</sup> In CSW, the Commission also ordered the Managing Director to make conforming changes to the Commission's rules to reflect this delegation of authority.<sup>3</sup>

2. The amendments adopted herein pertain to agency organization. The notice and comment and effective date provisions of section 4 of the Administrative Procedure Act<sup>4</sup> are therefore inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and (j), 5(c)(1) of the Communications Act of 1934, as amended.

3. Accordingly, it is ordered, pursuant to authority delegated by Commission Order, FCC 96–152, released April 4, 1996, and effective upon publication in the Federal Register, that part O of the Commission's rules and regulations is amended as set forth below.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

List of Subjects in 47 CFR Part 0

Organization and functions.

Final Rules

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 0—ORGANIZATION AND FUNCTIONS**

1. The authority citation for part 0 continues to read as follows:

Authority: 47 CFR Ch. 1, secs. 2–5, 301, 303, 307–309, 315, 317, 48 Stat., as amended, 1064–1066, 1068, 1081–1085, 1089, 47 U.S.C. 152–155, 301, 303, 307–309, 315, 317.

2. Section 0.251 is amended by adding a new paragraph (j), which reads as follows:

\* \* \* \* \*

(j) The General Counsel is delegated authority to act upon any application for a determination of exempt telecommunications company status filed pursuant to section 34(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 103 of the Telecommunications Act of 1996.

[FR Doc. 96–13249 Filed 5–24–96; 8:45 am]  
BILLING CODE 6712–01–P

<sup>2</sup> Order, In re Application of CSW Communications, Inc. for Status as an Exempt Telecommunications Company, \_\_\_ FCC Rcd \_\_\_, (FCC 96–152, Rel. April 4, 1996) ("CSW").

<sup>3</sup> Id.

<sup>4</sup> 5 U.S.C. § 553(b)(A) and 553(d).

**47 CFR Parts 0 and 80**

[WT Docket No. 95-132; FCC 96-201]

**Vessel Traffic Services (VTS)****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** The Commission is adding Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana to the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory VTS and establishing marine VHF Channel 12 as the VTS frequency for Sault Ste. Marie, Michigan; San Francisco, California; and Channel 11 as the VTS frequency for Morgan City, Louisiana. This action is in response to a request from the Coast Guard. The designation of Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana as a VTS areas will allow the Coast Guard to manage vessel traffic in a more efficient manner.

**EFFECTIVE DATE:** June 27, 1996.**FOR FURTHER INFORMATION CONTACT:** James Shaffer, (202) 418-0680, Wireless Telecommunications Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, FCC 95-201, adopted May 1, 1996, and released May 9, 1996. The full text of this 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. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857-3800.

**Summary of Report and Order**

1. The Coast Guard filed petitions (RM-8500, 8592, 8598), Public Notice No. 2023 and 2057, requesting that the Commission amend Part 80 of the Rules, 47 CFR Part 80, to add Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana to the Coast Guard designated radio protection areas for mandatory VTS and establish marine VHF Channel 12 as the VTS frequency for Sault Ste. Marie, Michigan; San Francisco, California; and Channel 11 as the VTS frequency for Morgan City, Louisiana.

2. Under the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990, the Coast Guard may construct, operate, maintain, improve or expand VTS systems in any

port or place under the jurisdiction of the United States, including the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to 33 U.S.C. 1230. The Ports and Waterways Safety Act requires certain designated vessels which operate in a VTS area to utilize and comply with the VTS. Marine accidents in recent years have underscored the need for improving safety on the nation's waterways. Moreover, Congress mandated VTS participation in section 4107 of the Oil Pollution Act, 33 U.S.C. 1223(a)(2). The Coast Guard has amended its VTS regulations to make participation in all VTS systems mandatory. A VTS system instills order and predictability on a waterway by coordinating vessel movements through the collection, verification, organization, and dissemination of information.

3. Designating Sault Ste. Marie and Berwick Bay as VTS areas will allow the Coast Guard to manage vessel traffic in those areas more efficiently and will help protect the marine environment by preventing vessel collisions and groundings. Therefore, we are adding Sault Ste. Marie and Berwick Bay to the Commission's list of designated radio protection areas for VTS systems specified in Section 80.383. The radio protection area for Sault Ste. Marie will be defined as "The rectangle between North latitudes 45 degrees and 47 degrees, and West longitudes 83 degrees and 85 degrees." The radio protection area for Berwick Bay will be defined as "The rectangle between North latitudes 28 degrees 30 minutes and 30 degrees 30 minutes, and West longitudes 90 degrees 50 minutes and 92 degrees." This area is part of the New Orleans VTS which discontinued operations on July 30, 1988, due to budgetary constraints.

4. We also designate Channel 12 (156.600 MHz) as a second radio frequency for use within the San Francisco VTS radio protection area. The density of vessel traffic in the San Francisco Bay, which includes numerous recreational boats, ferries and commercial fishing boats, severely constrains the ability of large vessels to maneuver in the event of an emergency. The Coast Guard states that with mandatory participation, the current VTS channel, Channel 14 (156.700 MHz), will be inadequate to ensure safe and reliable communications in this busy and environmentally sensitive area. The addition of Channel 12 will permit increased navigational safety in the area by organizing traffic flow patterns, reduced meeting, crossing and overtaking situations between large

vessels in tight spaces, and limited vessel speed. We will permit private coast stations currently authorized on Channel 12 within the San Francisco VTS area to operate until the end of their current license term on a noninterference basis. The staff will help affected licensees find suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next renewal.

5. We also amend Section 0.331 to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to designate radio protection areas for mandatory VTS and establish marine channels as VTS frequencies for these areas. This will allow the Commission to expedite these requests, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm.

**List of Subjects***47 CFR Part 0*

Delegations of authority.

*47 CFR Part 80*

Communications equipment, Marine safety.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.***Rules Changes**

Title 47 of the Code of Federal Regulations, Parts 0 and 80, are amended as follows:

**PART 0—COMMISSION ORGANIZATION**

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.331 is amended by revising paragraph (d) to read as follows:

**§ 0.331 Authority delegated.**

\* \* \* \* \*

(d) Authority concerning rulemaking proceedings. The Chief, Wireless Telecommunications Bureau shall not have the authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international conventions or agreement

where novel questions of fact, law or policy are not involved. Also, the addition of new Marine VHF frequency coordination committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law, as well as requests by the United States Coast Guard to designate radio protection areas for mandatory Vessel Traffic Services (VTS) and establish marine channels as VTS frequencies for these areas.

**PART 80—STATIONS IN THE MARITIME SERVICES**

3. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.383 is amended by revising the entries for 156.550 MHz and 156.600 MHz in the table in paragraph (a) and adding new paragraphs (b)(7) and (b)(8) to read as follows:

**80.383 Vessel Traffic Services (VTS) system frequencies.**

\* \* \* \* \*  
(a) \* \* \*

**VESSEL TRAFFIC CONTROL FREQUENCIES**

Carrier frequencies (MHz)	Geographic areas
* * * * *	
156.550	New York, New Orleans, <sup>1</sup> Houston, Prince William Sound, <sup>3</sup> Berwick Bay.
156.600	New York, New Orleans, <sup>1</sup> Houston, San Francisco, <sup>3</sup> Sault Ste. Marie. <sup>3</sup>
* * * * *	

<sup>1</sup> Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS system for the port area of New Orleans. If the United States Coast Guard re-establishes this system, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditional upon the continued availability of the frequency for non-VTS use.

<sup>3</sup> Private coast station licenses for the use of this frequency in this area will expire at the end of the current license term or five years after the adopted date of the final rule, whichever comes first. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

(b) \* \* \*

(7) *Sault Ste. Marie*. The rectangle between North latitudes 45 degrees and 47 degrees, and West longitudes 83 degrees and 85 degrees.

(8) *Berwick Bay*. The rectangle between North latitudes 28 degrees 30 minutes and 30 degrees 30 minutes, and West longitudes 90 degrees 50 minutes and 92 degrees.

\* \* \* \* \*

[FR Doc. 96-13099 Filed 5-24-96; 8:45 am] BILLING CODE 6712-01-P

**47 CFR Chapter I**

[CC Docket No. 91-35; FCC 96-131]

**Operator Service Access and Pay Telephone Compensation**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Where technically feasible and economically reasonable, the Commission's Third Report and Order requires local exchange carriers (LECs) to make international call blocking services available to non-aggregator business customers as well as to those businesses that qualify as aggregators under the Communications Act of 1934, as amended by The Telephone Operator Consumer Services Improvement Act of 1990. The Commission extended the availability of these services to non-aggregator business customers to assist these customers in reducing losses attributable to international toll fraud.

The Commission Order states, however, that LECs will not be required to provide similar international blocking to residential customers, whether to prevent international toll fraud or to control access to international dial-a-porn. Although LECs may elect to offer these services to their residential customers, the Commission declined to require that these services be made available to residences because it was not clear that such a new residential service would be technically feasible and economically reasonable. It was also unclear to what extent such a residential blocking service would be effective in limiting toll fraud and access to dial-a-porn.

In addition, the Commission Order requires LECs to file federal tariffs for both billed number screening (BNS) and

originating line screening (OLS) "confirmation screening services" that allow aggregators to ensure that the proper screening codes are associated with their telephone lines. The Order specifies that the OLS service must deliver a code that discretely identifies private payphones and such other codes as are necessary to identify other categories of aggregator locations. The Order also stresses that it is important for LECs to use uniform codes for their OLS services. The Order further requires LECs to unbundle their OLS "confirmation services," unless they can show either that bundling would not place aggregators at a competitive disadvantage or that it would not be technically feasible or would be economically unreasonable to unbundle these "confirmation services." It also requires LECs to unbundle the BNS "confirmation services" that they provide to aggregators under federal tariff and to make those services available to both aggregators and non-aggregators. Finally, it specifies a rate structure for features of OLS and BNS service provided to aggregators.

The Commission Order requires that LECs include these screening services in their federal tariffs and specifies a rate structure for service to aggregators because the Commission found these services were not uniformly available to aggregators under existing LEC state tariffs and because these services were not always adequate when made available under those tariffs.

As a result of the Commission Order, non-aggregator, as well as aggregator, business customers of LECs gain access to international call blocking services offered under federal tariffs. In addition, aggregator business customers will have greater access to uniform and discrete OLS screening codes and to unbundled OLS "confirmation services." Also, the Commission Order results in both aggregators and non-aggregators having access to unbundled BNS "confirmation services" under federal tariffs.

**EFFECTIVE DATE:** June 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Thomas David, Accounting and Audits Division, Common Carrier Bureau, (202) 418-0800, or Allen A. Barna, Competitive Pricing Division, Common Carrier Bureau, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Report and Order adopted March 25, 1996, and released April 5, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., N.W., Washington,

D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

#### Regulatory Flexibility Analysis:

The Commission has determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the LECs that will be affected are very small, such LECs do not qualify as "small entities" because each has a monopoly on ubiquitous access to the subscribers in their service area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefore, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1, 23-24 (1980), 45 FR 76148, November 18, 1980. To the extent that small telephone companies will be affected by these rules, the Commission certified that these rules would not have a significant effect on a substantial number of "small entities."

#### Summary of Report and Order

In its Docket 91-35 Reconsideration Order, the Commission ordered LECs to offer, pursuant to interstate tariffs, services that would block international direct-dialed sequences (011+ and 10XXX-011+), but did not require LECs to make that service available to customers other than aggregators. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Order on Reconsideration, 7 FCC Rcd 4355 (1992) (Docket 91-35 Reconsideration Order), 57 FR 34253, August 4, 1992. The Commission also required the LECs to offer two tariffed screening services, originating line screening (OLS) and billed number screening (BNS). These services enable operator service providers (OSPs) to determine whether there are billing restrictions on lines to which a caller may seek to bill a call. The Commission, however, did not expressly require that those screening services be federally tariffed. In its Order on Further Reconsideration and Further Notice of Proposed Rulemaking in this docket, 8 FCC Rcd 2863 (1993) (Further Reconsideration/Further NPRM), 58 FR

21435, April 21, 1993, the Commission subsequently affirmed the requirement that LECs offer OLS and BNS services and tentatively found that Bell Atlantic's federally tariffed line information data base (LIDB) service fulfills its obligation to provide a BNS service. The Further Reconsideration/Further NPRM requested further comment on three major issues: (1) whether the Commission should require the LECs to extend their international blocking services to non-aggregator business subscribers and to residential subscribers; (2) whether the Commission should affirm its tentative conclusion that BNS and OLS services should be tariffed at the federal level; and (3) whether proposed standards regarding availability to all customers, unbundling, and rate levels should be applied to OLS and BNS services provided by the LECs. In light of the rapid growth in the availability of, and complaints about, international information services since comments were last filed in this proceeding, the Commission's Common Carrier Bureau (Bureau) issued a Public Notice in March 1995 requesting further comment on whether international blocking for residential consumers would be useful in preventing losses to international pay-per-call services, particularly dial-a-porn services. Public Notice, Request for Additional Comments on the Costs and Benefits of International Blocking for Residential Customers, CC Docket No. 91-35, 10 FCC Rcd 4549 (Com.Car.Bur. 1995) (Public Notice), 60 FR 16651, March 31, 1995. Specifically, the Bureau asked LECs to comment on the costs they would incur to provide international call blocking service to residential customers and to show the extent to which those costs could be reduced by not providing blocking in areas in which it would not be technically feasible or economically reasonable to do so.

In this Order, the Commission required LECs to provide international blocking services to business customers, where technically feasible and economically reasonable. The Commission did not, however, require LECs to provide such blocking for residential consumers at this time. Also, the Commission required LECs to tariff, at the federal level, BNS and OLS screening services that allow aggregators to ensure that the proper screening codes are associated with their telephone lines. The OLS service must deliver a code that discretely identifies private payphones and such other codes as are necessary to identify other categories of aggregator locations. The

Commission emphasized again that it is important for LECs to use uniform codes for the OLS services that they provide. The Commission required the LECs to unbundle their OLS "confirmation services," unless they can show that bundling would not place aggregators at a competitive disadvantage or that it is not technically feasible or would be economically unreasonable to unbundle OLS service. The Commission also required that LECs unbundle the BNS service they provide to aggregators under federal tariff and make that service available to both aggregators and non-aggregators. Finally, the Commission specified a rate structure for OLS and BNS services provided to aggregators.

#### Ordering Clauses

Accordingly, it is ordered, pursuant to authority contained in Sections 1, 4, 201-205, 218, 220, and 226 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-205, 218, 220, and 226, that the policies and requirements set forth herein ARE adopted.

*It is further ordered* That this Order will be effective June 27, 1996.

*It is further ordered* That, pursuant to Section 203 of the Communications Act, 47 U.S.C. 203, each of the LECs SHALL FILE revisions to their federal tariffs, reflecting the requirements of this Order to provide international blocking service for non-aggregator business customers and Billed Number Screening (BNS) service within 60 days after the effective date of this Order.

*It is further ordered* That, pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, each of the LECs shall file tariff revisions, reflecting the requirements of this Order to federally tariff Originating Line Screening (OLS) service, no later than December 1, 1996.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-13300 Filed 5-24-96; 8:45 am]

BILLING CODE 6712-01-P

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Parts 37 and 38

[Docket No. 49658]

RIN 2105-AC13

#### Transportation for Individuals With Disabilities; Correction

AGENCY: Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Correction to final regulations.

**SUMMARY:** On May 21, 1996, the Department of Transportation published final rules amending its Americans with Disabilities Act in several respects (61 FR 25409). This document corrects certain editorial errors in that document. The corrections do not affect the substance of the amendments.

**EFFECTIVE DATE:** June 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW, Room 10424, Washington, DC, 20590. (202) 366-9306 (voice); (202) 755-7687 (TDD); or Richard Wong, Office of Chief Counsel, Federal Transit Administration, same street address, Room 9316. (202) 366-4011.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department is making editorial corrections to its May 21, 1996, final rule (61 FR 25409), amending 49 CFR parts 37 and 38, which implement the Americans with Disabilities Act for transportation services. The amendments concern such subjects as advance reservations for paratransit service, updates to paratransit plans, requirements for independent private schools, and other subjects.

**Need for Correction**

As published, the document contains errors which may prove to be misleading and are in need of correction. First, in the preamble, the last sentence of the first paragraph under the heading "Visitor Eligibility," beginning "The Department will further amend \* \* \*" (61 FR 25414, first column) is incorrect, and should be disregarded. The rule does not contain such an amendment.

In four instances, the amendatory language for certain provisions of the rule left notice of proposed rulemaking language (e.g., "proposes to amend" rather than "amends" or "revises") in place. This document corrects these errors. Finally, the amendment to § 37.135(c)(1) contained an potentially misleading citation to §§ 37.137-139, which could cause confusion about the applicability of the requirement of § 37.137(c) for continuing public participation in transit authorities' paratransit programs. The citation is corrected to fix this problem.

**Correction of Publication**

Accordingly, the publication on May 21, 1996, of the final regulations

amending 49 CFR Parts 37 and 38, which were the subject of FR Doc. 96-11935, is corrected as follows:

1. On page 25415, in the third column, amendatory instruction 1, relating to the authority citation for 49 CFR Part 37, is corrected to read as follows:

1. The authority citation for 49 CFR Part 37 continues to read as follows:

2. On page 25415, in the third column, amendatory instruction 2, relating to the authority citation for 49 CFR Part 38, is corrected to read as follows:

2. The authority citation for 49 CFR Part 38 is revised to read as follows:

3. On page 25415, in the third column, amendatory instruction 3, relating to the revision of § 37.27(b), is corrected to read as follows:

3. In part 37, § 37.27(b) is revised to read as follows:

4. On page 25416, in the second column, in the amendment to § 37.135(c)(1), the citation in the final sentence of the paragraph to "§§ 37.137-37.139" is corrected to read "§§ 37.137(a) and (b), 37.138 and 37.139".

5. On page 25416, in the third column, amendatory instruction 12, relating to Appendix D to Part 37, is corrected to read as follows:

12. In Part 37, Appendix D, the paragraph entitled "Section 37.13 Effective Date for Certain Vehicle Lift Specifications" is amended by replacing the words "new 30" by 48"" with the words "Part 38".

Rasheed J. Tahir,

*Legal Assistant.*

[FR Doc. 96-13252 Filed 5-24-96; 8:45 am]

**BILLING CODE 4910-62-P**

**National Highway Traffic Safety Administration**

**49 CFR Part 501**

**Organization and Delegation of Powers and Duties**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule delegates to NHTSA's Chief Counsel the authority to issue authoritative interpretations of the statutes administered by NHTSA and the regulations issued by the agency.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** John Womack, Senior Assistant Chief Counsel, NHTSA, 400 Seventh Street, SW, Room 5219, Washington, DC 20590. Mr. Womack's telephone number is: (202) 366-9511.

**SUPPLEMENTARY INFORMATION:** This final rule revises the regulations on the organization of and delegation of powers and duties within the National Highway Traffic Safety Administration (NHTSA).

Since the creation of the agency, NHTSA's Chief Counsel has issued written interpretations of the statutes the agency administers and the regulations it issues. These interpretations, in the form of letters responding to questions from the motor vehicle industry and members of the public, have been available to the public in the agency's technical reference library in Washington. With the development of new technology, the agency is now able to make them available through the Internet on the World Wide Web. (The website is [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov). At that site, select "NHTSA's Library." On the "NHTSA Library" page, select "NHTSA's Interpretation Letters.")

In preparing to implement this new service, NHTSA noted that although the industry and the public have consistently recognized the implicit authority of the Chief Counsel to issue such interpretations, there was no formal delegation of that authority from the Administrator to the Chief Counsel. Therefore, in connection with the broadening of public access to these interpretations, and in order to eliminate any possible misunderstanding or doubt, NHTSA is amending 49 CFR 501.8(d) to formally delegate the authority to interpret applicable statutes and regulations to the Chief Counsel.

This action should be construed as a confirmation of a preexisting implicit delegation, and does not invalidate in any way the interpretations that have previously been issued by the Office of Chief Counsel. However, interested persons should recognize that all interpretations are necessarily based on the facts presented in individual cases and the law that exists at the time the interpretation is issued. Since the agency's statutes and regulations change from year to year, past interpretations may no longer be applicable under current law.

As matters relating to agency management, the amendments made by this document are not covered by the notice and comment or the effective date requirements of the Administrative Procedure Act. These amendments relate solely to changes in the scope of the delegation of authority from the NHTSA Administrator to the Chief Counsel and have no substantive effect. Notice and the opportunity for comment are, therefore, not required, and these

amendments are effective immediately upon publication in the Federal Register. In addition, these amendments are not subject to Executive Order 12866, the Department of Transportation's regulatory policies and procedures, or the provisions for Congressional review of final rules in Chapter 8 of Title 5, United States Code.

List of Subjects in 49 CFR Part 501

Authority, Delegations.

In consideration of the foregoing, 49 CFR part 501 is amended as follows:

**PART 501—[AMENDED]**

1. The authority citation for part 501 continues to read as follows:

Authority: 49 U.S.C. sections 105 and 322; delegation of authority at 49 CFR 1.50.

2. Section 501.8 is amended by adding a new paragraph (d)(5) to read as follows:

**§ 501.8 Delegations**

\* \* \* \* \*

(d) \* \* \*

(5) Issue authoritative interpretations of the statutes administered by NHTSA and the regulations issued by the agency.

\* \* \* \* \*

Issued on: May 22, 1996.

Ricardo Martinez,  
*Administrator.*

[FR Doc. 96-13299 Filed 5-24-96; 8:45 am]

**BILLING CODE 4910-59-P**

# Proposed Rules

Federal Register

Vol. 61, No. 103

Tuesday, May 28, 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

### Food Safety and Inspection Service

#### 9 CFR Parts 319 and 381

[Docket No. 92-024E]

RIN 0583-AB51

#### Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term—Extension of Comment Period

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term" for an additional 180 days.

**DATES:** Comments must be received on or before November 25, 1996.

**ADDRESSES:** An original and two copies of written comments should be sent to: FSIS Docket Clerk, Docket No. 92-024P, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700. Oral comments should be directed to Mr. Charles R. Edwards, Director, Product Assessment Division, at (202) 254-2565.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700, (202) 254-2565.

**SUPPLEMENTARY INFORMATION:** FSIS and the Food and Drug Administration (FDA) have initiated reviews of their regulations pertaining to food standards of identity and composition. Each agency's review responds in part to

President Clinton's March 4, 1995, memorandum to heads of departments and agencies, titled "Regulatory Reinvention Initiative." This memorandum directed departments and agencies to conduct a page-by-page review of all of their regulations and eliminate or revise those that are outdated or otherwise in need of reform.

On December 29, 1995, FSIS published a proposed rule "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term" (60 FR 67474). The rule proposes to establish a general definition and standard of identity for standardized meat and poultry products that have been modified to qualify for use of certain expressed nutrient content claims as part of the product name.

Also, on December 29, 1995, FDA published an Advance Notice of Proposed Rulemaking (ANPR) "Food Standards of Identity, Quality, and Fill of Containers; Common or Usual Name Regulations; Request for Comments on Existing Regulations," (60 FR 67492). The ANPR solicited comments from interested parties on whether FDA's regulations regarding identity, quality, and fill of container for standardized foods and its common or usual name regulations for nonstandardized foods should be retained, revised, or revoked. The ANPR also addressed the need for consistency between FSIS and FDA in the development and implementation of food standards. FDA stated that it believes such harmonization will help manufacturers comply with the requirements of both agencies. On May 1, 1996, FDA extended the comment period on its ANPR until June 28, 1996, to receive comments only on the issue of FDA and FSIS harmonization of food standards (61 FR 19220).

FSIS is also developing and will soon publish an ANPR that will solicit information from the public on what direction further food standards reform should take, including suggestions on whether to alter or eliminate entirely the regulations for standardized meat and poultry products.

FSIS's proposed rule and its soon-to-be-published ANPR encompass the Agency's food standards review initiative. Therefore, to give the public an opportunity to consider the proposed rule and ANPR simultaneously, and in

response to requests, FSIS is extending the comment period 180 days for the proposed rule "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term."

Done at Washington, DC, on: May 22, 1996.  
Michael R. Taylor,

*Acting Under Secretary for Food Safety.*

[FR Doc. 96-13409 Filed 5-23-96; 1:41 pm]

BILLING CODE 3410-DM-P

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 230

[Regulation DD; Docket No. R-0904]

#### Truth in Savings

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Withdrawal of proposed official staff interpretation.

**SUMMARY:** The Board is withdrawing proposed revisions to the official staff commentary to Regulation DD (Truth in Savings) concerning guidance on issues of general interest, based on considerations of regulatory burden which was published in the Federal Register on December 6, 1995.

**DATES:** The proposal is withdrawn May 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jane Ahrens, Senior Attorney, or Michael L. Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412. For users of Telecommunications Device for the Deaf (TDD) *only*, please contact Dorothea Thompson, at (202) 452-3544.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is to assist consumers in comparing deposit accounts offered by depository institutions. The TISA requires institutions to disclose fees, the interest rate, the annual percentage yield (APY), and other account terms whenever a consumer requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement the

institution sends to the consumer. Rules are set forth for deposit account advertisements and advance notices to account holders of adverse changes in terms. The act restricts how institutions must determine the account balance on which interest is calculated. The TISA is implemented by the Board's Regulation DD (12 CFR part 230). The regulation authorizes the issuance of official staff interpretations.

On December 6, 1995 (60 FR 62349), the Board published for comment proposed amendments to the commentary to Regulation DD. Mainly, the proposed revisions provided guidance on technical matters such as the effect of a leap year on the calculation of interest, the APY and the annual percentage yield earned (APYE). Comments addressing other technical issues concerning the definition of bonuses and time accounts were also proposed.

The Board received nearly 50 comments on its proposal. About 90 percent of the comments were from financial institutions. By far, commenters focused on the proposals addressing leap-year calculations and compounding and crediting policies. Overall, comments were mixed. Some supported the proposals as helpful clarifications. Others opposed the proposals—particularly the revisions concerning calculations in a leap year and crediting interest—as being unduly technical and unnecessary. Based on the comments received and upon further analysis, the Board is withdrawing all proposed commentary revisions, due to considerations of regulatory burden and the narrow scope of the proposals.

## II. Discussion

### *Leap-Year Calculations*

Regulation DD requires institutions to pay interest on the full amount of principal in an interest-bearing account each day. Institutions may apply a daily rate of 1/365 or 1/366 of the interest rate during a leap year. On August 8, 1994, the Board issued a final staff commentary for Regulation DD (59 FR 40217). Comment 7(a) (1)–4 clarified that institutions may apply a daily rate of 1/365 or 1/366 of the interest rate for 366 days during a leap year, if the account will earn interest for February 29.

The Board published on December 6, 1995 proposed revisions to the commentary that further discussed leap-year calculations of interest, as well as the APY and the APYE. Numerous commenters opposed the proposed revisions (60 FR 62349). Many believed the regulation sufficiently addresses the

rule, and that highly technical interpretations were neither necessary nor desirable. Other commenters opposed the Board's existing rule that permits institutions sometimes to use a daily factor of 1/366 or 1/365 during a leap year—although these commenters represent both ends of the spectrum. Some believe a daily factor of 1/366 should never be used; others would expand its use, for example to all accounts during a calendar leap year. Not all commenters opposed the proposal. Some supported the revisions, and sought further elaboration about calculations for a variety of specific accounts. After reviewing the concerns raised and upon further analysis, the Board has decided not to adopt the proposed comments addressing leap-year calculations. The Board believes that for some institutions, a variety of specific examples would be helpful; overall, however, the Board believes the level of technical guidance proposed is not necessary. The regulation and commentary provide general guidance on leap-year calculations, which, on balance, the Board believes is the appropriate level of interpretive detail at this time.

### *Compounding and Crediting Policies*

Institutions must pay interest on the full amount of principal in the account each day, but may compound or credit interest at any frequency. Neither the TISA nor the regulation define "compounding," "crediting," or "principal." Proposed comment 7 (b)–4 would have provided that once interest is credited to an account it becomes part of the principal, and if interest remains in the account, interest must accrue on those funds.

Many commenters addressing the issue favored the proposal as a clarification of current banking practice. However, many others were opposed to the proposal. Commenters raised several related concerns arising out of the proposal about the definition of terms such as "posting," "crediting," and "principal." Those commenters argued that the Board's proposal raised issues that should properly be addressed after further notice and opportunity for public comment. Others were concerned about the effect of the proposal on time accounts that permit consumers to withdraw credited interest during the account term without penalty. They argued that if this interest were to be considered part of the principal, early withdrawal penalties could be triggered under some account agreements. Some commenters also stated that the TISA and Regulation DD do not require such a reading of the rules regarding the

payment of interest. Many stated that the proposal would result in a reduction of account choices or interest rates available to consumers for those institutions wishing to avoid accruing interest on interest credited to and remaining in the account.

The Board believes a number of valid concerns were raised about issues that were not addressed in the proposal. Accordingly, the Board is withdrawing the comment and will consider whether further guidance is needed in the future on these matters.

### *Other Proposed Revisions*

The proposed commentary update also addressed rounding rules for the APYE and the definitions of time account and bonuses. Given the technical nature and narrow application of these remaining proposals, the Board believes the cost and regulatory burden of reviewing and implementing changes associated with these provisions outweighs the benefits of additional official guidance, and is therefore withdrawing all proposed comments.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 21, 1996.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 96-13226 Filed 5-24-96; 8:45 am]

BILLING CODE 6210-01-P

## 12 CFR Part 245

[Regulation V; Docket No. R-0928]

### **Loan Guarantees for Defense Production**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing to abolish its Regulation V as obsolete. This consideration does not represent any major policy change, but rather is intended to eliminate an outmoded regulation and reduce regulatory burden.

**DATES:** Comments must be submitted on or before July 29, 1996.

**ADDRESSES:** Comments, which should refer to Docket No. R-0928, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of

those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room M-P-500 between 9:00 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Oliver Ireland, Associate General Counsel (202-452-3625), Heatherun Allison, Attorney (202-452-3565), Legal Division; for users of the Telecommunications Device for the Deaf (TDD) only, Dorothea Thompson (202-452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Review**

Pursuant to Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, the Board of Governors of the Federal Reserve System (the Board) is conducting a review of its regulations and written policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and to remove inconsistencies and outmoded and duplicative requirements. As part of this review, the Board is proposing to abolish Regulation V (12 CFR part 245), concerning the loan guarantee program under the Defense Production Act of 1950 (50 App. U.S.C. 2061) (the Act). The Board is requesting public comment on this proposed regulatory change, as well as soliciting the views of the guaranteeing departments and agencies (as defined in the Act) consistent with Executive Order 12919 (June 3, 1994) and Executive Order 10789 (Nov. 14, 1958) (as amended), implementing the Act.

**Authority for Regulation V**

The Board promulgated Regulation V (12 CFR 245) pursuant to the Act "to facilitate the financing of contracts or other operations deemed necessary to national defense production." Section 301(a)(1) of the Act allows the President to authorize "guaranteeing agencies" to enter into guarantees with public or private financing institutions concerning contracts "deemed by the guaranteeing agency to be necessary to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense, or for the purpose of financing any contractor, subcontractor or other person in connection with or in contemplation of the termination, in the

interest of the United States, of any contract made for the national defense; \* \* \*" Section 301(a)(1) of the Act defines "guaranteeing agencies" as the Department of Defense, the Department of Energy, the Department of Commerce, "and such other agencies of the United States engaged in procurement for the national defense as he may designate."

Exec. Order No. 12,919 (1994) provides that "the head of each Federal department or agency engaged in procurement for the national defense \* \* \* and the President and chairman of the Export-Import Bank of the United States" is authorized to guarantee public or private financing institutions as provided in Section 301 of the Act.<sup>1</sup> In furtherance of this authorization, Exec. Order No. 12,919 provides that "The Board of Governors of the Federal Reserve System is authorized, after consultation with heads of guaranteeing departments and agencies, the Secretary of the Treasury, and the Director, OMB, to prescribe regulations governing procedures, forms, rates of interest, and fees for [loan] guarantee contracts." Exec. Order No. 12919, 59 FR 29,525 (1994).<sup>2</sup> The Board exercised this authorization in implementing Regulation V in the 1950s. Regulation V was modified and streamlined in 1979.

**Purpose of Regulation V**

The loan guarantee provisions of the Act were intended to permit defense agencies to enter into defense-related contracts without regard to whether appropriations had been made for the underlying projects. Without the appropriations, defense agencies would lack the legal authority to make progress payments to defense contractors. Without progress payments, contractors would not have the working capital to perform their contracts unless they could obtain financing from private banking institutions, which might be reluctant to lend for the performance of contracts if the funds for the contract had not been appropriated. Thus, while the Act contemplates that defense-contract funding would be obtained

<sup>1</sup> The "head of each Federal department or agency engaged in procurement for the national defense" is defined as the head of each of the departments and agencies listed in Exec. Order No. 10,789 (1958), consisting of the following Departments: Defense, Army, Navy, Air Force, Treasury, Interior, Agriculture, Commerce, Transportation, Nuclear Regulatory Commission, General Services Administration, National Aeronautics & Space Administration, Tennessee Valley Authority, Government Printing Office, and Federal Emergency Management Agency. Exec. Order No. 10,789, 23 Fed. Reg. 8,897 (1958), as amended.

<sup>2</sup> A similar provision was formerly set forth in Section 302(c) of Exec. Order No. 10,480 (1953). Exec. Order No. 10,480 was revoked by Exec. Order No. 12,919 (1994).

from private banks, the loan guarantees provisions of the Act would enable the funding and therefore the continued production of items deemed necessary to the national defense by ensuring private banks of repayment when the contract was completed. Regulation V sets forth applicable procedures, forms, fees, charges and rates of interest for these loan guarantees, in which a Federal Reserve Bank acts as the fiscal agent of one or more specified federal departments or agencies for the guarantee by that department or agency of a defense production loan made by a private financing institution.

**Decline in Use of Regulation V**

The Act and the Executive Orders implementing it have periodically expired and subsequently been reauthorized. However, in 1975, the Act was amended to make the guarantee provisions unnecessary for most practical purposes. These amendments provided that "all authority hereby or hereafter extended under title III [relating to expansion of productive capacity and supply, including loan guarantee provisions] shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts." 50 U.S.C. App. 2166(a). Thus, under the 1975 amendments, defense agencies that have authority to authorize loan guarantees have authority to do so only if funds have been appropriated for the contract in question. Once funds have been appropriated, however, there is little need for the guarantee, because the appropriated funds can be paid timely in accordance with the defense contracts. Notwithstanding the 1975 amendments, the loan guarantee provisions of the Act were not deleted. No loan guarantees are currently outstanding and no applications for loan guarantees have been filed for several years.

**Current Regulatory Review Proposal**

Repealing Regulation V would achieve the objectives of Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 by improving efficiency and removing outmoded requirements while at the same time not adversely affecting the abilities of any parties to participate in a loan guarantee should the need arise. Repealing Regulation V would not affect the existence or availability of the loan guarantee program as provided by the Act. Although the 1975 amendments to the Act make it unlikely that a loan guarantee application will be filed, the Board and the Federal Reserve Banks would be able to perform their fiscal

agency and application coordination responsibilities under the Act if such an application were filed using fiscal agency procedures already in place in other contexts and on a case-by-case basis.

#### Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b) (1)-(2)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposal, are contained in the supplementary material above. The proposal rule imposes no additional reporting or recordkeeping requirements and does not overlap with other federal rules. (5 U.S.C. 603(b) (4)-(5).)

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. (5 U.S.C. 603(b)(3).) The proposal will apply to all depository institutions regardless of size. The proposal seeks to eliminate an obsolete regulatory provision and does not impose any substantial economic burden on small entities.

By order of the Board of Governors of the Federal Reserve System, May 21, 1996.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 96-13225 Filed 5-24-96; 8:45 am]

BILLING CODE 6210-01-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 96-AGL-1]

#### Proposed Amendment of Class E Airspace; Rochester, MN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** This action withdraws the Notice of Proposed Rulemaking (NPRM) which amended the Class E airspace at Rochester, MN. The airspace, as published, was incomplete and will be reissued subsequently with the corrected airspace description.

**DATES:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:**

John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7459.

#### SUPPLEMENTARY INFORMATION:

##### The Proposed Rule

On March 22, 1996, a Notice of Proposed Rulemaking was published in the Federal Register to amend the Class E airspace at Rochester, MN. This was necessary to accommodate the new Copter GPS 325 degrees approach procedure to St. Mary's Hospital Heliport, Rochester, MN (61 FR 11792). The airspace description, as published, was incomplete; therefore this NPRM is being withdrawn and will be reissued.

##### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

##### Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 96-AGL-1, as published in the Federal Register on March 22, 1996 (61 FR 11792), is hereby withdrawn.

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

Issued in Des Plaines, Illinois on May 1, 1996.

Maureen Woods,

*Acting Manager, Air Traffic Division.*

[FR Doc. 96-13254 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Chapter I

[Docket No. 96N-0002]

#### “Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem Cell Products Intended for Transplantation or Further Manufacture into Injectable Products;” Availability; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Availability of draft document; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to July 26, 1996, the comment period for the draft document entitled “Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem

Cell Products Intended for Transplantation or Further Manufacture into Injectable Products,” which appeared in the Federal Register of February 26, 1996 (61 FR 7087). The purpose of the draft document is to identify a draft regulatory approach that FDA believes is appropriate for the regulation of placental/umbilical cord blood stem cell products for transplantation. FDA published the draft document in response to numerous inquiries regarding the agency's regulatory approach to cord blood stem cell products and to provide an opportunity for interested persons to submit written comments on the draft document prior to fully implementing this approach. FDA is taking this action in response to requests to allow additional time for public comments.

**DATES:** Written comments by July 26, 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.

**FOR FURTHER INFORMATION CONTACT:** Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM-630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 26, 1996 (61 FR 7087), FDA requested public comment from interested persons on the draft document which included discussions of the following: (1) The applicable legal authorities in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act; (2) FDA's approach to the regulation of human cord blood stem cells intended for transplantation; (3) FDA's approach to the regulation of cord blood stem cells as source material for further manufacture; and (4) FDA's approach to the regulation of ancillary products used for production of cord blood stem cells. Interested persons were given until April 26, 1996, to submit written comments on the draft document.

The agency received four letters from companies and research institutions involved in the collection and storage of cord blood requesting an extension of the comment period. The letters requested up to 90 additional days for comment on the basis that FDA's proposed regulatory approach would significantly alter the current cord blood collection and storage practices used by companies and research institutions. In addition, the requests cited the need for additional time to adequately review

and analyze the draft document so as to formulate and submit meaningful, substantive comments to the agency. In a letter of April 26, 1996, FDA responded by offering an additional 29 days for comment, while the agency considered the requests for a 90-day extension. After careful consideration, the agency has concluded that it is in the public interest to allow additional time for interested persons to submit comments. Accordingly, FDA is extending the original comment period by 90 days, to July 26, 1996.

Interested persons may, on or before July 26, 1996, submit written comments to the Dockets Management Branch (address above). 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. A copy of the draft document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 23, 1996.

William K. Hubbard,  
Associate Commissioner for Policy  
Coordination.

[FR Doc. 96-13304 Filed 5-22-96; 4:03 pm]

BILLING CODE 4160-01-F

## ARMS CONTROL AND DISARMAMENT AGENCY

### 22 CFR Part 608

#### Service of Process; Production of Official Information; and Testimony of Agency Employees

**AGENCY:** Arms Control and Disarmament Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish or clarify policies, practices, responsibilities, and procedures for the service of legal process upon the United States Arms Control and Disarmament Agency (ACDA, the Agency), its officers, and employees, and the production of official ACDA information and the appearance of and testimony by ACDA employees as witnesses in connection with litigation. This rule is procedural in nature. Although not required to do so, ACDA is voluntarily publishing this proposed rule for public comment.

**DATES:** To be considered, comments must be delivered by mail or in person to the address, or faxed to the telephone number, listed below by 5 p.m. on Friday, June 28, 1996.

**ADDRESSES:** Comments should be directed to the Office of the General Counsel, United States Arms Control and Disarmament Agency, Room 5636, 320 21st Street, NW., Washington, DC 20451; FAX (202) 647-0024. Comments will be available for inspection between 8:15 a.m. and 5 p.m. at the same address.

**FOR FURTHER INFORMATION CONTACT:** Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, NW., Washington, DC 20451, telephone (202) 647-3596.

#### SUPPLEMENTARY INFORMATION:

##### General

This proposed rule is intended to clarify ACDA policies and practices regarding litigation-related matters such as service of process upon ACDA and ACDA employees and the production of official ACDA information in litigation. ACDA anticipates that the rule, which generally parallels similar rules which have been adopted by numerous other federal agencies, e.g., the Department of Defense (32 CFR part 97), the Department of Justice (28 CFR part 16, subpart B), the Nuclear Regulatory Commission (10 CFR part 9, subpart D), and the Department of State (22 CFR part 172), will eliminate or reduce current ambiguities regarding such matters for ACDA employees, as well as for private attorneys and judicial and quasi-judicial authorities. ACDA also expects that this rule will promote consistency in ACDA's assertions of privileges and objections, thereby reducing the potential for both inappropriate, potentially harmful disclosure of protected information and wasteful or inappropriate allocation of Agency resources. Although the proposed rule is largely self-explanatory, we describe the general scheme of the several subsections below for the readers' ease of reference.

##### Service of Process

Part 604.4(b) of 22 CFR establishes the Agency's Office of the General Counsel as the designated office for the presentation of administrative claims asserted under the Federal Tort Claims Act (and 22 CFR parts 602, 603, and 605 set forth procedures for administrative requests under the Freedom of Information Act, under the Privacy Act, and for declassification of national security information, respectively). However, until the present, the Agency has not had regulations establishing the Agency's General Counsel, or his/her delegate, as the sole Agency recipient for litigation-related demands, whether

civil or criminal, for official Agency information, whether oral or documentary, or for other Agency action. The proposed rule also clarifies that ACDA is not an agent for service on behalf of its employees in respect of purely private legal disputes and explains that ACDA will counsel its employees not to use their official positions to evade judicial process.

##### Compliance With Requests or Demands for Official Information

Fundamentally, the compliance sections of the proposed rule (§§ 608.4-608.9) simply track, to a greater or lesser degree, similar regulations which have been adopted by other federal agencies (such as those referenced above), and which derive from the Supreme Court's decision in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Thus, the principal thrust of the compliance provisions of the proposed rule is that Agency employees (including former employees) must obtain the approval of the Agency's General Counsel, or his/her delegate, prior to responding to any subpoenas or other litigation-related requests or demands for Agency information, whether classified or unclassified, that relate to the employee's official duties.

Significantly, § 608.5 requires the party who initiates a litigation-related request or demand for official ACDA information to provide a written statement providing specified information concerning the nature and scope of the demand.

Finally, the proposed rule describes factors, among others, that Agency officials shall take into consideration when considering litigation-related requests or demands and specifies that Agency employees may ordinarily not provide expert or official testimony on behalf of private parties.

##### Regulatory Flexibility Act Certification

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

##### Executive Order 12866 Determination

ACDA has determined that the proposed rule is not a significant regulatory action within the meaning of section 3(f) of that Executive Order.

##### Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act because it does not contain any information collection requirements within the meaning of that Act.

### Unfunded Mandates Act Determination

ACDA has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

### List of Subjects in 22 CFR Part 608

Administrative practice and procedure, Classified information, Government employees.

### The Proposed Regulations

ACDA proposes to amend title 22 of the Code of Federal Regulations by adding a new part 608 as follows:

**PART 608—SERVICE OF PROCESS; PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR SIMILAR REQUESTS OR DEMANDS IN CONNECTION WITH FEDERAL OR STATE LITIGATION; EXPERT TESTIMONY**

#### Sec.

- 608.1 Purpose and scope; definitions.
- 608.2 Service of summonses and complaints.
- 608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.
- 608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.
- 608.5 Procedure when testimony or production of documents is sought—general.
- 608.6 Procedure when response to demand is required prior to receiving instructions.
- 608.7 Procedure in the event of an adverse ruling.
- 608.8 Considerations in determining whether the Agency will comply with a demand or request.
- 608.9 Prohibition on providing expert or opinion testimony.

Authority: 22 U.S.C. 2581(j).

#### § 608.1 Purpose and scope; definitions.

(a) This part sets forth the procedures to be followed with respect to:

- (1) Service of summonses and complaints or other requests or demands directed to the U.S. Arms Control and Disarmament Agency (ACDA, the Agency) or to any ACDA employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of ACDA; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial authority (collectively, “demands”), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, “requests”), of any material contained in the files of the Agency, any information relating to material contained in the files of the Agency, or any information acquired while the subject of the demand or request is or was an employee of the Agency as part of the performance of the person’s duties or by virtue of the person’s official status.

(b) For purposes of this part, and except as ACDA may otherwise determine in a particular case, the term *employee* includes the Director of ACDA and former Directors of ACDA, and all employees and former employees of ACDA or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Director of ACDA, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors.

(c) For purposes of this part, the term *litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This part governs, inter alia, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this part shall not apply to any claims by ACDA employees (present or former), or applicants for Agency employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between ACDA and a labor organization representing ACDA employees; or their successor agencies or entities.

(d) For purposes of this part, *official information* means all information of any kind, however stored, that is in the custody and control of ACDA, relates to information in the custody and control of ACDA, or was acquired by ACDA employees as part of their official duties or because of their official status within ACDA while such individuals are employed by or served on behalf of ACDA.

(e) Nothing in this part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12356 on national security information (or successor order thereto), the Government in the Sunshine Act, 5 U.S.C. 552b, the Agency’s regulations in 22 CFR chapter VI implementing any of the foregoing, or pursuant to congressional subpoena. Nothing in this part otherwise permits disclosure of information by ACDA or its employees except as provided by statute or other applicable law.

(f) This part is intended only to inform the public about ACDA procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, any right or benefit substantive or procedural, enforceable at law by a party against ACDA or the United States.

(g) Nothing in this part affects:

(1) The disclosure of information during the course of legal proceedings in foreign courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals; or

(2) The rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(h) Nothing in this part affects the disclosure of official information to other foreign agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, extradition, deportation or other proceedings.

#### § 608.2 Service of summonses and complaints.

(a) Only ACDA’s General Counsel, or his/her delegate, is authorized to receive and accept summonses or complaints sought to be served upon ACDA or ACDA employees. All such documents should be delivered or addressed to

General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st St. N.W., Room 5635, Washington, DC 20451. Pursuant to 42 U.S.C. 659(b) and 5 U.S.C. 5520a(c)(1), this same officer has been designated specifically to accept service of process for the enforcement of the legal obligation to provide child support or to make alimony payments by employees of the Agency and to accept service of process for the enforcement of the legal obligation to pay monies owed for other than child support or alimony by employees of the Agency, respectively.

(b) In the event any summons or complaint described in § 608.1(a) is delivered to an employee of ACDA other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication which directs the person attempting to make service to the procedures set forth in this part.

(c) Except as otherwise provided in §§ 608.2(d) and 608.3(c), ACDA is not an authorized agent for service of process with respect to civil litigation against ACDA employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to ACDA employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon ACDA's General Counsel, or his/her delegate.

(d) Although ACDA is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, ACDA recognizes that its employees stationed overseas should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage ACDA employees to accept service of process in appropriate cases, and will waive applicable diplomatic or consular privileges and immunities when ACDA determines that it is in the interest of the United States to do so. Pursuant to section 302 of Executive Order 12953, ACDA's General Counsel has been designated in Appendix B to 5 CFR part 581 as the official to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making ACDA employees available for service of process, regardless of the location of the employee's workplace.

(e) Documents for which ACDA's General Counsel, or his/her delegate, accepts service in official capacity only shall be stamped "Service Accepted in

Official Capacity Only." Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable for the service of process.

**§ 608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.**

(a) Except in cases in which ACDA is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept subpoenas, or other demands or requests directed to ACDA or any component thereof, or its employees, or former employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Agency;

(2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Agency or which any Agency employee acquired in the course and scope of the performance of official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official ACDA duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to an Agency employee (including former employee) other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the office of the General Counsel, decline to accept the subpoena, demand, or request or shall return it to the serve under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, ACDA is not an agent for service or otherwise authorized to accept on behalf of its employees any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual ACDA employee to whom such demand or request is directed.

(d) Acceptance of such documents by ACDA's General Counsel, or his/her delegate, does not constitute a waiver of any defenses that might otherwise exist

with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

**§ 608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.**

(a) No employee of ACDA shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of ACDA as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

(b) No ACDA employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

**§ 608.5 Produce when testimony or production of documents is sought—general.**

(a) If official ACDA information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should identify the record or reasonably describe it in terms of date, format, subject matter, the office originating or receiving the record, and the names of all persons to whom the record is known to relate. Subject to § 606.7, ACDA employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by ACDA's General Counsel or his/her delegate. See *United States ex re. Toughy v. Ragen*, 340 U.S. 462 (1951). The Office of the General Counsel may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, ACDA may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of

inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) ACDA's General Counsel, or his/her delegate, will notify the ACDA employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The Office of the General Counsel will consult with the Department of Justice regarding legal representation for ACDS employees in appropriate cases.

**§ 608.6 Procedure when response to demand is required prior to receiving instructions.**

(a) If a response to a demand is required before ACDA's General Counsel, or his/her delegate, renders a decision, ACDA will request that either a Department of Justice attorney or an ACDA attorney designated for the purpose:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of ACDA's General Counsel, or his/her delegate; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or ACDA attorney on the employee's behalf, the employee shall respectfully request the demanding court or authority for a reasonable stay of proceedings for the purpose of obtaining instructions from ACDA.

**§ 608.7 Procedure in the event of an adverse ruling.**

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to § 608.6, or if the court or other authority rules that the demand must be complied with irrespective of the Agency's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 463 (1951).

**§ 608.8 Considerations in determining whether the Agency will comply with a demand or request.**

(a) In deciding whether to comply with a demand or request, ACDA officials and attorneys shall consider, among others:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of ACDA employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by ACDA of its mission and duties; and

(8) The need to avoid involving ACDA in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which, *inter alia*, any of the following factors exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an ongoing law enforcement investigation.

**§ 608.9 Prohibition on providing expert or opinion testimony.**

(a) Except as provided in this section, and subject to 5 CFR 2635.805, ACDA employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official ACDA duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, ACDA's General Counsel, or his/her delegate, may, consistent with 5 CFR 2635.805, in the exercise of discretion, grant special, written authorization for ACDA employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of ACDA's General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of an ACDA employee, such employee shall immediately inform the Office of General Counsel of such order. If the Office of the General Counsel determines that no further legal review of or challenge to the court's order will be made, the ACDA employee shall comply with the order. If so directed by the Office of the General Counsel, however, the employee shall respectfully decline to testify. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Dated: May 17, 1996.  
Mary Elizabeth Hoinkes,  
General Counsel.  
[FR Doc. 96-13194 Filed 5-24-96; 8:45 am]  
BILLING CODE 6820-32-M

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950**

**RIN 1029-AB87**

**State Program Amendments**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.  
**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to amend its regulations by revising the information currently reported in the Code of Federal Regulations (CFR) regarding the OSM Director's approval of amendments to State regulatory programs and abandoned mine land reclamation plans (hereafter State program amendments). A companion rule, State Program Amendments (I), was proposed revising the information reported at 30 CFR parts 901 through 920. As with the prior rulemaking, the information regarding the Director's approval of State program

amendments would be condensed to a tabular presentation depicting the dates when State program amendments were originally submitted to OSM and the dates the OSM Director's decision approving all or portions of these amendments were published in the Federal Register. This rulemaking would further reduce the number of unnecessary pages in the CFR. As always, people interested in getting copies of the full text of the amended State regulatory program or abandoned mine land reclamation plan could contact the State regulatory authority office or the OSM field office with oversight authority for that State.

**DATES:** *Written comments:* We will accept written comments on the proposed rule until 5:00 p.m. Eastern time on July 29, 1996.

*Public hearings:* We will accept requests for a public hearing until 4:00 p.m. Eastern time on June 27, 1996. People who want to attend but not testify at the hearing, must contact the person listed under **FOR FURTHER INFORMATION CONTACT**, beforehand to verify that we will hold a hearing. Any disabled individuals who need special accommodations to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** *Written comments:* Please hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Room 120, 1951 Constitution Ave. NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, SIB 120, 1951 Constitution Ave. NW., Washington, DC 20240.

You may also send comments through the Internet to OSM's Administrative Record. Our Internet address is: OSMRulesOSMRE.GOV. We will file copies of any electronic messages received with our Administrative Record.

*Public hearings:* You must contact the person identified under **FOR FURTHER INFORMATION CONTACT** by the time required under **DATES** to request a public hearing.

**FOR FURTHER INFORMATION CONTACT:** John A. Trelease, Rules and Legislation Staff, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington DC 20240; Telephone (202) 208-2783.

**SUPPLEMENTARY INFORMATION:**

- I. Public Comment Procedures
- II. Discussion of Proposed Rules
  - Why is this rule being written?*
  - What would change?*

*How do I get a copy of State program amendments?*

III. Procedural Matters

I. Public Comment Procedures

*Written Comments*

If you are submitting written comments on the proposed rule please be specific, limit your comments to issues pertinent to the proposed rule, and explain the reason for your recommendations. If possible, please submit three copies of your comments to our Administrative Record (see **ADDRESSES**). We may not consider your comments for the final rule when received after the close of the comment period (see **DATES**) or delivered to addresses other than those listed in **ADDRESSES**.

*Public Hearings*

We will hold public hearings on the proposed rule by request only. If no one has contacted Mr. Trelease requesting a hearing by the date listed in **DATES**, we will not hold a hearing. We will hold a public meeting instead of a hearing if only one person expresses an interest. We will include the results of all meetings and hearings in our Administrative Record.

If we hold a hearing, it will continue until everyone who wants to testify is heard. Please provide us with an advanced copy of your testimony at the address specified for the submission of written comments (see **ADDRESSES**), and a copy of the transcriber when you arrive at the hearing. This will assist us in preparing appropriate questions, and ensure that the transcriber provides us with an accurate record of the testimony.

II. Discussion of Rule

*Why Is This Rule Being Written?*

On March 4, 1995, the President announced a government-wide Regulatory Reinvention Initiative. The President directed each agency to conduct a page-by-page review of its regulations for the purpose of eliminating or revising those that are outdated or otherwise in need of reform. As part of that effort, OSM is considering several means of reducing the number of pages in the CFR.

This rulemaking would result in a reduction of approximately 50 pages from the CFR and reduce future printing costs for the government, and contribute to on-going efforts to make the CFR a more readable document.

*What Would Change?*

The OSM Director's approval or approval in part of State program

amendments is published in the Federal Register and codified in the CFR. The regulatory text documenting such decisions usually contains topical outlines of the amendments and associated program citations, the dates the amendments were submitted to OSM, and the dates the amendments became effective. Under the revised procedures of this rulemaking, the regulatory text for 30 CFR parts 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950 would be limited to a tabular presentation of the dates that States submitted amendments, and the dates the amendments were published in the Federal Register after approval, or partial approval, by the OSM Director. A companion rule was proposed on May 8, 1996 (61 FR 20768), revising the information reported at 30 CFR parts 901 through 920.

OSM believes that there is no compelling public need to codify all of the information currently found in the regulatory text of State program amendment approvals. Although the topical outline of an approved amendment may be a convenient reference for members of the public who want to begin their research of particular provisions of that program amendment, OSM believes that the public would still find it necessary to refer back to the final rule's Federal Register notice for a thorough preamble discussion of those provisions. As always, those people who would like copies of the full text of the State program amendment may contact the State regulatory authority office or the OSM field office with oversight authority for that State.

*How Do I Get a Copy of State Program Amendments?*

Copies of approved State program amendments may be obtained by contacting the State regulatory authority or the local OSM field office with oversight authority for that State. Addresses for these offices are found in parts 900 through 950 of the CFR with their respective State programs.

II. Procedural Matters

*Federal Paperwork Reduction Act*

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

*Regulatory Flexibility Act*

The Department of the Interior certifies that this revision would not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**Unfunded Mandates**

This rule imposes no unfunded mandates on any government or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

**National Environmental Policy Act**

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual 516 DM 6, Appendix 8.4.A.(2).

**Executive Order 12866**

This rule is not significant under Executive Order 12866 and does not require review by the Office of Management and Budget.

**Executive Order 12988**

This proposed rule has been reviewed under the applicable standards of Section 3(b)(2) of Executive Order 12988, Civil Justice Reform (61 FR 4729). In general, the requirements of Section 3(b)(2) of Executive Order 12988 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The proposed rule would have no preemptive effect.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule does not modify the implementation of SMCRA, nor does it modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting implication and burden reduction?

The standards established by this rule are so clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR Part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of the date of publication, the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

List of Subjects in 30 CFR Parts 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 20, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950 are proposed to be amended as follows.

**PART 925—MISSOURI**

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is revised to read as follows:

**§925.15 Approval of Missouri regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of

these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
December 3, 1980 and March 12, 1981.	July 23, 1982.
September 7, 1982 and October 13, 1982.	January 17, 1983.
April 13, 1983 .....	May 8, 1984.
March 13, 1986 .....	January 7, 1987.
February 4, 1987 .....	February 26, 1988.
June 22, 1987 .....	June 16, 1988.
December 14 and 18, 1987.	October 31, 1988.
August 3, 1988 .....	December 11, 1989.
July 8, 1988 .....	January 8, 1990.
March 18, 1988 .....	June 5, 1990.
June 5, 1989 .....	July 6, 1990.
July 21, 1989 .....	October 30, 1990.
January 12, 1989 .....	January 3, 1991.
July 8, 1988 and January 12, 1988.	May 8, 1991.
November 8, 1991 ....	September 24, 1992.
October 10, 1990 .....	September 29, 1992.
October 19, 1992 .....	December 6, 1993.
September 24, 1993	April 22, 1994.
February 10, 1995 .....	July 13, 1995.

3. Section 925.25 is revised to read as follows:

**§925.25 Approval of Missouri abandoned mine land reclamation plan amendments.**

(a) You may receive copies of the Missouri abandoned mine land reclamation plan and amendments from the:

(1) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102; or

(2) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

(b) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
June 22, 1987 .....	June 16, 1988.
August 22, 1988 .....	March 15, 1989.
November 29, 1994	August 24, 1995.

**PART 926—MONTANA**

4. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

5. Section 926.15 is revised to read as follows:

**§ 926.15 Approval of Montana regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
September 13, 1983	January 3, 1984.
April 2, 1984 .....	January 3, 1985.
January 3, 1984 .....	November 18, 1985.
July 3, 1985 .....	February 14, 1986.
April 23, 1987 .....	December 31, 1987.
December 21, 1988	May 11, 1990.
June 19, 1990 .....	March 20, 1991 and August 19, 1992.
October 19, 1992 .....	February 25, 1994.
June 16, 1993 and July 28, 1993.	February 1, 1995.

6. Section 926.25 is added to read as follows:

**§ 926.25 Approval of Montana abandoned mine land reclamation plan amendments.**

(a) Montana certification of completing all known coal-related impacts is accepted, effective July 9, 1990.

(b) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
April 20, 1983 .....	September 19, 1983.
March 22, 1995 .....	July 19, 1995.

**PART 931—NEW MEXICO**

7. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

8. Section 931.15 is revised to read as follows:

**§ 931.15 Approval of New Mexico regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
February 28, 1982 .....	May 27, 1982.
July 9, 1982 .....	October 26, 1982.
February 8, 1984 .....	August 1, 1984.
June 6, 1984 .....	January 4, 1985.
June 20, 1984 and July 18, 1984.	January 31, 1985.

Original amendment submission date	Date of final publication
August 12, 1987 .....	February 11, 1988.
September 1, 1988 ...	January 30, 1989.
June 17, 1987 .....	March 9, 1989.
April 18, 1988 and October 20, 1988.	March 17, 1989.
February 21, 1989 and August 17, 1989.	December 26, 1989.
March 29, 1989 and April 26, 1989.	April 26, 1990.
May 25, 1989 .....	November 23, 1990.
July 22, 1989 .....	February 26, 1991.
April 24, 1990 .....	June 21, 1991.
March 15, 1990 .....	December 31, 1991.
July 9, 1991 .....	April 13, 1992.
November 22, 1991	June 23, 1992.
January 16, 1991 .....	December 17, 1993.
October 26, 1994 .....	February 15, 1995.

**PART 934—NORTH DAKOTA**

9. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

10. Section 934.15 is revised to read as follows:

**§ 934.15 Approval of North Dakota regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
July 30, 1982 .....	February 9, 1983 and November 9, 1983.
February 2, 1984 .....	July 19, 1984.
February 27, 1984 .....	January 3, 1985.
June 18, 1985 .....	February 18, 1986.
May 30, 1986 .....	October 21, 1986.
September 8, 1986 ...	December 9, 1986.
April 3, 1987 .....	November 16, 1987.
February 10, 1987 .....	February 2, 1988.
June 1, 1988, .....	March 10, 1989.
April 11, 1989 .....	August 4, 1989.
November 1, 1988 ...	January 19, 1990.
November 20, 1990.	January 9, 1992.
June 12, 1991 and November 19, 1991.	August 20, 1992.
April 21, 1993 .....	March 15, 1994 and July 22, 1994.
October 22, 1993 .....	July 22, 1994.
November 10, 1994.	April 13, 1995.
February 17, 1994 .....	July 14, 1995.

11. Section 934.25 is revised to read as follows:

**§ 934.25 Approval of North Dakota abandoned mine land reclamation plan amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of

these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
March 4, 1983 .....	June 24, 1983.
September 15, 1987	June 16, 1988.
October 31, 1991 .....	July 27, 1992.
May 25, 1993 .....	September 27, 1993.

**PART 935—OHIO**

12. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

13. Section 935.15 is revised to read as follows:

**§ 935.15 Approval of Ohio regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
September 16, 1982	January 17, 1983.
October 13, 1982 .....	January 31, 1983 and July 22, 1983.
January 6, 1983 .....	May 24, 1983.
June 10, 1983, August 11, 1983 and August 22, 1983.	October 6, 1983.
July 18, 1983 .....	October 13, 1983.
January 30, 1984 .....	April 23, 1984.
February 8, 1984 .....	May 1, 1984.
December 28, 1983	June 5, 1984.
March 5, 1984 .....	August 8, 1984.
June 15, 1984 .....	September 25, 1984.
July 23, 1984 .....	November 1, 1984.
March 9, 1984 .....	November 7, 1984.
September 17, 1984	December 31, 1984.
July 10 and 23, 1984	March 18, 1985.
July 11, 1984 and July 23, 1984.	May 23, 1985.
July 3, 1985 .....	September 18, 1985.
November 15, 1985	April 9, 1986 and June 9, 1986.
January 15, 1986 .....	May 6, 1986.
October 26, 1985 .....	July 17, 1986.
November 6, 1984 ...	July 28, 1986.
March 3, 1986 .....	September 18, 1986.
July 10, 1986 .....	October 29, 1986.
October 8, 1986 .....	March 5, 1987.
December 1, 1986 and January 13, 1987.	July 17, 1987.
May 16, 1986 .....	August 10, 1987.
January 28, 1987 .....	December 9, 1987.
June 26, 1987 .....	March 10, 1988.
January 16, 1987 .....	May 27, 1988.
October 16, 1987 .....	December 22, 1988.
March 24, 1988 and August 23, 1988.	January 30, 1989.
March 8, 1988 and July 1, 1988.	February 21, 1989.
April 17, 1987 .....	December 15, 1989.
November 3, 1987 ...	January 31, 1990.
January 26, 1989 .....	

Original amendment submission date	Date of final publication
October 2, 1989 .....	April 20, 1990.
August 11, 1989 .....	June 5, 1990.
December 5, 1989 ....	July 20, 1990.
October 20, 1988 .....	July 25, 1990.
May 11, 1990 .....	August 21, 1990.
March 1, 1989 .....	September 18, 1990.
January 20, 1989 .....	September 24, 1990.
May 11, 1990 .....	February 21, 1991.
December 7, 1990 ....	February 26, 1991.
June 15, 1990 .....	April 19, 1991.
January 31, 1991 .....	May 21, 1991 and June 6, 1991.
March 1, 1991 .....	May 30, 1991.
January 31, 1989 .....	October 21, 1991.
August 23, 1991 .....	December 9, 1991.
November 16, 1987 and October 12, 1990.	April 13, 1992.
January 16, 1990 .....	July 27, 1992.
July 22, 1991 and September 10, 1991.	August 18, 1992.
May 12, 1992 .....	September 11, 1992.
December 11, 1991 .....	October 28, 1992.
June 30, 1992 .....	January 12, 1993.
May 12, 1992 and June 22, 1992.	January 14, 1993.
December 9, 1992 ....	April 23, 1993.
February 7, 1992 and March 2, 1992.	June 11, 1993.
April 5, 1993 .....	June 22, 1993.
February 11, 1993 .....	August 16, 1993.
January 15, 1993 .....	September 3, 1993.
May 1, 1992 and June 11, 1993.	May 2, 1994.
May 17, 1994 .....	July 27, 1994.
March 15, 1993 .....	September 1, 1994.
February 23, 1994 ....	October 12, 1994.
March 4, 1993 .....	November 15, 1994.
July 19, 1994 .....	May 11, 1995.
May 17, 1994 .....	May 12, 1995.
September 22, 1994 .....	July 17, 1995.
March 28, 1995 .....	July 25, 1995.
February 2, 1995 .....	November 9, 1995.

14. Section 935.25 is revised to read as follows:

**§ 935.25 Approval of Ohio abandoned mine land reclamation plan amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
January 6, 1983 .....	May 24, 1983.
April 2, 1984 .....	November 19, 1984.
August 20, 1986 .....	August 17, 1987.
October 2, 1989 .....	April 20, 1990.
February 19, 1992 .....	September 24, 1992.

**PART 936—OKLAHOMA**

15. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

16. Section 936.15 is revised to read as follows:

**§ 936.15 Approval of Oklahoma regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
January 22, 1982 .....	April 2, 1982.
February 22, 1983 .....	May 4, 1983.
May 13, 1983 .....	August 28, 1984.
July 8, 1983 .....	March 18, 1985.
July 16, 1985 .....	December 10, 1985.
August 15, 1985 .....	January 14, 1986.
September 11, 1985 .....	January 16, 1986.
August 8, 1985 .....	April 28, 1986.
May 18, 1988 .....	March 27, 1990 and May 15, 1990.
March 30, 1990 .....	December 18, 1990 and February 15, 1991.
June 21, 1990 .....	January 9, 1991.
February 6, 1992 .....	December 7, 1993.
February 17, 1994 .....	January 10, 1995.
September 14, 1994 .....	March 10 and 29, 1995.
July 5, 1995 .....	November 9, 1995.

**PART 938—PENNSYLVANIA**

17. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

18. Section 938.15 is revised to read as follows:

**§ 938.15 Approval of Pennsylvania Regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register.

Original amendment submission date	Date of final publication
April 26, 1983 and May 12, 1983.	October 5, 1983.
August 1, 1983 .....	January 4, 1984.
January 17, 1984 .....	March 20, 1984.
October 31, 1983 .....	May 15, 1984 and July 3, 1984.
March 30, 1984 .....	November 27, 1984.
March 2, 1984 .....	April 4, 1985.
April 19, 1985 .....	August 15, 1985.
April 16, 1985 .....	November 4, 1985.
September 5, 1985 .....	February 19, 1986.
November 2, 1984 ....	May 19, 1986.
September 30, 1985 .....	September 8, 1986.
April 18, 1985 .....	June 18, 1987.
January 22, 1987 .....	July 14, 1987.
April 14, 1987 .....	October 27, 1988.
December 5, 1988 ....	July 14, 1989.
August 17, 1988 .....	August 18, 1989.

Original amendment submission date	Date of final publication
August 21, 1986 .....	November 3, 1989.
December 22, 1989 .....	May 31, 1991.
September 24, 1986 .....	October 24, 1991.
May 27, 1992 .....	October 28, 1992.
June 2, 1992 .....	November 16, 1992.
December 18, 1991 .....	December 30, 1992, January 14, 1993 and April 8, 1993.
February 18, 1993 .....	July 6, 1993.
March 9, 1993 .....	December 6, 1993.
May 11, 1993 .....	July 20, 1994.
October 24, 1994 .....	April 3, 1995.

19. Section 938.25 is revised to read as follows:

**§ 938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
April 17, 1992 .....	October 30, 1992.

**PART 943—TEXAS**

20. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

21. Section 943.15 is revised to read as follows:

**§ 943.15 Approval of Texas regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
March 27, 1980 .....	November 26, 1980.
September 18, 1981 .....	June 3, 1982.
August 31, 1984 .....	July 9, 1985.
August 24, 1988 .....	December 11, 1989.
June 24, 1991 .....	February 19, 1992.
December 23, 1991 .....	April 17, 1992.
September 12, 1989 .....	May 21, 1992.
September 22, 1989 .....	August 19, 1992.
February 8, 1993 .....	March 21, 1994.
May 24, 1994 .....	March 27, 1995.
August 11, 1995 .....	December 13, 1995.

22. Section 943.25 is revised to read as follows:

**§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.**

(a) Texas certification of completing all known coal-related impacts is accepted, effective August 19, 1992.

(b) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
May 11, and May 26, 1989.	August 19, 1992.

**PART 944—UTAH**

23. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

24. Section 944.15 is revised to read as follow:

**§ 944.15 Approval of Utah regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
June 29, 1981 .....	June 22, 1982.
May 21, 1981 .....	September 27, 1982.
August 26, 1982 .....	December 13, 1982.
December 3, 1982 ....	March 7, 1983.
February 6, 1984 .....	August 29, 1984 and December 18, 1985.
August 13, 1984 .....	December 3, 1985.
October 9, 1985 .....	January 16, 1986.
January 21, 1985 .....	June 10, 1986.
March 3, 1986 .....	July 28, 1986.
September 3, 1986 ...	January 28, 1987.
January 8, 1988 .....	March 28, 1988.
September 24, 1987 ..	August 18, 1988.
August 11, 1989 .....	April 12, 1990.
November 13, 1989 ..	August 13, 1990.
October 10, 1990 .....	January 29, 1991.
July 3, 1990 .....	August 23, 1991.
March 1, 1991 .....	November 22, 1991.
December 30, 1991 ..	May 11, 1992.
July 26, 1991 .....	August 19, 1992.
November 20, 1991 ..	September 11, 1992.
November 5, 1992 ....	March 30, 1993.
April 30, 1992 .....	September 17, 1993.
September 17, 1992 ..	April 7, 1994.
March 7, 1994 .....	May 24, 1994 and September 27, 1994.
August 2, 1993 .....	July 11, 1994.
January 27, 1994 .....	September 27, 1994.
September 9, 1994 ...	March 27, 1995.
February 10, 1995 .....	May 2, 1995.
November 12, 1993 ..	May 30, 1995.
April 14, 1994 .....	July 19, 1995.
February 6, 1995 .....	September 14, 1995.

25. Section 944.25 is revised to read as follows:

**§ 944.25 Approval of Utah abandoned mine land reclamation plan amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
July 26, 1991 .....	August 19, 1992.
March 7, 1994 .....	September 27, 1994.
April 14, 1994 .....	July 19, 1995.

**PART 946—VIRGINIA**

26. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

27. Section 946.15 is revised to read as follows:

**§ 946.15 Approval of Virginia regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
January 28, 1982 .....	July 21, 1982.
July 9, 1982 .....	August 19, 1982.
July 8, 1982 .....	September 21, 1982.
August 13, 1982 .....	December 13, 1982.
September 30, 1982 ..	January 18, 1983.
December 20, 1982 ..	February 28, 1983.
March 22, 1983 .....	April 21, 1983 and June 6, 1983 and June 20, 1983.
July 9, 1982 .....	April 22, 1983.
May 20, 1983 .....	December 27, 1983.
July 27, 1983 .....	March 16, 1984.
February 10, 1984 .....	May 8, 1984.
April 11, 1984 .....	August 2, 1984.
June 13, 1984 .....	August 31, 1984.
February 20, 1985 .....	May 8, 1985.
May 1985 .....	August 15, 1985.
September 4, 1985 ...	November 18, 1985.
November 8, 1985 ....	November 25, 1986.
March 20, 1987 .....	July 17, 1987.
January 16, 1987 .....	August 17, 1987.
June 15, 1987 and July 2, 1987.	December 31, 1987.
September 1, 1987 ...	March 7, 1988.
September 10, 1987 ..	June 16, 1988.
June 30, 1989 .....	December 1, 1989.
July 5, 1989 .....	February 2, 1990.
April 6, 1988 .....	February 5, 1990.
August 31, 1990 .....	December 7, 1990.
September 12, 1990 ..	December 26, 1990.
June 29, 1990 .....	January 4, 1991.
April 5, 1991 and May 1, 1991.	August 5, 1991.
October 1, 1990 .....	July 7, 1992.

Original amendment submission date	Date of final publication
May 6, 1993 .....	September 24, 1993.
October 22, 1993 .....	September 27, 1994.
October 31, 1994 .....	August 8, 1995.

28. Section 946.25 is revised to read as follows:

**§ 946.25 Approval of Virginia abandoned mine land reclamation plan amendments.**

(a) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
November 8, 1985 ....	November 25, 1986.
February 3, 1987 .....	November 13, 1987.

- (b) You may receive a copy from:
- (1) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, or
  - (2) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219.

**PART 948—WEST VIRGINIA**

29. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

30. Section 948.15 is revised to read as follows:

**§ 948.15 Approval of West Virginia regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
October 29, 1981 .....	May 11, 1982.
June 17, 1982 .....	September 10, 1982.
September 14, 1982 and October 29, 1982.	March 1, 1983.
February 16, 1983, April 29, 1983, June 15, 1983 and September 13, 1983.	November 16, 1983.
January 12, 1984 .....	September 20, 1984.
November 20, 1984 ..	April 23, 1985.
March 30, 1984, October 30, 1984, May 20, 1985 and June 14, 1985.	July 11, 1985.

Original amendment submission date	Date of final publication
November 11, 1985 June 30, 1986 and April 26, 1986.	March 20, 1986. May 23, 1990.
June 29, 1990 ..... July 12, 1991 ..... July 30, 1993 ..... June 28, 1993 .....	October 4, 1991. November 19, 1991. August 16, 1995. October 4, 1995 and February 21, 1996.

31. Section 948.25 is revised to read as follows:

**§ 948.25 Approval of West Virginia abandoned mine land reclamation plan amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
May 20, 1985 ..... December 30, 1987 September 17, 1991 and October 25, 1991.	July 11, 1985. August 26, 1988. March 26, 1993.

**PART 950—WYOMING**

32. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

33. Section 950.15 is revised to read as follows:

**§ 950.15 Approval of Wyoming regulatory program amendments.**

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
March 26, 1981 and April 8, 1981.	February 18, 1982.
May 26, 1982 ..... March 3, 1983, March 8, 1983 and March 21, 1983.	September 27, 1982. November 9, 1983.
June 25, 1984 ..... September 21, 1984 October 12, 1984 ..... June 19, 1985 ..... June 10, 1985 ..... May 1, 1986 ..... December 13, 1985 March 31, 1989 ..... May 1, 1986 ..... March 21, 1991 ..... June 24, 1991 ..... March 19, 1993 ..... July 8, 1992 .....	February 28, 1985. December 3, 1985. December 13, 1985. January 2, 1986. March 31, 1986. November 24, 1986. May 6, 1987. July 25, 1990. January 29, 1991. July 8, 1992. October 29, 1992. August 23, 1993. October 7, 1993.

Original amendment submission date	Date of final publication
July 24, 1992 ..... August 18, 1982 and March 9, 1993. December 15, and August 6, 1993. May 1, 1986 ..... April 13, 1994 ..... November 8, 1994 .... June 2, 1995 .....	November 2, 1993. January 24, 1994. March 30, 1994. June 30, 1994. October 21, 1994. March 17, 1995. September 14, 1995

34. Section 950.35 is revised to read as follows:

**§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.**

(a) Wyoming certification of completing all known coal-related impacts is accepted, effective May 25, 1984.

(b) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register:

Original amendment submission date	Date of final publication
December 16, 1991 April 21, 1995 .....	April 13, 1992. February 21, 1996.

[FR Doc. 96-13260 Filed 5-24-96; 8:45 am]  
BILLING CODE 4310-05-M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Chapter I**

[CC Docket No. 96-115, FCC 96-221]

**Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is issuing this Notice of Proposed Rulemaking seeking comment on proposed regulations to specify in more detail and clarify the obligations of telecommunications carriers with respect to the use and protection of customer proprietary network information (CPNI) and other customer information. The Notice is being issued in response to formal and informal requests for guidance as to local exchange carriers' responsibilities under the Telecommunications Act of 1996. The objective of the Notice of Proposed

Rulemaking is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

**DATES:** Comments are due on or before June 11, 1996 and Reply Comments are due on or before June 26, 1996. Written comments by the public on the proposed and/or modified information collections are due June 11, 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 July 29, 1996.

**ADDRESSES:** Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. 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, NW., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Blaise Scinto, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1380, or Radhika Karmarkar, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1628. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202-418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking adopted May 16, 1996 and released May 17, 1996 (FCC-96-221). This NPRM 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. The full text of this Notice

of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

**Paperwork Reduction Act**

This NPRM 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 NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due July 29, 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:* None.

*Title:* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115.

*Form No.:* N/A.

*Type of Review:* New collection.

Information collection requirement	Number of respondents (approx.)	Estimated time per response	Total annual burden
Customer approval—oral .....	1,500	10 hours .....	15,000 hours.
Customer approval—written .....	1,500	10 hours .....	15,000 hours.
Burden of proof—oral approval .....	100	1 hour .....	100 hours.
CPNI Disclosure to Third Parties .....	500	5 hours .....	2,500 hours.
Record-keeping requirement for restricted CPNI .....	3,000	5 hours .....	15,000 hours.
Aggregate CPNI disclosure .....	1,400	5 hours .....	7,000 hours.
Subscriber list information disclosure .....	1,400	4 hours .....	5,600 hours.

*Total Annual Burden:* 60,200.

*Respondents:* Business or other for profit, including small businesses.

*Estimated costs per respondent:* \$0.

*Needs and Uses:* The Notice of Proposed Rulemaking seeks to clarify and specify in more detail the obligations of telecommunications carriers under the customer proprietary network information (CPNI) and subscriber list information provisions for the Telecommunications Act of 1996 (see 47 U.S.C. § 222). The Notice also seeks to implement data safeguards for information about calls received by alarm monitoring services, pursuant to 47 U.S.C. 275(d).

**SYNOPSIS OF NOTICE OF PROPOSED RULEMAKING**

**A. Summary**

**I. Introduction**

1. On February 14, 1996, several local exchange carrier associations (the Associations) informed the Common Carrier Bureau (Bureau) that their members were uncertain about their responsibilities under the Telecommunications Act of 1996 (the 1996 Act) regarding use and protection of customer proprietary network information (CPNI), and requested that the Commission conduct a rulemaking to implement the provisions of the 1996 Act. On March 5, 1996, the NYNEX Telephone Companies (NYNEX) filed a petition for declaratory ruling regarding the proper interpretation of the term

“telecommunications service” as used in Section 222. On March 27, 1996, U S West, Inc. (U S West) responded to the NYNEX Petition by letter to the Bureau Chief. In response to these and other informal requests for guidance from the telecommunications industry, we initiate this proceeding to seek comment on proposed regulations to specify in more detail and clarify the obligations of telecommunications carriers with respect to the use and protection of CPNI and other customer information. We invite parties who wish to respond to any of the above-referenced industry filings to do so by submitting comments in this proceeding.

2. Section 702 of the 1996 Act added a new Section 222 to the Communications Act of 1934, as amended, which sets forth, among other things, restrictions on the use of CPNI obtained by telecommunications carriers in providing telecommunications service to customers as well as certain requirements related to the availability of subscriber list information. In addition, the 1996 Act establishes a new Section 275(d) that prohibits local exchange carriers (LECs) from using information obtained from calls made to alarm monitoring service providers to market their own alarm monitoring services, or those provided by any other entity, and requires the Commission to adopt implementing regulations within

six months. Although the requirements of Section 222 were immediately effective, we tentatively conclude that regulations that interpret and specify in more detail a telecommunications carrier's obligations under subsections 222 (c)-(f) of the 1996 Act would be in the public interest. In this Notice of Proposed Rulemaking (NPRM), we propose a regulatory regime that balances consumer privacy and competitive considerations to ensure that telecommunications carriers comply with their new statutory obligations to maintain the privacy of CPNI and other customer information.

3. In addition, we clarify that the CPNI requirements the Commission previously established as nonstructural safeguards in the *Computer II* and *Computer III* proceedings for the provision of enhanced services and customer premises equipment (CPE) by American Telephone and Telegraph (AT&T), the Bell Operating Companies (BOCs), and GTE Corporation (GTE) remain in effect, pending the outcome of the rulemaking, to the extent that they do not conflict with Section 222, since nothing in the 1996 Act affects these requirements. To the extent that the 1996 Act requires more of a carrier, or imposes greater restrictions on a carrier's use of CPNI, the statute, of course, governs. We seek comment on whether there are statutory, competitive, or privacy reasons that justify the continued application of these pre-

existing rules (which are discussed in greater detail below) to the BOCs, and GTE. With respect to AT&T, we tentatively conclude that these requirements should be removed in light of our recent decisions classifying AT&T as a non-dominant carrier, and the pending AT&T reorganization separating its equipment business from its telecommunications service business. We also seek comment regarding the extent to which these pre-existing rules should or must be amended in light of the language or pro-competitive, deregulatory goals of the new statute. We tentatively conclude that it is not in the public interest, at this time, to extend all of these pre-existing CPNI rules to carriers that are not affiliated with AT&T, the BOCs, or GTE, and seek comment on that conclusion. To the extent that we conclude that we should apply more restrictive CPNI access requirements to certain groups of carriers, such as the BOCs, we seek comment on the specific market conditions or other circumstances that would warrant removal of those requirements in the future.

## II. Background

### A. Commission CPNI Requirements Established Prior to Enactment of the Telecommunications Act of 1996

4. Prior to enactment of the 1996 Act, in the context of the *Computer II* and *Computer III* proceedings, the Commission established requirements applicable to the use of CPNI for the marketing of enhanced services and CPE by AT&T, the BOCs, and GTE. The Commission determined that such requirements were necessary to protect independent enhanced service providers (ESPs) and CPE suppliers from discrimination by AT&T, the BOCs, and GTE. In the absence of these safeguards, the affected carriers could use CPNI obtained from their provision of regulated services to gain an anticompetitive advantage in the unregulated CPE and enhanced services markets. Further, the Commission found that these CPNI requirements were in the public interest because they were intended to protect legitimate customer expectations of confidentiality regarding individually identifiable information. The Commission defined CPNI to encompass any information about customers' network services and their use of those services that a telephone company possessed because it provided those network services.

5. Under the Commission's *Computer III* rules, the BOCs have been required to abide by a request from any customer

that its CPNI be withheld from the BOCs' enhanced services and CPE marketing personnel. If, however, the customer has not requested CPNI protection, the CPNI rules vary depending on: (1) Whether the information is disclosed to the BOC's CPE or ESP affiliate; (2) the number of lines to which a customer subscribes; and (3) whether the subscriber is a residential or business customer. For example, BOC personnel have been able to use CPNI without prior authorization for marketing CPE to all customers. With respect to marketing enhanced services, written prior authorization has been required from customers that subscribe to more than 20 lines. BOC personnel could use the CPNI of customers that subscribe to 20 or fewer lines, however, without prior authorization. Unaffiliated ESPs by contrast have been required to obtain prior customer authorization to obtain access to CPNI maintained by the BOCs. The Commission's rules also imposed on BOCs a notification obligation which required BOCs to provide annual written notification of CPNI rights to multiline (2 or more lines) business customers. In previous orders, the Commission has required the BOCs to implement various computerized systems to protect against unauthorized access by their enhanced services and CPE personnel to restricted CPNI. In addition, the BOCs have been required to accommodate customer requests for partial or temporary restrictions on access to their CPNI. The Commission applied these requirements to GTE in its provision of enhanced services, but not CPE, while declining to apply these requirements to other independent telephone companies.

6. Although AT&T is subject to CPNI restrictions under *Computer III*, the AT&T requirements generally are less stringent than those applicable to the BOCs. For example, AT&T is not required to obtain prior authorization from a customer with more than 20 lines before using its CPNI to market enhanced services. Similarly, while the BOCs must notify multiline customers annually of their right to restrict disclosure of CPNI to BOC CPE affiliates, AT&T must only provide such notification in a one-time billing insert. AT&T, however, must maintain password/ID systems and other mechanisms to restrict unauthorized access to CPNI.

7. On March 10, 1994, the Bureau issued a Public Notice inviting comments on these CPNI rules in light of the increasing alliances, acquisitions, and mergers by and between telephone and non-telephone companies. In

recognition of these changes, the Bureau sought comment from the public on whether the existing CPNI safeguards would continue in the future to strike the appropriate balance among customers' privacy interests, competitive equity, and efficiency.

### B. New Sections 222(c) and (d): CPNI Privacy Provisions of the Telecommunications Act of 1996

8. In new Sections 222(c) and (d), the 1996 Act established requirements for maintaining the confidentiality of CPNI that became effective immediately upon enactment for all telecommunications carriers. New Section 222(f)(1) defines CPNI as "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship." The statute explicitly includes within the definition of CPNI "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier."

9. New Section 222(c)(1) provides that:

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

Section 222 further provides that "[a] telecommunications carrier shall disclose [CPNI], upon affirmative written request by the customer, to any person designated by the customer."

10. The 1996 Act establishes three exceptions to the general prohibition set forth in Section 222(c)(1). A telecommunications carrier, either directly or indirectly through its agents, may use, disclose, or permit access to individually identifiable CPNI: "(1) to initiate, render, bill, and collect for telecommunications services; (2) to protect the carrier's rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or (3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of

such information to provide such service."

11. The 1996 Act also establishes separate requirements for the treatment of "Aggregate Customer Information." A telecommunications carrier, other than a LEC, may use, disclose, or permit access to aggregate customer information for purposes other than those specified by Section 222(c)(1). LECs may use aggregate CPNI for purposes other than those specified by Section 222(c)(1) only if, upon reasonable request, they provide such aggregate customer information to other carriers or persons on reasonable and nondiscriminatory terms and conditions.

#### C. New Section 222(e): Availability of Subscriber List Information

12. New Section 222(e) states that, notwithstanding Sections 222(b), (c), and (d), a telecommunications carrier that provides telephone exchange service must provide "subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." "Subscriber list information" is defined as "any information identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications \* \* \* that the carrier or an affiliate has published \* \* \* or accepted for publication in any directory format." As with new Sections 222(c) and (d), new Section 222(e) also became effective immediately upon enactment.

#### D. New Section 275(d): Use of Data Regarding Alarm Monitoring Services

13. With respect to the provision of alarm monitoring services, the 1996 Act states that a LEC "may not record or use in any fashion the occurrence or contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such [LEC], or any other entity." The new statute further requires the Commission to establish, within six months after the enactment of the 1996 Act, any regulations necessary to enforce the provisions concerning LEC use of alarm monitoring service call information.

### III. Discussion

14. As noted above, shortly after passage of the 1996 Act, representatives of several telecommunications carriers and carrier associations contacted the Bureau with questions regarding the

scope and substance of their obligations under the Section 222 CPNI provisions that became effective immediately upon enactment. The Bureau also received a letter, submitted on behalf of associations representing a majority of the LECs, that, *inter alia*, asked the Commission to commence a rulemaking to resolve questions concerning the LECs' responsibilities under the CPNI provisions of the 1996 Act. In addition, NYNEX filed a petition for declaratory ruling seeking confirmation of its interpretation of one aspect of Section 222 and U S West responded by letter to that petition.

15. In view of these concerns expressed by the industry, as well as our own analysis of the 1996 Act, we tentatively conclude that regulations that interpret and specify in more detail a telecommunications carrier's obligations under Section 222 would be in the public interest. We seek comments on this tentative conclusion and on the specific requirements we propose to adopt. Based on our reading of the 1996 Act and its legislative history, we believe that Congress sought to address both privacy and competitive concerns by enacting Section 222. In their comments, we ask parties to explain specifically whether their arguments in support of, or in opposition to, the adoption of particular CPNI requirements are based on privacy concerns, competitive concerns, or both. In this proceeding, we seek to establish promptly the regulatory framework for carrier compliance with the CPNI requirements contained in Section 222. We also clarify the applicability of our existing *Computer III* CPNI rules to AT&T, the BOCs, and GTE, and seek comment on whether these pre-existing rules should continue to apply. In addition, we seek comment on the carrier requirements in Section 222(e) for making subscriber list information available to others upon request for the purpose of publishing directories. Finally, we seek comment on what procedures LECs should develop to comply with their Section 275(d) obligations.

#### A. Scope of the Commission's Authority

16. Section 2(b) of the 1934 Act preserves state jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier \* \* \*." Under *Louisiana PSC*, the Commission has authority to preempt state regulation of intrastate telecommunications services where such state regulation would thwart or impede the Commission's

exercise of its lawful authority over interstate telecommunications services because regulation of the interstate aspects cannot be severed from regulation of the intrastate aspects. We note that, in connection with the CPNI rules we established prior to the enactment of the 1996 Act, we preempted state CPNI rules that required prior authorization inconsistent with our own rules, determining that such state rules would effectively negate federal policies promoting both carrier efficiency and consumer benefits. The U.S. Court of Appeals for the Ninth Circuit upheld this exercise of our preemption authority. We note that our preexisting CPNI rules were established pursuant to the Commission's general regulatory authority under the Communications Act of 1934. The 1996 Act establishes a specific statutory scheme governing access to and protection of CPNI in a way that "balance[s] both competitive and consumer privacy interests with respect to CPNI."

17. We seek comment on the extent to which Section 222 permits states to impose additional CPNI requirements. We further seek comment regarding what aspects of state regulation of CPNI or other customer information would enhance or impede the federal purpose. We are particularly interested in receiving comment on state regulation regarding: (1) Whether written or oral authorization is allowed, and (2) the appropriate interpretation of the term "telecommunications service," and whether such state regulation would enhance or impede valid federal interests with respect to CPNI and other customer information.

18. In addition, we seek comment regarding whether the CPNI provisions of Section 222 and the data safeguards provision of Section 275(d) may by themselves give the Commission jurisdiction over both the interstate and intrastate use and protection of CPNI and other customer information with respect to matters falling within the scope of those sections.

19. In addition, we seek comment regarding the scope of the Commission's authority with respect to the subscriber list information provision set out in Section 222(e), which applies to information gathered in the provision of "telephone exchange service." Because Section 222(e) applies to "telephone exchange service," we further seek comment regarding the respective federal and state roles in ensuring that subscriber list information is made available "under nondiscriminatory and reasonable rates, terms, and conditions."

*B. Procedures for All Telecommunications Carriers: Sections 222(c) and (d)*

i. CPNI Use Prohibition

20. Absent prior customer authorization, Section 222(c)(1) authorizes a telecommunications carrier to use individually identifiable CPNI obtained from the provision of a particular telecommunications service solely to provide "the telecommunications service from which such information is derived," or services necessary to provide that telecommunications service. Neither Section 222 nor the definition of the terms "telecommunications" and "telecommunications service" set forth in the 1996 Act provide explicit guidance as to the scope of the term "a telecommunications service," as used in Section 222. Moreover, the Joint Explanatory Statement in the Conference Report is silent on this issue. Some might contend that Congress intended to define the term "telecommunications service" broadly to include all services that the Commission has classified as "basic" services. Under this interpretation, providers of telecommunications services could use, without prior customer authorization, CPNI obtained from any such service to market any other telecommunications service. We believe, however, that a close reading of Section 222 does not support this interpretation.

21. Section 222(c)(1), by its terms, bars a telecommunications carrier from using CPNI obtained from the provision of "a telecommunications service" for any purpose other than to provide "the telecommunications service" from which the CPNI is obtained or services necessary to provide "such telecommunications service." The use of the singular in this section suggests that Congress recognized that telecommunications carriers provide a variety of telecommunications services and intended, absent prior customer approval, to prohibit a carrier from using CPNI obtained from the provision of one service for marketing or other purposes in connection with the provision of another service. This statutory interpretation is reinforced by other provisions of Section 222. Section 222(a) refers to "telecommunications services" and Section 222(b) refers to "any telecommunications service." These references support our reading that Congress contemplated that a single carrier provides different telecommunications services.

22. We tentatively conclude that it would be reasonable to interpret Section

222 as distinguishing among telecommunications services based on traditional service distinctions. Under this approach, we tentatively conclude that we should treat the following as distinct "telecommunications services": local (including short-haul toll); interexchange (including interstate, intrastate, and international long distance offerings, as well as short-haul toll); and commercial mobile radio services (CMRS). We tentatively conclude that short-haul toll should be treated as both a local telecommunications service, when provided by a LEC, as well as an interexchange telecommunications service, when provided by an interexchange carrier (IXC), because under traditional service distinctions both LECs and IXCs currently market and provide short-haul toll service as part of an integrated package with local and interexchange services, respectively. Under the AT&T Consent Decree, BOC services have been subject to LATA boundaries. See *United States v. Western Elec. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (subsequent history omitted); 47 U.S.C. 153(25). The Commission has not traditionally applied the interLATA and intraLATA distinction. For purposes of this NPRM, with respect to the BOCs, the term "short-haul toll" should be interpreted as "intraLATA toll," and the term "interexchange" should be interpreted as "interLATA." We seek comment on these proposed distinctions and on other possible service distinctions. We further seek comment on how changes in telecommunications technology and regulation that allow carriers to provide more than one traditionally distinct service (e.g., LECs and IXCs may begin providing each others' services) may impact how carriers would implement the requirements of Section 222 to restrict use of CPNI from one telecommunications service to another.

23. CPNI obtained from providing any one of the discrete services listed above may not be used for any purpose, including marketing, involving any of the other services, unless the telecommunications carrier obtained prior customer authorization or one of the exceptions established by Sections 222(c) and (d) applies. We recognize that in the rapidly evolving market for telecommunications services, the distinctions we propose here may become outdated. Thus, we invite parties to suggest other distinctions among telecommunications services that in their view are mandated, envisioned,

or logically consistent with the statute for CPNI protection. We request that parties who do so comment specifically on the costs and benefits of the schemes they propose, as well as the impact that such schemes will have on both competitive and consumer privacy interests. We also seek comment on whether and when technological and market developments may require us to revisit the issue of telecommunications service distinctions.

24. Our interpretation also enhances customer privacy by giving customers greater control over CPNI use; CPNI derived from one telecommunications service cannot be used to provide other services or products without prior customer knowledge. We believe that our interpretation of the term "telecommunications service" also addresses competitive considerations. Our reading of the 1996 Act prohibits carriers that are established providers of certain telecommunications services from gaining an advantage by using CPNI to facilitate their entry into new telecommunications services without obtaining prior customer authorization.

25. We seek comment on our tentative conclusions concerning the scope of the term "telecommunications service," especially regarding the costs and benefits associated with our interpretation. We also seek comment on the effect on customer privacy of precluding the use of CPNI among telecommunications service categories. We further seek comment regarding how our proposed interpretation of the term "telecommunications service" would affect competition both in the provision of telecommunications services, and the provision of other adjacent services and products, such as information services and CPE.

26. The CPNI prohibition restricts unauthorized use of CPNI for any purpose other than those specified in Section 222(c)(1) and the exceptions listed in Section 222(d). For example, CPNI obtained from the provision of any telecommunications service may not be used to market information services or CPE without prior customer authorization. Section 222(d)(1) enables carriers to use, disclose, or permit access to CPNI "to initiate, render, bill, and collect for telecommunications services." We seek comment on whether this exception permits carriers, without prior authorization, to use a customer's CPNI derived from the provision of one telecommunications service to perform installation, maintenance, and repair for any telecommunications service to which that customer subscribes. We also seek comment on whether, in the alternative, installation, maintenance,

and repair would qualify as "services necessary to, or used in, the provision of such telecommunications service," under Section 222(c)(1)(B). We also seek comment on what other services might be "necessary to, or used in the provision of, such telecommunications service" under Section 222(c)(1)(B).

ii. Customer Notification of CPNI Rights/Prior Authorization

27. Section 222(c)(1) authorizes a carrier that obtains CPNI by providing a telecommunications service to use that CPNI for purposes unrelated to the service from which it is obtained if the customer approves. The statute, however, does not specify the procedures that a carrier must use to obtain customer approval, nor whether approval must be written or oral. We seek comment on what methods carriers may use to obtain customer authorization for use of CPNI in compliance with the statute.

a. Notification Requirements

28. We tentatively conclude that, in order to ensure full compliance with the prior authorization requirement specified by Section 222(c)(1), we should require a telecommunications carrier seeking approval for CPNI use from its customers to notify those customers of their rights to restrict access to their CPNI. We tentatively conclude that customers must know that they can restrict access to the CPNI obtained from their use of a telecommunications service before they waive that right, in order to be considered to have given approval. We seek comment on whether we should allow such notification to be given orally and simultaneously with a carrier's attempt to seek approval for CPNI use, or whether we should instead require an advance written notification. We further seek comment on what is the least burdensome method of notification that would meet the objectives of the 1996 Act. We note that under the Computer III CPNI rules, we require AT&T, the BOCs, and GTE to provide to multiline business customers written notification of their CPNI rights, along with election forms to restrict or authorize CPNI access. We seek comment on whether we need to specify the information that should be included in the customer notification, and, if so, the disclosure requirements that we should adopt.

b. Authorization Requirements

29. Carriers may choose to obtain written authorization from customers to use their CPNI for purposes unrelated to the provision of the service from which

it was obtained. This authorization could take the form of a letter or a billing insert sent to the customer that contains a summary of the customer's CPNI rights and is accompanied by a postcard which the customer could sign and return to the carrier to authorize CPNI use. Written authorization provides greater protection to both customers and the carrier than oral authorization, in that the former advises customers in writing of their CPNI rights and provides the carrier with evidence that it has obtained customer approval. From a consumer protection standpoint, written notification, which is more specific and verifiable than oral notification, may be preferable.

30. We seek comment on whether Section 222(c)(1) allows carriers to choose to use outbound telemarketing programs to obtain oral "approval" from customers for use of their CPNI. We note that Section 222(c)(1) mandates that carriers obtain "the approval of the customer" in order to obtain access to the customer's CPNI, without indicating whether the approval has to be written or oral. There are two related provisions of the statute which give rise to conflicting inferences on this point. On the one hand, Section 222(c)(2) requires carriers to disclose CPNI to any person designated by a customer "upon affirmative written request by the customer," which suggests that Section 222(c)(1) allows oral approval, because unlike 222(c)(2) it does not specifically require written authorization.

31. On the other hand, Section 222(d)(3) regarding inbound telemarketing provides that a telecommunications carrier may use, disclose, or permit access to CPNI obtained from its customers "to provide any inbound telemarketing, referral, or administrative services for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service." Section 222(d)(3) could be interpreted as suggesting that oral consent cannot be given for a broader purpose or a longer duration. In the alternative, Section 222(d)(3) could also be interpreted as permitting a carrier to use CPNI to provide a customer with information for the duration of an inbound call, even if the customer has otherwise restricted the carrier's use of its CPNI. We seek comment on how Section 222(c)(1) should be interpreted in light of Section 222(c)(2) and Section 222(d)(3). We also seek comment on the privacy and competitive implications of requiring carriers to obtain prior written approval under Section 222(c)(1) in order to obtain access to customer CPNI, as well

as on the costs and benefits of requiring written approval.

32. To the extent that oral approval is allowed under 222(c)(1), we propose to require carriers choosing to obtain oral approval to bear the burden of proof associated with such a scheme in the event of a dispute. Specifically, such carriers would be required to demonstrate through credible evidence that they had obtained the required customer authorization prior to granting access to the CPNI for purposes that otherwise would be unlawful.

33. Additionally, we seek comment on whether we should establish requirements regarding: (1) How long a customer's CPNI use authorization should remain valid; (2) how often carriers may contact a customer in order to attempt to obtain CPNI use authorization, whether or not the customer has requested restriction of its CPNI; and (3) whether and to what extent customers may authorize partial access to their CPNI (for example, limited to certain uses or time periods).

iii. CPNI Disclosure to Third Parties

34. Section 222(c)(2) requires carriers, when presented with a customer's affirmative written request, to provide that customer's CPNI to any person designated in the written authorization. Section 222(c)(2) imposes a disclosure requirement on carriers to ensure that any party with customer authorization, including unaffiliated third party competitors, can obtain access to individually identifiable CPNI. As such, carriers must provide a customer's CPNI to any party that has obtained an affirmative written authorization from the customer. We seek comment with respect to what additional mechanisms or procedures, if any, we ought to require telecommunications carriers to implement to guard against unauthorized access to CPNI by third parties.

iv. Safeguards for Customer-Restricted CPNI Data

35. We tentatively conclude that all telecommunications carriers must establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties. We noted above that we have required AT&T, the BOCs, and GTE to implement computerized safeguards and manual file indicators to prevent unauthorized access to CPNI. We seek comment on whether these requirements should continue to apply to AT&T, the BOCs, and GTE.

36. We tentatively conclude that we should not now specify safeguard

requirements for all other telecommunications carriers, but we note that these carriers may wish to adopt some or all of the types of safeguards against unauthorized access to CPNI that we applied to AT&T, the BOCs, and GTE in *Computer III*, in satisfaction of their obligation to develop effective means to protect restricted CPNI. We seek comment, however, regarding whether we should impose on all telecommunications carriers any of the requirements imposed on AT&T, the BOCs, and GTE, or any other safeguard designed to protect against unauthorized access to restricted CPNI, and will adopt such requirements if the record indicates a need for them.

#### v. Aggregate CPNI

37. The aggregate CPNI provisions of Section 222(c)(3) permit telecommunications carriers, other than LECs, to use aggregate CPNI for purposes other than providing telecommunications services. LECs, however, may use aggregate CPNI for purposes other than providing telecommunications service only if the aggregate CPNI is made available to others on a reasonable and nondiscriminatory basis. In *Computer III*, we required the subject carriers to notify third parties about the availability of aggregate CPNI used by these carriers by publishing notices in trade publications or newsletters. We seek comment on whether, in addition to the statutory requirements of Section 222, we should also require all LECs to provide similar notification to others regarding the availability of aggregate CPNI, on a reasonable and nondiscriminatory basis prior to using such aggregate CPNI themselves.

#### C. Applicability of Computer III CPNI Requirements

38. We conclude that the 1996 Act does not prohibit the Commission from enforcing CPNI requirements that are not inconsistent with the new statutory provisions, since nothing in the 1996 Act affects these requirements. We recognize that in certain respects our existing *Computer III* requirements place greater restrictions than the 1996 Act on CPNI access by AT&T, the BOCs, and GTE for the provision of enhanced services and CPE. Under our reading of the new statute, these additional restrictions will continue to apply to those carriers, pending the outcome of this rulemaking.

39. AT&T, the BOCs, and GTE must continue to provide annual written notification to customers about CPNI rights before using this CPNI to market

enhanced services. The current retention of this requirement does not supersede the new statutory requirement that all telecommunications carriers, including AT&T, the BOCs, and GTE, obtain prior authorization before using CPNI to engage in any activity other than providing the service from which the CPNI was derived. The BOCs and GTE must also continue to obtain prior written authorization from customers with more than twenty lines before using their CPNI to market enhanced services. With respect to use of CPNI for marketing CPE, AT&T must continue to notify customers in a one-time billing insert before using the CPNI of these customers to market CPE. Similarly, the BOCs must continue to notify multiline customers annually about their CPNI rights before using this CPNI to market CPE. In addition, AT&T, the BOCs, and GTE must maintain any previously approved mechanisms (i.e., computer password systems, filing mechanisms) to restrict unauthorized internal access to CPNI.

40. We do not propose to extend our pre-existing *Computer III* CPNI requirements, as modified by the 1996 Act, to other telecommunications carriers, because we tentatively conclude that these additional CPNI restrictions are not necessary to secure the public interest objectives of the 1996 Act. The Commission's CPNI rules were established in the context of the *Computer III* proceeding, in which the Commission adopted various nonstructural safeguards to protect independent ESPs and CPE suppliers from discrimination by AT&T, the BOCs, and GTE. The Commission specifically sought to prohibit these carriers from using CPNI obtained from their provision of basic regulated services to gain an anticompetitive advantage in the unregulated CPE and enhanced services markets. In that proceeding, we determined that, because AT&T, the BOCs, and GTE could gain anticompetitive advantages in this manner, their use of CPNI must be restricted.

41. We, however, recognize that some of the anticompetitive concerns we sought to address through the establishment of our CPNI rules may now be addressed by the new Section 222. In such light, we seek comment on which, if any, of our *Computer III* CPNI rules may no longer be necessary as a result of new Section 222. For example, we seek comment on the necessity for continuing to require AT&T, the BOCs, and GTE to provide written notification to multiline customers of their CPNI rights. Given that the *Computer III* CPNI

rules are part of a scheme of nonstructural safeguards, parties should address how changing the CPNI rules might influence the effect of other *Computer III* requirements. Parties should comment on whether there are privacy or competitive reasons for continuing to apply these specific pre-existing requirements to these carriers, as well as on the costs and benefits of maintaining these requirements. We also invite parties to comment on what, if any, modifications to our current CPNI rules should be adopted to further the pro-competitive, deregulatory goals of the 1996 Act, in addition to those discussed in this NPRM.

42. We further seek comment on whether AT&T, the BOCs, and GTE continue to possess a competitive advantage with respect to access to and use of customer CPNI, as well as whether any other entities, such as independent LECs, now possess similar advantages. In particular, it appears that our recent decisions classifying AT&T as a non-dominant carrier, and the pending AT&T reorganization separating its equipment business from its telecommunications service business, may justify removal of *Computer III* CPNI requirements for AT&T. We tentatively conclude that removal of these requirements is now justified. We further seek comment regarding whether privacy, competitive concerns, or any other considerations, justify special regulatory treatment of AT&T, the BOCs, and GTE. Further, to the extent that commenters believe differential regulatory treatment is justified for certain carriers, we seek comment on whether such differential treatment should be permanent or limited in duration, and, if limited, what sunset provisions should apply.

#### D. Section 222(e): Availability of Subscriber List Information

43. Section 222(e) states that a telecommunications carrier that provides "telephone exchange service" shall provide subscriber list information "gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." We interpret Section 222(e) to require not only LECs, but also any telecommunications carrier, including an IXC or cable operator, for example, to meet the requirements of this section to the extent such carrier provides telephone exchange service. We seek comment on this interpretation.

44. Subscriber list information is defined in Section 222(f)(3) as any information "identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service)" or any combination of such information, that the "carrier or an affiliate has published \* \* \* or accepted for publication in any directory format." We seek comment on what regulations, if any, are necessary to clarify the type and/or categories of information that must be made available under this section. In particular, we seek comment on the meaning of "primary advertising classifications," since the statute does not specify what is meant by this term. We also note that new Section 274(h)(2)(i) of the 1996 Act exempts from the definition of "electronic publishing" the provision of "directory assistance that provides names, addresses, and telephone numbers and does not include advertising." We tentatively conclude that the term "primary advertising classifications" in Section 222(e) is used differently than the term "advertising" in Section 274(h)(2)(i), and that therefore subscriber list information does not fall within the definition of electronic publishing. We seek comment on this tentative conclusion.

45. We also seek comment on what regulations or procedures may be necessary to implement the requirement that subscriber list information be provided "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions." Commenting parties should state specifically what regulations or procedures, if any, should be required and how Section 222(e) makes them necessary. In particular, commenters should comment on the format in which the information should be provided and how it should be unbundled.

46. We also seek comment on what safeguards may be necessary to ensure that a person seeking subscriber list information is doing so for the specified purpose of "publishing directories in any format." While the Joint Explanatory Statement states that the purpose of Section 222(e) is to guarantee "independent publishers access to subscriber list information" upon request, we seek comment on how and to what extent a telecommunications carrier subject to this section may seek authorization from a person or entity requesting such information. Parties should comment on whether such

requests must be in writing or whether they can be made orally.

#### *E. Section 275(d): Alarm Monitoring Procedures for LECs*

47. Section 275(d) prohibits a LEC from recording or using in any fashion "the occurrence or content of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such [LEC], or any other entity." Thus, Section 275(d) restricts LECs from using the information described in that section for marketing another alarm monitoring service, either their own service or a service offered by another affiliated or unaffiliated entity. We tentatively conclude that a customer's authorization under Section 222(c)(1) will not extend to any records concerning the occurrence of calls received by alarm monitoring service providers. Although call content information is not considered CPNI, we note that, pursuant to Section 275(d), LECs may not use information concerning the "content of calls" received by providers of alarm monitoring services to market such services. We seek comment on what procedures LECs should develop to comply with Section 275(d).

#### IV. Conclusion

48. In this notice, we seek comment on rules to ensure compliance by telecommunications carriers with the provisions relating to carrier use of and access to CPNI and other customer information established by the Telecommunications Act of 1996 in new Sections 222(c)-(f) and 275(d), and to secure the privacy and competitive protections mandated by Congress. We invite comment on our interpretation of the requirements imposed by Section 222(c)-(f) and Section 275(d), as well as our tentative conclusions regarding regulations necessary to ensure carrier compliance with these requirements and to more fully effectuate the statutory policies. We also request parties to specify whether their comments on our proposed regulatory requirements address privacy or competitive concerns, and to comment on the appropriate duration of such regulatory requirements. Any party disagreeing with our tentative conclusions should explain with specificity in terms of costs and benefits its position and suggestions for alternative regulatory policies.

#### V. Procedural Issues

##### *A. Ex Parte Presentations*

49. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

##### *B. Initial Regulatory Flexibility Analysis*

50. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

51. *Reason for Action:* The Commission is issuing this NPRM seeking comment on proposed regulations to ensure telecommunications carriers' compliance with requirements for the use and protection of customer proprietary network information (CPNI) and other customer information set forth in the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

52. *Objectives:* The objective of the NPRM is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above. The Commission is committed to reducing the regulatory burdens on small communications services companies whenever possible, consistent with our other public interest responsibilities.

53. *Legal basis:* The NPRM is adopted pursuant to Sections 1, 4, 222, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 222, 275, and 303(r).

54. *Description, potential impact, and number of small entities affected:* Any rule changes that might occur as a result of this proceeding could impact small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis. The Secretary shall send a copy of this NPRM to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

55. *Reporting, recordkeeping and other compliance requirement:* None.

56. *Federal rules that overlap, duplicate or conflict with the Commission's proposal:* None.

57. *Any significant alternatives minimizing impact on small entities and*

*consistent with stated objectives:* The NPRM solicits comments on a variety of alternatives.

58. *Comments are solicited:* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this NPRM but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

#### C. Initial Paperwork Reduction Act of 1995 Analysis

59. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. 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.

#### D. Comment Filing Procedures

60. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before June 11, 1996 and reply comments on or before June 26, 1996. To file formally in this proceeding, you must file an original and six (6) copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven (11) copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission,

1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW, Room 239, Washington, DC. 20554.

61. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than twenty-five (25) pages and reply comments be no longer than fifteen (15) pages. Copies of specific proposed rules that conform to the C.F.R. format, relevant state orders, sample CPNI notification and authorization forms or letters, and empirical economic studies will not be counted against these page limits. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. See 47 C.F.R. § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length, although a summary that does not exceed three pages will not count toward the page limit for comments or reply comments. This summary may be paginated separately from the rest of the pleading (e.g., as "i, ii").

62. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

63. Written comments by the public on the proposed and/or modified information collections are due June 11, 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 60 days after date of publication in the Federal Register. 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, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to fain\_\_\_\_t@al.eop.gov.

#### VI. Ordering Clauses

64. Accordingly, *it is ordered* that pursuant to Sections 1, 4, 222, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 222, 275, and 303(r), a *Notice of Proposed Rulemaking* is hereby *Adopted*.

65. *It is further ordered* that, the Secretary shall send a copy of this *Notice of Proposed Rulemaking*, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

[FR Doc. 96-13329 Filed 5-24-96; 8:45 am]  
BILLING CODE 6712-01-P

#### 47 CFR Part 73

[MM Docket No. 96-62; FCC 96-124]

#### Broadcast Blanketing Interference

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes consolidation of FCC regulations to combine the blanketing interference rules into a new single rule section for AM, FM, and TV broadcast services. This rulemaking proceeding also proposes to amend signal contour determinations in establishing AM radio and TV broadcast blanketing areas, provide detailed clarification of broadcast licensee's responsibility in resolving blanketing interference, and provide a list of protected and non-protected devices.

**DATES:** Comments must be filed on or before June 25, 1996 and reply comments filed on or before July 25, 1996. Written comments by the public

on the proposed and/or modified information collections are due on or before June 29, 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 July 29, 1996.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10234 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Bernard Garden (202) 418-2190, or Robert Greenberg (202) 418-2720, Mass Media Bureau. For additional information concerning the information collection contained in the NPRM, contact Dorothy Conway at (202) 418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

OMB Information Collection Notification

The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. The NRPM has been submitted to the Office of Management and Budget for review under Section 3507(d) of the PRA. Comments are requested concerning (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 Control Number:* None.

*Title:* Proposed Section 73.1630 Blanketing Interference.

*Form Number:* None.

*Type of Review:* New.

*Respondents:* Broadcast Licensees.

*Number of Respondents:* 21,000 Complainants.

*Estimated time per response:* The burden ranges from 1 hour to 2 hours.

*Annual Burden:* 41,000 hours.

*Total Annual Cost per Respondent:* 0.

*Needs and Uses:* This rulemaking proceeding proposes to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. Under the current rules (Section 73.88 (AM), Section 73.318 (FM), Section 73.685(d) (TV)), the licensee is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a licensee is only required to provide technical assistance in determining the cause of the interference. In this NPRM, we are proposing to consolidate all blanketing interference rules under a new Section 73.1630, Blanketing Interference. This new rule is designed to facilitate the resolution of broadcast interference problems and sets forth all responsibilities of the licensee/permittee of a broadcast station. For one year after the broadcast station commences program tests, the licensee is financially responsible for resolving blanketing interference complaints. After the first year, the licensee is obligated to provide technical assistance to resolve complaints of blanketing interference. The information provided to complainants will be used to facilitate the resolution of complaints of blanketing interference.

This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 96-62 adopted March 21, 1996, and released on April 26, 1996. The complete text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW., Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

**Synopsis of Notice of Proposed Rule Making**

1. This proceeding is initiated, on the Commission's own motion, in order to clarify to what extent broadcast licensees are responsible for eliminating blanketing interference caused by their individual stations. In addition, this action is taken to refine and specify methods for determining the geographical blanketing area. In many

cases, the licensee's responsibility in eliminating blanketing interference is misunderstood by listeners and broadcasters alike. Thus, the objectives of this action is intended to remove confusion and facilitate the resolution of broadcast blanketing interference problems.

2. Receivers are designed to operate in an environment consisting of desired and undesired signals. As long as the levels of the signals remain within the design specifications of the receiver, it will operate in a predictable manner. If any of the signals in the environment exceed the design specifications of the receiver, the receiver will begin to operate with unpredictable results. In addition to broadcast receivers, as mentioned above, a wide range of electronic devices can suffer blanketing interference from the signals of nearby radio and TV stations. For example, we are aware of problems with telephone equipment (including answering machines, hard-wired, cordless, and cellular telephones), hi-fi audio amplifiers, public address systems, electronic music keyboard instruments, professional studio and home recording components, and electronic medical equipment. Currently, however, protection of these devices are not the responsibility of the broadcast licensee.

**Blanketing Interference Contours**

3. Section 73.88 currently requires licensees of each AM broadcast station to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour. Unlike the rules for FM, which define the method of calculating the blanketing contour, no such method is specified for AM. Thus, the licensee may find it convenient to determine the 1 V/m contour by field measurements. As an alternative, determining the AM blanketing contour mathematically for a single tower antenna may result in a close approximation of the measured contour. Determination of the AM blanketing contour from multi-tower directional antenna arrays, however, may need to be calculated with near-field considerations.

4. In continuing to use the current AM blanketing contour, we propose that for directional antenna array systems, the determination of the 1 V/m contour along each radial direction should be by actual mathematical vector summation of the field radiated by each antenna. Since this approach may require near-field considerations, we believe that a more realistic determination of the 1 V/m contour AM blanketing area would be reflected with this method. Therefore, we propose to amend the rules for the method of calculating the blanketing

interference contour for AM broadcast stations as presented under proposed Section 73.1630(a) below.

5. Because many of the transmitting antenna signal characteristics and structural locations are the same for both FM and television broadcast stations, we are not aware of any apparent reason, at this time, not to utilize for television stations the same blanketing area contour currently used for FM stations. Therefore, for regulatory consistency, we propose to amend the rules by specifying that the TV blanketing area be defined by the 115 dBu contour, as presented under proposed Section 73.1630(b) below.

6. When the 115 dBu contour was originally proposed for FM blanketing in BC Docket No. 82-186, most of the commenters agreed with its use. Now that the industry has had much experience with this contour level, we seek information as to whether it continues to be an appropriate contour for defining FM blanketing areas, and should be extended for defining television blanketing areas. In addition, because the 1 V/m contour used for describing the AM blanketing area was established at an even earlier period than the FM blanketing contour, we seek information as to whether the 1 V/m contour continues to be an appropriate contour level in today's radiofrequency environment.

#### *Licensee's Responsibility*

7. Under the current rules, which we propose to continue, the licensee is financially responsible for resolving complaints when all three of the following conditions are met: (1) The complainant's affected device is located inside the station's blanketing contour; (2) the complainant filed notice to the station within the first year of program test authority; and (3) the interference is not to electrical devices excluded from protection by Section 73.318(b). When these conditions are met, the licensee must provide effective technical assistance in determining the cause of the problem and advising on corrective measures. Resolution of such blanketing interference complaints may involve the installation of electrical or electronic filters and traps, or the replacement of the complainants' affected equipment, and these efforts are at the licensee's expense and without cost to the complainant. If an otherwise valid complaint is lodged after the one year period, the licensee is only required to provide effective technical assistance in determining the cause of the problem and advice on corrective measures; the licensee is not financially responsible for any necessary corrective equipment

or measures. If a complainant is located outside of the blanketing contour area and files after the one year period or the complaint involves devices and equipment excluded from protection, the licensee has no obligation under our rules to resolve the interference problem. However, as noted earlier, many licensees take voluntary steps to assist in alleviating the interference to promote goodwill within the station's community.

8. To give broadcast licensees further detailed guidance in resolving blanketing interference problems, we propose to publish in the rules an outlined summary of the station's responsibilities. We propose that the licensee responsibility will vary depending on (1) whether or not the complaint was filed within the first year of operation, (2) whether the complainant is located inside or outside the blanketing contour, and (3) whether the device experiencing interference is covered under the blanketing rule.

9. Additionally, we note that in today's highly transitory society, neighborhoods may have many residents move in after the initial one year period specified in the rules. Further, the proliferation of new communications services and technology may bring into established neighborhoods many new devices subject to blanketing interference. Therefore, we seek comment on whether the Commission's rules should be modified for situations when blanketing interference occurs after the one year period. Further, we seek comment on whether locations of temporary lodging or transient residences, e.g., hotels, university student dormitories, and rental properties should be subject to the blanketing rules beyond the one year limit. In other words, we seek comment on whether a station's obligation ends with that initial group of complainants that files within one year, or whether the station's obligation should extend to subsequent residents. Further, we seek comment on whether these types of cases should be considered on a case-by-case basis.

#### *Effective Technical Assistance*

10. Section 73.1630(d) of the proposed rules states, "[f]ollowing the one year period of full financial obligation to satisfy blanketing complaints, licensees shall provide technical information or assistance to complainants on remedies for blanketing interference." The rule requires that a licensee provide information and assistance sufficiently specific to enable the complainant to eliminate all blanketing interference and

not simply that the station attempt to correct the problems. Effective technical assistance entails providing specific details about proper corrective measures to resolve the blanketing interference. For example, licensees may provide complainants with diagrams and descriptions which explain how and where to use radiofrequency chokes, ferrite cores, filters, and/or shielded cable. In addition, effective technical assistance also includes the recommendation on replacement equipment that would work better in the high radiofrequency fields. We note that the licensee may authorize a consultant or service company to provide this information or assistance. However, effective technical assistance is not rendered merely by referring the complainant to the equipment manufacturer.

#### *High Gain Antennas*

11. Section 73.318(b) specifies the conditions under which licensees and permittees must satisfy complaints of blanketing interference. It states, in pertinent part, that "[t]hese requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas or antenna booster amplifiers." It has been our experience that high gain antennas have not been a factor in blanketing interference problems. Therefore, we propose to delete reference to high gain antennas from our blanketing rules and seek comment accordingly.

#### *Telephone Interference*

12. A great number of blanketing interference complaints are submitted because of interference to telephones. The Commission's blanketing rules, however, do not currently require broadcasters to resolve telephone interference. Hard-wired telephones are considered non-RF devices under the current blanketing interference rules and thus, are excluded from protection per Section 73.318(b). Cordless telephones are covered by Part 15 of the Commission's rules and thus, Section 15.5(b) states, in pertinent part, that cordless telephones may not cause harmful interference and that interference to cordless telephones caused by the operation of an authorized radio station must be accepted. Portable and mobile cellular telephones are RF devices licensed under Part 22, Subpart K, and are considered as mobile receivers, and thus, not protected by the current blanketing interference rules. Because cell sites are fixed locations, however,

they would be protected from blanketing interference by the Commission's rules.

13. We are concerned about interference to all telephones and wireless devices, including interference that may develop in future PCS and specialized mobile radio (SMR) systems. Therefore, we seek specific comment on the following questions:

a. Should the Commission require broadcasters to resolve interference to telephones, either hard-wired or wireless?

b. If so, to what extent should broadcast licensees be responsible for resolving the interference? The Commission found, while conducting the telephone interference survey, that filters are not always reliable in eliminating residential telephone interference. Thus, if such filtering devices are ineffective and licensees are not required to furnish them, to what extent should licensees provide other technical information and assistance?

c. Should the Commission rely on industry voluntary efforts to implement interference free design standards for telephones, or should the Commission initiate a separate rulemaking proceeding to consider imposing higher interference immunity standards for residential telephones?

d. If voluntary standards for interference immunity are developed, should there be any blanketing requirements for telephones that do not meet the voluntary standards for interference free telephones?

#### *Licensee's Response Time*

14. There is currently no criteria for speed of service for correcting blanketing interference caused by new or modified station operation. Based on case history, many stations have been slow to respond, *i.e.*, months before a complaint was acted upon, and often even further delay before the interference was finally corrected. There is also no specific requirement to maintain records of name, location, type of complaint, etc. The public inspection file requirements, however, do specify that license application engineering related matters need not be retained longer than three years in the local public inspection file. Accordingly, in that blanketing interference is of engineering related circumstances, the Commission expects broadcast licensees to maintain all letters of such complaints that are timely filed with the station per the proposed Section 73.1630. However, in order to establish a station's definitive efforts to solve blanketing interference, should we require stations to maintain a specific

log for some period of time, such as two years after new construction or transmitter modification which would include name, location, phone number, date complaint filed, date complaint resolved, type of complaint, list of affected equipment (manufacturer's name and model number), and what action it took to resolve the complaint? And finally, should we require licensees to respond to complaints within a specified period such as 10 working days and to resolve the complaints within an additional period of time such as 30 calendar days?

#### *Conclusion*

15. In light of the proliferation of electronic equipment available to consumers, the increase in the number of broadcast stations, and our concern about the effects of blanketing interference on future wireless communication systems, we believe that it is time to revisit the subject of broadcast blanketing interference. In addition to proposing amendments to refine the Commission's rules and regulations in this area for broadcast licensees, this proceeding may stimulate various related industry manufacturers to begin to meet the challenge of producing components that are less susceptible to blanketing interference. We are proposing specific rule amendments in the broadcast services that primarily clarify our current requirements. Additionally, we seek specific comment on the questions raised, especially those regarding telephone interference, and the specific rule amendments proposed below.

#### *Administrative Matters*

##### *Ex Parte Rules—Non-Restricted Proceeding*

16. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

##### *Regulatory Flexibility Act*

17. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate

and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

*Reason for Action.* This action is taken in order to clarify to what extent broadcast licensees are responsible for eliminating blanketing interference cause by their individual stations. In addition, this action is taken to refine and specify methods for determining the geographical blanketing area.

*Objectives.* In many cases, the licensee's responsibility in eliminating blanketing interference is misunderstood by listeners and broadcaster alike. Thus, the objectives of this action is intended to remove confusion and facilitate the resolution of broadcast blanketing interference problems.

*Legal Basis.* Authority for the actions proposed in this Notice may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

*Reporting, Recordkeeping, and Other Compliance Requirements.* None.

*Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule.* None.

*Description, Potential Impact and Number of Small Entities Involved.* None.

*Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives.* There are none apparent.

##### *Initial Paperwork Reduction Act of 1995 Analysis*

18. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13. Public and agency comments are due June 25, 1996, OMB comments are due July 29, 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.

#### Comment Information

19. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before June 25, 1996 and reply comments on or before July 25, 1996. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

#### Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

#### § 73.88 [Removed]

2. Sections 73.88 is removed.

#### § 73.318 [Removed]

3. Section 73.318 is removed.

4. Section 73.685 is amended by revising paragraph (d) to read as follows:

#### § 73.685 Transmitter location and antenna system.

\* \* \* \* \*

(d) (See Section 73.1630 concerning blanketing interference)

\* \* \* \* \*

5. A new Section 73.1630 is added to Subpart H to read as follows:

#### § 73.1630 Blanketing interference.

(a) Calculation of the Blanketing Interference Contour for AM Stations. Areas adjacent to the transmitting antenna that receive a signal with a strength of 1 V/m or greater will be assumed to be blanketed. The determination of the location of the 1 V/m contour along a radial shall be by actual field strength measurement or by iterative vector summation of the field radiated by each antenna until the 1 V/m contour is located. The distance from each tower to the point at which the fields are being summed, shall be calculated using the Cosine Law with the distance from the tower to the array reference point being one side, the distance to the point of summation from the reference point being the second side and the angle between the two sides being the included angle. The field radiated by each tower is attenuated using only inverse distance attenuation and the phase of the field component from each tower shall be taken as the phase of the current at the tower's current loop minus the space phase from the tower to the point of summation.

Note to paragraph (a): If  $d_n$  is the distance from the reference point to the point of summation,  $s_n$  the distance from the reference point to the tower  $n$ , and  $\Phi_n$  the included angle, the distance  $D_n$  from tower  $n$  is given by  $D_n = (d_n^2 + s_n^2 - 2d_n s_n \cos(\Phi_n))^{1/2}$ . The Field  $\vartheta$ , a vector quantity, is given by  $\vartheta = \sum \vartheta_n / D_n$  where  $\vartheta_n$  is the field radiated by tower  $n$  and  $D_n$  is the distance from tower  $n$ .

(b) Calculation of the Blanketing Interference Contour for FM and TV Stations. Areas adjacent to the transmitting antenna that receive a signal with a strength of 115 dBu (562 mV/m) or greater will be assumed to be blanketed. In determining the blanketed area, the 115 dBu contour is determined by calculating the inverse distance field using the effective radiated power of the maximum radiated lobe of the antenna without considering its vertical radiation pattern or height. For directional antennas, the effective radiated power in the pertinent bearing shall be used. The distance to the 115 dBu contour is determined using the following equation:

$$D \text{ (in kilometers)} = 0.394\sqrt{P}$$

$$D \text{ (in miles)} = 0.245\sqrt{P}$$

Where  $P$  is the maximum effective radiated power (ERP), measured in kilowatts, of the maximum radiated lobe.

(c) After January 1, 1997, permittees or licensees who either commence program tests, replace their antennas, or request facilities modifications and are issued a new construction permit must

satisfy all complaints of blanketing interference which are received by the station during a one year period. The period begins with the commencement of program test, or commencement of programming utilizing the new antenna. Resolution of complaints shall be at no cost to the complainant. These requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of antenna booster amplifiers. Mobile receivers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs) are also excluded. (See the Appendix to § 73.1630 for covered devices and non-covered devices.)

(d) A permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1997, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year. Two or more permittees that concurrently collocate on or after January 1, 1997, shall assume shared responsibility for remedying blanketing complaints within the blanketing area unless an offending station can be readily determined and then that station shall assume full financial responsibility.

(e) Following the one year period of full financial obligation to satisfy blanketing complaints, licensees shall provide technical information or assistance to complainants on remedies for blanketing interference.

(f) A summary of the station's responsibilities are as follows:

(1) Complainant Within the Blanketing Contour.

(i) Complaint Received Within First Year of Operation—Paragraph (c) of this section.

(A) DEVICES COVERED UNDER Section 73.1630—Licensee/permittee is financially responsible for resolving interference complaints.

(B) DEVICES NOT COVERED UNDER Section 73.1630—Licensee/permittee is not financially responsible for resolving interference complaints.

(ii) Complaint Received After First Year of Operation—Paragraph (e) of this section.

(A) DEVICES COVERED UNDER Section 73.1630—Licensee/permittee is not financially responsible for resolving interference complaints. Licensee/permittee is required to provide technical assistance to complainants.

This entails the providing of information on the cause of the interference and also providing information on proper corrective measures.

(B) DEVICES NOT COVERED UNDER Section 73.1630—Same as paragraph (f)(1)(i)(B) of this section.

(2) Complainant Outside the Blanketing Contour.

(i) Complaint Received Within First Year of Operation—Paragraph (c) of this section.

(A) DEVICES COVERED UNDER Section 73.1630—Licensee/permittee is not financially responsible for resolving interference complaints. However, the licensee/permittee is expected to cooperate with complainants by providing technical assistance in determining the cause of the problem and providing advice on corrective measures.

(B) DEVICES NOT COVERED UNDER Section 73.1630—Same as paragraph (f)(1)(i)(B) of this section.

(ii) Complaint Received After First Year of Operation—Paragraph (e) of this section.

(A) DEVICES COVERED UNDER Section 73.1630—Same as paragraph (f)(1)(i)(B) of this section.

(B) DEVICES NOT COVERED UNDER Section 73.1630—Same as paragraph (f)(1)(i)(B) of this section.

Appendix to § 73.1630—Covered and Non-Covered Devices

#### *I. Devices Covered Under 47 CFR § 73.1630*

Receivers, Tuners, and RF Amplifiers

- Radio (stationary or portable)
- TV (stationary or portable)
- Satellite TV
- VCR
- Cable TV head-end
- Fixed radio sites for cellular systems, private radio services, SMR and PCS systems.

#### *II. Devices Not Covered Under 47 CFR § 73.1630*

- Malfunctioning or mistuned receivers
- Improperly installed antenna systems
- Antenna booster amplifiers
- Mobile receivers and non-RF devices such as:
  - Mobile receivers (i.e. Walkman or Watchman)
  - Car radios
  - Musical instrument amplifiers
  - All Telephones (including hard-wired, cordless, mobile or pocket cellular or PCS)
  - Answering machines
  - Digital or Analog tape recorders
  - CD players
  - Phonographs
  - Computers

#### *III. Definitions*

Mobile Receivers—Devices that do not remain in one fixed location. These devices are excluded due to their inherently transient nature.

Portable Receivers—Capable of being carried, whether operating by electric cord or batteries.

Note: Not all portable receivers are operated in the mobile mode.

[FR Doc. 96-12946 Filed 5-24-96; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Chapter 1

#### Federal Acquisition Regulation; Elimination of Nonstatutory Certifications

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Agenda for public meeting.

**SUMMARY:** By Federal Register notice dated May 14, 1996 (61 FR 24263), the Administrator for Federal Procurement Policy and the Federal Acquisition Regulatory Council announced a public meeting to discuss implementation of Section 4301(b) for the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104). The notice stated that there would be an interactive meeting between the Federal Acquisition Regulatory Council, other Government representatives (from the procurement, legal and Inspector General communities), and industry. The purpose of this notice is to provide a sample of the types of issues/questions that will be posed for discussion and to solicit additional questions/issues from the public. Suggestions thus far include:

1. What are the requirements of Section 4301(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106)?

2. What role do certifications required in the FAR play in the Federal procurement process? Is this role one that should be preserved or discontinued? Why?

3. What are the positive aspects of FAR certification requirements? What concerns or issues, if any, do they create for Government? What concerns or issues, if any, do they create for offerors/contractors?

4. What are the negative aspects of FAR certification requirements? What concerns or issues, if any, do they create for Government? What concerns or

issues, if any, do they create for offerors/contractors?

5. Do FAR requirements for prime Government contractors to include certification requirements in their subcontract provide benefits for Government or for offerors/contractors? Do such requirements create concerns or issues for Government or offerors/contractors?

6. Identify any existing FAR certification requirements that are especially burdensome to offerors/contractors. Describe the nature of the burden, and indicate whether or not any benefit derived from the requirement outweighs the burden.

7. In implementing the requirements of Section 4301, what criteria should be used to determine whether or not a particular certification, other than those mandated by statute, should be retained or deleted?

8. Do the FAR certification requirements affect whether or not commercial firms, or commercial divisions of firms, are interested in selling supplies or services to the Government? Why or why not?

9. If the FAR certification requirements do provide a benefit to the Federal procurement process that is worth preserving, is there an alternative means by which the same benefit can be provided?

10. Do certifications promote socially useful efforts by companies to assure that they are in compliance with the law? How useful are these certifications in ensuring the integrity of the procurement process?

11. How should we view the suggestion that certifications make it easier to prosecute cases against those the Government suspects of criminal wrongdoing? Do certifications make it "too easy" for the Government to win, or does it allow the Government to overcome the proof of burden that would otherwise be almost impossible to meet?

**DATES:** The public meeting will be conducted at the address shown below from 1:00 p.m. to 5:30 p.m., Eastern daylight time, on June 3, 1996.

**ADDRESSES:** The meeting will be held at the White House Conference Center, Truman Room, 726 Jackson Place, NW, Washington, DC 20503. Suggestions for other questions/issues should be sent prior to the meeting to Mike Mutty, Defense Acquisition Regulations Council, PDUSD (A&T) DP(DAR), IMD 3D129, 3062 Defense Pentagon, Washington, DC 20301-3062, or by FAX to (703) 602-0350.

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**FOR FURTHER INFORMATION CONTACT:** Mr.  
Mike Mutty, Defense Acquisition  
Regulations Council, at (703) 602-0131,  
FAX (703) 602-0350.

Dated: May 21, 1996.

Edward C. Loeb,

*Director, Federal Acquisition Policy Division.*

[FR Doc. 96-13246 Filed 5-24-96; 8:45 am]

**BILLING CODE 6820-EP-M**

# Notices

Federal Register

Vol. 61, No. 103

Tuesday, May 28, 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.

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Oregon PIEC Advisory Committee will meet on June 13, 1996 at the Riverside Inn, 971 SE Sixth Street, Grants Pass, Oregon. The meeting will begin at 9:30 a.m. and continue until 4:45 p.m. Agenda items to be covered include: (1) Local area issues presentation; (2) Northwest Forest Plan implementation monitoring report; (3) Advisory Committee monitoring recommendation status; (4) Information about the winter storm impacts and management actions, and (5) Public comments.

All Province Advisory committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Kurt Austermann, Province Advisory Committee Staff, USDI Medford District, Bureau of Land Management, 3040 Biddle Rd., Medford, Oregon 97504, phone 541-770-2200.

Dated: May 20, 1996.

James T. Gladen,

*Forest Supervisor, Designated Federal Official.*

[FR Doc. 96-13243 Filed 5-24-96; 8:45 am]

**BILLING CODE 3410-11-M**

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## COMMISSION ON CIVIL RIGHTS

#### Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on

Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:00 p.m. on June 27, 1996, at the Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to review current civil rights developments in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gilbert Gutierrez, 907-443-5682, or Philip Montez, Director of the Western Regional Office, 213-894-3437 (TDD 213-894-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 17, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96-13197 Filed 5-24-96; 8:45 am]

**BILLING CODE 6335-01-P**

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#### Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:00 p.m. on June 21, 1996, at the Offices of Walther, Key, Maupin, et al., 3500 Lakeside Court, Suite 200, Reno, Nevada 89509. The purpose of the meeting is to review current civil rights developments in the State and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich, 702-329-0958, or Philip Montez, Director of the Western Regional Office, 213-894-3437 (TDD 213-894-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working

days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 17, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96-13198 Filed 5-24-96; 8:45 am]

**BILLING CODE 6335-01-P**

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#### Agenda and Notice of Public Meeting of the Washington State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington State Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 11:30 a.m. on June 18, 1996, at the Sixth Avenue Inn, 2000 Sixth Avenue, Room 226, Seattle, Washington 98121. The purpose of the meeting is to review current civil rights developments in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson William Wassmuth, 206-233-9136, or Philip Montez, Director of the Western Regional Office, 213-894-3437 (TDD 213-894-3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 17, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96-13199 Filed 5-24-96; 8:45 am]

**BILLING CODE 6335-01-P**

**DEPARTMENT OF COMMERCE****International Trade Administration****U.S.-South Africa Business Development Committee: Membership**

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of membership opportunity.

**SUMMARY:** The Department of Commerce is currently seeking nominations of outstanding individuals to serve on the U.S. section of the U.S.-South Africa Business Development Committee (BDC). On June 4, 1994, the late Secretary of Commerce Ronald H. Brown and South African Minister of Trade and Industry Trevor Manuel signed the document establishing the BDC, the purpose of which is to provide a forum for the public and private sectors to engage in constructive exchanges of information on commercial matters, problem solve, and more effectively work together on issues of common interest. The BDC is composed of two sections, a U.S. section and a South African section. The U.S. Section is chaired by Secretary of Commerce Michael Kantor and is comprised of 21 private sector representatives. The inaugural meeting of the BDC took place September 19-20, 1994. Subsequent plenary and working group meetings have been held over the past two years with the government and private sector members from both countries in attendance.

**Obligations**

Private sector members were originally appointed for a two year term which expires August 31, 1996. Nominations are now being sought for private sector members to serve for a two year period from September 1, 1996 until August 31, 1998. Private sector members will serve at the discretion of the Secretary and shall serve as representatives of the business community and the industry their business represents. They are expected to participate fully in defining the agenda for the Committee and in implementing its work program. It is expected that private sector individuals chosen for BDC membership will attend not less than 75% of the BDC meetings which will be held in the U.S. and South Africa.

Private sector members are fully responsible for travel, living and personal expenses associated with their participation on the BDC and may be responsible for a pro rata share of

administrative and communications costs of the BDC.

The BDC will continue to work on issues of common interest to encourage trade and investment, including the following:

- Resolving obstacles to trade and investment between the two countries;
- Expanding commercial activity between both countries and identifying commercial opportunities;
- Developing sectoral or project-oriented approaches to expand business opportunities;
- Implementing trade and business development programs, including trade missions, seminars, exhibits and other events;
- Identifying further steps to facilitate and encourage the development of commercial expansion between the two countries; and
- Taking any other appropriate steps for fostering commercial relations between the U.S. and South Africa.

**Criteria**

In order to be eligible for membership in the U.S. section, potential candidates must be:

- (1) U.S. citizens or permanent residents;
- (2) CEOs or other senior management level employees of a U.S. company or organization with demonstrated involvement in trade with and/or investment in South Africa who will participate in not less than 75% of the BDC meetings, which will be held in the United States and South Africa. (The representative nominated should be the individual that will actively participate in the BDC);
- (3) Not a registered Foreign Agent; and
- (4) Actively doing business in South Africa or actively developing entry plans for doing business in South Africa.

To the extent possible, the Department of Commerce will strive to achieve membership composition that reflects U.S. entrepreneurial diversity. Therefore, in reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

- (1) Depth of experience in the South African market;
- (2) Export/investment experience;
- (3) Representation of industry or service sectors of importance to our commercial relationship with South Africa;
- (4) Company size or, if an organization, size and number of member companies;
- (5) Location of company or organization; and

**(6) Demographics.**

To be considered for membership, please provide the following: name and title of individual proposed for consideration; name and address of the company or organization of which the individual is a representative; company's or organization's product or service line; size of the company or, if an organization, the size and number of member companies; export experience/foreign investment experience in major markets; a brief statement (not more than 1 page) of why each candidate should be considered for membership on the Committee; the particular segment of the business community the candidate would represent; and a personal resume.

**Deadline**

In order to receive full consideration, requests must be received no later than June 15, 1996.

**ADDRESSES:** Please send your requests for consideration to Mrs. S.K. Miller, Director, Office of Africa by fax on 202/482-5198 or by mail at Room 2037, U.S. Department of Commerce, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Mrs. S.K. Miller, Director, Office of Africa, Room 2037, U.S. Department of Commerce, Washington, D.C. 20230; telephone: 202/482-4227.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. 1501 *et seq.*, 32 Stat. 825; Reorganization Plan No. 3 of 1979, 19 U.S.C. 2171 Note, 93 Stat. 1381.

Dated: May 21, 1996.

Sally K. Miller,

Director, Office of Africa.

[FR Doc. 96-13205 Filed 5-24-96; 8:45 am]

BILLING CODE 3510-DA-P

**Export Trade Certificate of Review; Notice of Application**

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued. The applicant requested, and the Secretary of Commerce, with the concurrence of the Attorney General, has granted expedited review of this application.

**FOR FURTHER INFORMATION CONTACT:** W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

#### Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a Secretary of Commerce should issue a Certificate to the applicant. An original and five (5) copies of such comments should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 96-00003."

#### Summary of the Application

*Applicant:* U.S. Rice Millers' Association, 4301 N. Fairfax Drive, Arlington, VA 22203-1616; Contact: David Graves; Telephone: (703) 351-8161.

*Application No.:* 96-00003.

*Date Deemed Submitted:* May 10, 1996.

*Members (in addition to applicant):* Affiliated Rice Milling, Inc., Alvin, Texas; American Rice, Inc., Houston, Texas; Brinkley Rice Milling Company, Brinkley, Arkansas; Broussard Rice Mill, Inc., Mermentau, Louisiana; Busch Agricultural Resources, Inc., St. Louis, Missouri; Cargill Rice Milling, Greenville, Mississippi; Louis Dreyfus Corporation, Wilton, Connecticut; El Campo Rice Milling Company, Louise, Texas; Farmers Rice Milling Company, Inc., Lake Charles, Louisiana; Farmers' Rice Cooperative, Sacramento, California; Gulf Rice Milling, Inc., Houston, Texas; Liberty Rice Mill, Inc., Kaplan, Louisiana; Producers Rice Mill, Inc., Stuttgart, Arkansas; The Rice Company, Roseville, California; Riceland Foods, Inc., Stuttgart,

Arkansas; RiceTec, Inc., Alvin, Texas; Riviana Foods Inc., Houston, Texas; Supreme Rice Mill, Inc., Crowley, Louisiana; Uncle Ben's, Inc., Houston, Texas.

The Rice Millers' Association seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

#### Export Trade

##### Products

Semi-milled and wholly milled rice, whether or not polished or glazed (Harmonized Tariff Schedule 1006.30) and husked (brown) rice (Harmonized Tariff Schedule 1006.20).

#### Export Markets

For purposes of administering the European Union's tariff rate quota: The countries of the European Union. For all other purposes: All parts of the world except the United States (the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

#### Export Trade Activities and Methods of Operation

1. Rice Millers' Association (RMA) will administer a system for allocating the U.S. share of the European Union (EU) tariff rate quotas ("TRQs") for milled white rice and brown rice (roughly 38,000 tons of milled rice and 8,000 tons of brown rice) agreed to as compensation to the United States for the EU enlargement, to include Austria, Finland and Sweden, as follows:

A. RMA shall establish a special tariff rate quota (hereinafter referred to as "Quota A") for the balance of calendar year 1996 and for calendar year 1997 for those RMA Members which can document exports of milled rice or brown rice to Austria, Finland and Sweden during the period 1990-1993. For the balance of 1996, RMA shall award a Member a Quota A milled rice or brown rice quota amount based upon a percent of the Members average documented historical quantity exported to the three countries in the period 1990-1993, as determined by RMA. For 1997, RMA shall award a Member a milled rice and brown rice Quota A amount equal to 100 percent of the annual average quantity of U.S. milled rice and brown rice that the Member documents that it exported to Austria, Finland and Sweden during the period 1990-1993.

(i) RMA Members receiving a milled rice or brown rice Quota A allocation

during 1996 may also receive a milled rice or brown rice Quota B allocation during 1996. Each Member receiving a milled rice or brown rice Quota A allocation during any period in 1997 shall not be eligible to receive a milled rice or brown rice Quota B allocation during that period unless the Member declines a milled rice or brown rice Quota A allocation during any period for that year.

B. For any particular time period, RMA shall establish a tariff rate quota allocation (hereinafter referred to as "Quota B") for milled rice and brown rice allocation equal to the EU milled rice and brown rice tariff rate quota remaining after deducting the milled rice and brown rice Quota A quantity, if any, for that particular time period. (i) RMA may provide for an amount of the milled rice or brown rice Quota B quantity to be available for allocation during any particular time period, in a manner which fully utilizes the quota available for that particular time period. (ii) RMA shall allocate an amount of Quota B milled rice and brown rice available for a given period to eligible RMA Members based on the Member's proportional share of milled rice and brown rice exports to the EU for the previous period duly registered with RMA by a date certain during the period the quota is being allocated, as determined by RMA.

2. RMA shall assess a fee to pay for administration of all matters related to establishing, operating and auditing RMA export trade certificate of review operations and for certain market development activities.

3. RMA and/or its Member shall use those funds remaining after payment of its administrative expenses to carry out market development activities. Such activities shall be of the types approved by RMA that are comparable to those funded under the Department of Agriculture's market access program with primary emphasis on rice market development activities in the European Union.

4. RMA and/or its Members may:

(i) provide for an administrative structure to implement the foregoing tariff rate quota system, in compliance with the U.S.-EU Compensation Agreement and EU regulations, (ii) exchange and discuss information regarding the structure and method for implementing the foregoing tariff rate quota system, in compliance with the U.S.-EU Compensation Agreement and EU regulations,

(iii) discuss the type of information needed regarding past transactions and exports that are necessary for implementing the foregoing tariff rate

quota system, in compliance with the U.S.-EU Compensation Agreement and EU regulations,

(iv) exchange and discuss information about U.S. and foreign legislation and regulations affecting the foregoing tariff rate quota system, in compliance with the U.S.-EU Compensation Agreement and EU regulations,

(v) discuss and establish the fees to be assessed upon Members to pay for administrative expenses and market promotion activities,

(vi) discuss and provide for the market promotion activities to be undertaken with the fees remaining after payment of administrative expenses,

(vii) otherwise exchange and discuss information as necessary to implement the foregoing activities and take the necessary action to implement the allocation system for the foregoing tariff rate quota, in compliance with the U.S.-EU Compensation Agreement and EU regulations, and

(viii) meet to engage in the activities described above.

5. In allocating quotas among Members, those employees or agents of RMA who are not also employees of a Member, may receive, and each Member may supply to such employees or agents of RMA, information as to the Member's sales and exports of milled white rice and brown rice to the EU as is necessary to properly administer the quota, provided that such information is not disclosed by RMA employees or agents to any other Member.

#### Definitions

"Members" means a mill member of the Rice Millers Association who has been certified as a "Member" within the meaning of Section 325.1(1) of the Regulations.

Dated: May 21, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96-13212 Filed 5-24-96; 8:45 am]

BILLING CODE 3510-DR-P

### National Oceanic and Atmospheric Administration

[I.D. 050196A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in the Beaufort Sea

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

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from the BP Exploration (Alaska) 900 East Benson Boulevard, Anchorage, AK 99519 (BPX) for authorization to take small numbers of marine mammals by harassment incidental to conducting seismic surveys in the Northstar Unit, in the Beaufort Sea in state and federal waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize BPX to incidentally take, by harassment, small numbers of bowhead whales and other marine mammals in the above mentioned area during the open water period of 1996.

**DATES:** Comments and information must be received no later than June 27, 1996.

**ADDRESSES:** Comments on the application should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application, an environmental assessment (EA), and a list of references used in this document may be obtained by writing to this address, by telephoning one of the contacts listed below or by leaving a voice mail request at (301) 713-4070.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, Ron Morris, Western Alaska Field Office, NMFS, (907) 271-5006.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule

establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

#### Summary of Request

On March 18, 1996, NMFS received an application from BPX requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season within the Northstar Unit, located in the Beaufort Sea in U.S. waters. The survey is expected to take place between approximately July 20 and October 20, 1996. A detailed description of the work planned is contained in the application (BPX 1996) and is available upon request (see **ADDRESSES**).

#### Description of Habitat and Marine Mammal Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the EA prepared for this authorization (SAIC 1996) or in other documents (Minerals Management Service (MMS) 1992, 1996) and need not be repeated here. A copy of the EA is available upon request (see **ADDRESSES**).

#### Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals including bowhead whales (*Balaena glacialis*), gray whales (*Eschrichtius robustus*), belukha (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions on the biology and distribution of these species, and others, can be found in several other documents (BPX 1996, Lentfer 1988, MMS 1992, NMFS 1990 and 1996, Small and DeMaster 1995). Please refer to those documents for information on these species.

#### Potential Effects of Seismic Surveys on Marine Mammals.

Disturbance by seismic noise is the principal means of taking by this activity. Vessel and aircraft will provide a secondary source of noise.

Deep seismic surveys are used to obtain data about formations several thousands of feet deep. The physical presence of vessels could also lead to non-acoustic effects involving visual or other cues. These surveys are accomplished by transmitting sound waves into the earth, which are reflected

off subsurface formations and recorded with detectors in the water column. A typical marine seismic source is an airgun array, which releases compressed air into the water creating an acoustical energy pulse that is directed downwards toward the seabed. Hydrophones spaced along a streamer cable just below the surface of the water receive the reflected energy from the subsurface formations and transmit data to the seismic vessel. Onboard the vessel, the signals are amplified, digitized, and recorded on magnetic tape.

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by open water seismic operations may be detectable some substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or masking a signal of comparable frequency (BPX 1996). An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source (or other vessels) react to the generated sounds or visual cues.

Seismic pulses are known to cause bowhead whales to behaviorally respond within a distance of several kilometers (Richardson *et al.* 1995). Although some limited masking of low-frequency sounds (e.g., whale calls) is a possibility, the intermittent nature of seismic source pulses will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.* 1986).

Hearing damage is not expected to occur during the project. It is not known whether a marine mammal very close to an air gun array would be at risk of temporary or permanent hearing impairment, but temporary threshold shift is a theoretical possibility for animals within a few hundred meters (Richardson *et al.* 1995). Planned monitoring and mitigation measures (described below) are designed to detect marine mammals occurring near the array and to avoid exposing them to sound pulses that have any possibility of causing hearing damage.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions (BPX 1996). The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and season. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses, include changes

in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors such as feeding, socializing or mating are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening (BPX 1996).

#### *Bowhead Whales*

Various studies (Reeves *et al.* 1984, Fraker *et al.* 1985, Richardson *et al.* 1986, Ljungblad *et al.* 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. Bowheads exposed to seismic pulses from vessels more than 4.5 miles (7.5 km) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (BPX 1996).

Within a 3.7–60 mile (6–99 km) range, it has not been possible to determine a specific distance at which subtle behavioral changes no longer occur (Richardson and Malme 1993), given the high variability observed in bowhead whale behavior (BPX 1996).

#### *Gray Whales*

The reactions of gray whales to seismic pulses is similar to those of bowheads. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that about 50 percent showed avoidance when the average received pulse level was 170 dB (re 1  $\mu$ Pa @ 1 m). Less consistent results were indicated at levels of 140–160 dB.

#### *Belukha*

The belukha is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Because its hearing threshold at frequencies below 100 Hz (where most of the energy from air gun arrays is concentrated) is poor (125 dB re 1  $\mu$ Pa @ 1 m) or more depending upon frequency (Johnson *et al.* 1989 (as referenced in BPX 1996), Richardson 1991, 1995), belukha are not predicted to be strongly influenced by seismic noise. However, because of the high source levels of seismic pulses, airgun sounds may be audible to belukha at large distances (Richardson 1991, 1995).

#### *Ringed, Larga and Bearded Seals*

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.* 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (J. Parsons as quoted in Greene *et al.* 1985, Anon. 1975, Mate and Harvey 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources.

Underwater audiograms have been obtained using behavioral methods for 3 species of phocinid seals, ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were reviewed in Richardson *et al.* (1995). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat down to at least 1 kHz, and ranges between 60 and 85 dB (re 1  $\mu$ Pa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70–85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB (re 1  $\mu$ Pa @ 1 m) at 100 Hz (Kastak and Schusterman, 1995a,b).

Because no studies to date have focused on pinniped reaction to underwater noise from pulsed, seismic arrays in open water (Richardson *et al.*, 1991, 1995), as opposed to in-air exposure to continuous noise, substantive conclusions are not possible at this time. However, assuming an sound pressure level needed to be 80–100 dB over its threshold in order to cause annoyance and 130 dB for injury (pain), as is the current thought based upon human studies (ARPA, 1995), then it appears unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within close proximity of the array. For permanent injury, marine mammals would need to remain in the high noise field for extended periods of time. Existing evidence also suggests that, while they may be capable of hearing sounds from seismic arrays, seals appear to tolerate intense pulsatile sounds, without known effect, once they learn that there is no danger associated with the noise (see, for example, NMFS/WDFW, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.* 1991) and may habituate to certain noises over time. Since seismic work is fairly common in Western Beaufort Sea waters, pinnipeds have previously been

exposed to seismic noise, and may not react to it, after initial exposure.

Effects of Seismic Noise and other Activities on Subsistence Needs.

The disturbance and potential displacement of marine mammals by sounds from seismic activities is the principle concern related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, ringed seals, and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities (BPX 1996). Displacement of migrating marine mammals farther offshore due to behavioral changes resulting from elevated noise levels could potentially make harvest of these species more difficult.

Nuiqsut is the community closest to the area of the proposed activity, and only harvests bowhead whales during the fall whaling season. Nuiqsut whalers typically take zero to three whales each season, with a trend toward larger harvests in the most recent years (BPX 1996). Nuiqsut whalers concentrate their efforts on areas north and east of the Northstar Unit, generally in water depths greater than 65 ft (20 m). Cross Island, located 13 miles (20 km) east of the eastern edge of the primary area of proposed activity, is the principle field camp location for Nuiqsut whalers. Thus, most bowhead whales will not enter the ensonified area until they have passed through the area used by Nuiqsut whalers (BPX 1996).

The location of the proposed seismic activity is to the south of the main westward migration route of bowhead whales. BPX believes that although whales may be able to hear the sounds emitted by the seismic array out to a distance of 30 miles (50 km) or more, it is unlikely that changes in migration route will occur at distances of >15 miles (>25 km). As discussed above, scientific studies have shown obvious avoidance reactions at distances up to 3.7–5 miles (6–8 km), with one probable case of avoidance at 15 miles (24 km) (Richardson *et al.* 1986, Koski and Johnson 1987, Ljungblad *et al.* 1988). However, other bowheads >3.7 miles (>6 km) from shallow-water seismic operations showed no obvious avoidance (BPX 1996).

It is difficult to determine the maximum distance at which reactions occur (Moore and Clark 1992), although whalers believe that some migrating bowheads are deflected by seismic operations at distances greater than those documented by scientific studies done to date. As a result, BPX is developing a Communications and Avoidance Agreement with the whalers (see BPX 1996) to reduce any potential

interference with the hunt. Also, it is believed that the monitoring plan proposed by BPX (LGL 1996) will provide information that will help resolve uncertainties about the effects of seismic exploration on the accessibility of bowheads to hunters.

In addition, while seismic exploration in the Northstar Unit has some potential to influence subsistence seal hunting activities, the peak season for seal hunting is during the winter months when the harvest consists almost exclusively of ringed seals (BPX 1996). In summer, boat crews hunt ringed, spotted and bearded seals (BPX 1996). The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island (BPX 1996). In this area, during summer, sealing occurs by boat when hunters apparently concentrate on bearded seals (BPX 1996).

#### Mitigation

BPX proposes to use biological observers to monitor marine mammal presence in the vicinity of the seismic array. To avoid the potential for serious injury to marine mammals, BPX will power down the seismic source if pinnipeds are sighted within 500 ft (150 m) of the source or if cetaceans are sighted within 2,130 ft (650 m) of the source. At 500 ft (150 m), the average pulse levels will be less than 190 dB (re 1  $\mu$ Pa @ 1 m). At 2,130 ft (650 m), the average pulse level is expected to be about 180 dB (re 1  $\mu$ Pa @ 1 m), based on the expected characteristics of the air gun array to be used in this program, and on site-specific propagation loss data (from Miles *et al.* 1987).

In addition, NMFS proposes to require BPX to ramp-up the seismic source from a level less than, or equal to, 160 dB to its operating level immediately preceding transmissions at a rate not exceeding 6 dB/min and to power-down the array to a level no greater than 160 dB whenever marine mammals enter their respective safety zone. NMFS will recommend ramp-up be accomplished through software designed to fire a specified sequence of guns operating at a designated pressure until the full array of guns are firing at peak operating pressure.

#### Monitoring

As part of their application, BPX provided a preliminary monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort Sea (LGL 1996). As required by the MMPA, this monitoring plan will be subject to a peer-review panel of

technical experts prior to formal acceptance by NMFS.

Preliminarily, BPX plans to conduct the following:

#### (1) Vessel-based Visual Monitoring

Two biologist-observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress, and immediately preceding the start of shooting. These observers will scan the area immediately around the vessels with binoculars during the daytime and with night vision equipment during the night. When mammals are detected within a safety zone designated to prevent injury to the animals, the geophysical crew leader will be notified so that shutdown procedures can be implemented.

#### (2) Aerial Surveys

From September 1, 1996 until the seismic program ends, aerial surveys will be conducted daily, weather permitting. The primary objective will be to document the occurrence, distribution, and movements of bowhead and belukha whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes and for assessing the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen, and sonobuoys will be dropped to document ambient noise and characteristics of seismic noise near whale sightings. Aerial surveys will be at an altitude of 1,000 ft (300 m) above sea level. It is tentatively proposed to avoid direct overflights of the Cross Island area where whalers from Nuiqsut are based during their fall whale hunt.

The daily aerial surveys are proposed to cover two grids:

(a) A grid of 12 north-south lines spaced 8 km (5 miles) apart and extending to about 30 mi (50 km) offshore, 30 mi (50 km) east, and 12.5 mi (20 km) west of the Northstar area;

(b) A grid of 8 north-south lines within the above region, also spaced 5 mi (8 km) apart and mid-way between the longer lines, to provide more intensive coverage of the area of the seismic operations and immediate surrounding waters.

#### (3) Acoustical Measurements

A boat-based acoustical measurement program is proposed for a 10-day period in mid- to late-August 1996. The objectives of this survey will be as follows:

(a) To measure the levels and other characteristics of the horizontally-propagating seismic survey sounds as a function of distance and aspect relative to BPX's seismic source vessel.

(b) To measure acoustic transmission loss vs. frequency, distance, and propagation direction in and near the Northstar Unit, based on transmission and reception of standardized acoustic signals having a source level of about 165 dB re 1  $\mu$ Pa @ 1 m. Transmissions will not be done if bowheads are seen within 2,130 ft (650 m) of the seismic array.

(c) To obtain additional site-specific ambient noise data, which determine signal-to-noise ratios for seismic and other acoustic signals at various ranges from their sources.

In addition, data on ambient noise and on characteristics of seismic pulses will be obtained from sonobuoys dropped and monitored from the survey aircraft after September 1, 1996.

For a more detailed description of planned monitoring activities, please refer to the application and supporting document (LGL 1996).

#### Reporting

BPX will provide an initial report to NMFS within 90 days of the completion of the seismic program. This report will provide dates and locations of seismic operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final technical report will be provided by BPX within 20 working days of receipt of the document from the contractor, but no later than April 30, 1996. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

#### Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of this authorization. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

#### National Environmental Policy Act

In conjunction with this notice, NMFS has released an EA that addresses the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. A copy of the EA is available upon request (see ADDRESSES).

#### Conclusions

NMFS has preliminarily determined that the short-term impact of conducting seismic surveys in the Northstar Unit of the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans. While behavioral modifications may be made by these species of cetaceans to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

As the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed seismic activity in waters generally too shallow and distant from the edge of the pack ice for most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated and the potential for temporary or permanent hearing impairment will be avoided through incorporation of the mitigation measures mentioned above.

Because bowhead whales are east of the seismic area in the Canadian Beaufort Sea until late August/early September, seismic activities are not expected to impact subsistence hunting of bowhead whales prior to that date. After September 1, 1996, BPX will initiate aerial survey flights for bowhead whale assessments. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BPX and subsistence users.

Also, while summer seismic exploration in the Northstar Unit has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville delta (west and inshore of Northstar), and (3) the zone of influence by seismic sources on belukha and seals is fairly small, NMFS believes the Northstar seismic survey will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

#### Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for the 1996 Beaufort Sea open water season for a seismic survey within the Northstar

Unit provided the above mentioned mitigation, monitoring and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of bowhead whales, gray whales, and possibly belukha whales, bearded seals, and largha seals; will have a negligible impact on these marine mammal stocks; and will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

#### Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see ADDRESSES).

Dated: May 17, 1996.

Patricia A. Montanio,  
Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.

[FR Doc. 96-13287 Filed 5-23-96; 10:02 am]

BILLING CODE 3510-22-F

[I.D. 051796D]

#### North Pacific Fishery Management Council; Committee Meetings

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

**ACTION:** Notice of meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory bodies will meet the week of June 10, 1996 in Portland, OR. Other committee and workgroup meetings may be held on short notice during the week; notices will be posted at the meeting site. All meetings are open to the public with the exception of Council executive sessions to discuss personnel, international issues, and litigation. An executive session is tentatively scheduled for noon on June 13.

**ADDRESSES:** Red Lion Hotel Portland Downtown, 310 S.W. Lincoln, Portland, OR. Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

**DATES:** The Advisory Panel (AP) and the Scientific and Statistical Committee (SSC) will begin meeting at 9:00 a.m. on June 10. The SSC will conclude their meeting by June 12, and the AP will conclude their meeting on June 13. The Council will begin their meeting on June 11, at 8:00 a.m. and conclude mid-day on June 16. The Council will meet in joint session with the International Pacific Halibut Commission (IPHC) from 1:00 p.m. to 5:00 p.m. on June 11.

**FOR FURTHER INFORMATION CONTACT:**

Council staff, telephone: 907-271-2809.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include the following subjects:

1. Reports from NMFS and the Alaska Department of Fish and Game on the current status of the fisheries off Alaska, and enforcement reports from the U.S. Coast Guard and NMFS.

2. Final review of a regulatory amendment to raise ownership caps for Bering Sea/Aleutian Islands (BSAI) halibut quota share holders.

3. Final decision on gear allocations for BSAI Pacific cod fishery.

4. Final decisions on BSAI crab bycatch management measures, including proposed closures and prohibited species limits.

5. Initial review of an amendment package for measures to improve retention and utilization of groundfish species.

6. A report on a proposal to ban night trawling for Pacific cod and discussion of whether to proceed with an amendment analysis.

7. Final decision on proposed revisions to the Gulf of Alaska and BSAI groundfish overfishing definitions.

8. Review and approval of a Request for Proposals for analysis of management measures for the halibut charterboat industry off Alaska.

The agenda for the Council's joint meeting with the IPHC includes the following discussion items:

1. IPHC Area 4 biomass distribution.
2. Gridsorting.
3. Bycatch compensation by area.
4. Bycatch limits.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907-271-2809, at least 5 working days prior to the meeting date.

Dated: May 20, 1996.

Richard W. Surdi,

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

[FR Doc. 96-13285 Filed 5-24-96; 8:45 am]

BILLING CODE 3510-22-F

**[I.D. 051796C]****Marine Mammals; Scientific Research Permit (P466C)**

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

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Mr. Scott D. Kraus, New England Aquarium, Central Wharf, Boston, MA 02110-3399, has applied in due form for a permit to take by harassment up to 4,000 harbor porpoises (*Phocoena phocoena*) in the Gulf of Maine during the course of acoustic playback experiments for purposes of scientific research.

**DATES:** Written comments must be received on or before June 21, 1996.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298 (508/281-9250).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested 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 applicant seeks authorization to take by harassment up to 4,000 harbor porpoises (*Phocoena phocoena*) in the Gulf of Maine during the course of underwater acoustic playback experiments. The proposed research is a continuation of work previously authorized in 1992, and will provide data on porpoise responses to various acoustic stimuli used as acoustic deterrent devices in commercial fishing gear.

Dated: May 17, 1996.

Ann D. Terbush,

*Chief, Permits and Documentation, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96-13286 Filed 5-22-96; 3:24 pm]

BILLING CODE 3510-22-F

**CONSUMER PRODUCT SAFETY COMMISSION****Sunshine Act Meeting**

**TIME AND DATE:** 10:00 a.m., Thursday, May 30, 1996.

**LOCATION:** Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTER TO BE CONSIDERED:**

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

**CONTACT PERSON FOR ADDITIONAL**

**INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504-0800.

Dated: May 22, 1996.

Sadye E. Dunn,

*Secretary.*

[FR Doc. 96-13446 Filed 5-23-96; 2:51 pm]

BILLING CODE 6355-01-M

**[CPSC Docket No. 96-C0006]****Burlington Coat Factory Warehouse Corp., a Corporation; Provisional Acceptance of a Settlement Agreement and Order**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR Section 1605.13. Published below is a provisionally-accepted Settlement Agreement with Burlington Coat Factory Corp., a corporation.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 12, 1996.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96-C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

**FOR FURTHER INFORMATION CONTACT:** William J. Moore, Jr., Trial Attorney, Office of Compliance and Enforcement,

Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0626.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: May 20, 1996.

Sadye E. Dunn,  
Secretary.

#### Consent Order Agreement

Burlington Coat Factory Warehouse Corporation ("Burlington Coat Factory" or "Respondent") enters into this Consent Order Agreement with the staff ("the staff") of the Consumer Product Safety Commission ("the Commission") pursuant to the procedures set forth in section 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondent sold certain ladies' rayon sheer chiffon skirts and scarves that failed to comply with the Standard for the Flammability of Clothing Textiles 16 CFR part 1610 ("the general wearing apparel standard").

#### Respondents and the Staff Agree

1. The Consumer Product Safety Commission is an independent regulatory agency of the United States government. The Commission has jurisdiction over this matter under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* (CPSA), the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.* (FAA) and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* (FTC).

2. Respondent Burlington Coat Factory is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at 1830 Route 130, Burlington, New Jersey 08016.

3. Respondent is now, and has been, engaged in one or more of the following activities: the sale, or the offering for sale, in commerce, or the delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of womens' skirts and scarves subject to the general wearing apparel standard.

4. This Agreement is for the sole purpose of settling the allegations in the accompanying Complaint. The Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent. The parties agree to

entry of the attached Order, which is incorporated herein by reference.

5. Respondent specifically denies the allegations contained in paragraphs 3-5 of the accompanying Complaint. In particular, Respondent contends that it did not knowingly sell rayon sheer chiffon skirts and scarves that violated the flammability requirements of the general wearing apparel standard. Nothing in this Agreement constitutes an admission by Respondent that it violated the law.

6. Respondent further contends that it has received no reports of injuries from the use of any products enumerated in this agreement or the accompanying Complaint. Respondent makes no admission of any fault, liability, or statutory violation. Nor does this Agreement constitute an admission by Respondent that it is paying a civil penalty; any payment referenced in paragraph II of the accompanying Order is solely to settle the Commission's contention that a civil penalty is appropriate.

7. The parties agree that this Consent Order Agreement resolves the allegations of the accompanying Complaint. The Commission specifically waives its right to initiate any other criminal, civil or administrative action against the Respondent, its shareholders, officers, directors, employees, and agents with respect to those alleged violations.

8. Respondent waives any rights to a formal hearing as to any findings of fact and conclusions of law regarding the allegations set forth in the Complaint. Respondent waives any right to seek judicial review or otherwise challenge or contest the validity of the Commission's Order.

9. The Commission may disclose the terms of this Consent Order Agreement to the public consistent with Section 6(b) of the CPSA.

10. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the incorporated Order. Agreements, understandings, representations or interpretations made outside of this Consent Order Agreement may not be used to vary or contradict its terms.

Upon acceptance of this Agreement, the Commission shall issue the following order.

By:  
Paul C. Tang,  
Vice President and General Counsel,  
Burlington Coat Factory, Warehouse  
Corporation, 1830 Route 130, Burlington, New  
Jersey 08016.

Date: April 12, 1996.

By:  
William J. Moore, Jr.,  
Trial Attorney, Division of Administrative  
Litigation.

Date: April 12, 1996.

Eric L. Stone,  
Acting Director, Division of Administrative  
Litigation.  
David Schmeltzer,  
Assistant Executive Director, Office of  
Compliance, Consumer Product Safety  
Commission, Washington, DC 20207.

#### Order

Upon consideration of the Agreement of the parties

#### I

*It is hereby ordered* That Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any 100% rayon sheer chiffon skirts or scarves that fail to comply with the flammability requirements of the Standard for the Flammability of Clothing Textiles: 16 C.F.R. Part 1610.

#### II

*It is further ordered* That Respondent pay to the United States Treasury a civil penalty of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) within twenty (20) days after service upon Respondent of the Final Order.

#### III

*It is further ordered* That for a period of three years following the service upon Respondent of the Final Order in this matter, Respondent notify the Commission within 30 days following the consummation of the sale of a majority of its stock or following a change in any of its corporate officers responsible for compliance with the terms of this Consent Agreement and Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 C.F.R. Section 1605.13, and shall be placed on the public record, and the Secretary is directed to publish the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the Federal Register.

So ordered by the Commission, this 20th day of May, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

#### Complaint

The staff of the Consumer Product Safety Commission ("staff") contends that Burlington Coat Factory Warehouse Corporation, a corporation ("Respondent"), is subject to the provisions of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* (CPSA); the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.* (FFA); the Federal Trade Commission Act (15 U.S.C. 41 *et seq.* (FTC); and the Standard for the Flammability of Clothing Textiles, 16 C.F.R. part 1601 ("the general wearing apparel standard"). The staff further contends Respondent violated the general wearing apparel standard's provisions related to the flammability of certain women's rayon sheer chiffon skirts and scarves.

Based upon the information provided to the Commission by the staff, the Commission determined it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the CPSA, 15 U.S.C. 2079(b); sections 3 and 5 of the FFA, 15 U.S.C. 45; and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, the Commission hereby issues this Complaint and states the staff's charges as follows:

1. Respondent Burlington Coat Factory is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at 1830 Route 130 N, Burlington, New Jersey, 08016.

2. Respondent is and has been engaged in one or more of the following activities: the sale, or the offering for sale, in commerce, of women's sheer chiffon rayon skirts and scarves subject to the general wearing apparel standards.

3. In 1994 and 1995, Respondent sold and offered for sale women's 100% rayon sheer chiffon skirts and scarves that did not comply with the flammability requirements for general wearing apparel.

4. As the result of these failures to comply with the general wearing apparel standard, Respondent sold, or offered for sale, in commerce, a significant number of women's garments purchased from several different importers that failed to comply with the general wearing apparel flammability standards.

5. After being informed of the violations involving sheer chiffon skirts by the Commission staff in 1994, Respondent nevertheless sold and offered for sale sheer chiffon scarves that did not comply with the applicable flammability requirements.

#### Relief Sought

Wherefore, the staff requests the Commission to issue an order requiring the Respondent to:

Cease and desist from the sale, or the offering for sale, in commerce, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of rayon sheer chiffon skirts and scarves subject to the general wearing apparel standards that fail to comply with such standards.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the \_\_\_\_ day of \_\_\_\_\_, 1996.

Dated:

By direction of the Commission:

David Schmeltzer,

Assistant Executive Director, Office of Compliance.

[FR Doc. 96-13203 Filed 5-24-96; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF ENERGY

### Establishment of the Fee Policy for Acceptance of Foreign Research Reactor Spent Nuclear Fuel

**AGENCY:** Department of Energy.

**ACTION:** Notice of establishment of the fee policy for acceptance of foreign research reactor spent nuclear fuel.

**SUMMARY:** This notice establishes the fee policy for receipt and management of spent nuclear fuel from foreign research reactors by the Department of Energy (DOE). DOE's foreign research reactor spent fuel acceptance policy covers aluminum-based and TRIGA (Training, Research, Isotope, General Atomics) spent fuel and target material containing uranium enriched in the United States. For high-income economy countries, the fee will be no higher than \$4,500 per kilogram of total mass for aluminum based spent fuel containing highly enriched uranium (HEU) and TRIGA spent fuel, and no higher than \$3,750 per kilogram of total mass for aluminum based spent fuel containing low enriched uranium (LEU). The cost of shipping the spent fuel to the United States from high-income economy countries is not included in the fee, and will be borne by the reactor operators. For other countries, the Department will

pay the costs for shipping, receipt, and management.

**FOR FURTHER INFORMATION CONTACT:** G. F. Cole, Director, Office of Spent Fuel Management (EM-67), U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585, Telephone (301) 903-1450.

**SUPPLEMENTARY INFORMATION:** On May 13, 1996, the Department of Energy (DOE) issued the Record of Decision (ROD) for the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS-0218F of February 1996, the Final EIS). The ROD specifies that the United States will accept up to 19.2 MTHM (metric tonnes of heavy metal) of foreign research reactor spent fuel in approximately 22,700 separate elements and up to approximately an additional 0.6 MTHM of target material over a thirteen year period. All of this material contains uranium that was enriched in the United States.

DOE specified in the ROD that the following spent fuel and target material types will be accepted under this policy:

1. Spent nuclear fuel (HEU or LEU) from foreign research reactors operating on LEU fuel or in the process of converting to LEU fuel when the policy became effective.

2. Spent nuclear fuel (HEU or LEU) from foreign research reactors that operated on HEU fuel when the policy became effective but that formally commit to convert to LEU fuel. Spent nuclear fuel will not be accepted from foreign research reactors that could convert to LEU fuel but whose operators or owners do not formally commit, prior to receipt of their spent fuel into the United States, to make the conversion. Similarly, target material containing uranium enriched in the United States will only be accepted if reactors wishing to ship such target material have formally committed to convert to the use of LEU targets, when such targets become available. The terms and commitments for conversion are discussed in the ROD.

3. HEU spent nuclear fuel from foreign research reactors having lifetime cores, from foreign research reactors planning to shut down by a specific date while the policy is in effect, and from foreign research reactors for which a suitable LEU fuel is not available.

4. HEU or LEU spent nuclear fuel from foreign research reactors that are already shut down.

5. Unirradiated HEU or LEU fuel from eligible foreign research reactors will be accepted as spent nuclear fuel.

As stated in the ROD, DOE will not accept LEU spent fuel from any individual foreign research reactor until the HEU spent fuel at that reactor has all been shipped, unless there are extenuating circumstances (e.g., deterioration of one or more LEU elements sufficient to cause a safety problem if acceptance were delayed). In addition, DOE will not accept spent fuel (HEU or LEU) from new foreign research reactors starting operation after the date of implementation of the policy.

The ROD specifies that the United States will charge high-income-economy countries a fee that will be published in a separate Federal Register Notice (this constitutes that notice). The ROD also specifies that DOE will bear the full cost of shipping and managing foreign research reactor spent fuel from other countries, including at-reactor preparation. The countries from which spent fuel would be accepted, and definition of whether or not they are considered to be high-income-economy countries, are listed in the ROD and the Final EIS. The Final EIS also identifies the estimated number of spent nuclear fuel shipments from each country, and the estimated number of casks each country would ship.

The fee will be no higher than \$4,500 per kilogram of total mass (not heavy metal mass) for aluminum based spent fuel containing HEU and TRIGA spent fuel, and no higher than \$3,750 per kilogram of total mass for aluminum based spent fuel containing LEU. Total mass includes, among other things, the mass of cladding, structural materials, the aluminum fuel matrix, overpack canning. The actual fee will be established in DOE's spent fuel acceptance contracts. These fees will be used to cover all aspects of receipt and management of the spent nuclear fuel by DOE, including geologic disposal. The cost of preparing the spent nuclear fuel for shipment to the United States (e.g., inspection, documentation, and canning, if necessary), and shipping the spent nuclear fuel to a DOE spent fuel management site in the the United States, is not included in the fee and is not an obligation of the United States. These costs will be borne by the individual reactor operators in high-income-economy countries. Fees are due and payable upon DOE acceptance of the spent nuclear fuel at the DOE management site.

No fee is specified in this notice for acceptance of target material. This fee will be established separately at a later time.

For spent fuel not covered by a valid, signed DOE acceptance contract, DOE reserves the right to modify the fee

upward or downward at any time to respond to changed circumstances, including a change in the cost of managing the spent fuel in the United States.

Issued at Washington, DC., on May 22, 1996.

Jill Lytle,

*Deputy Assistant Secretary, Office of Nuclear Material and Facility Stabilization Environmental Management.*

[FR Doc. 96-13283 Filed 5-24-96; 8:45 am]

BILLING CODE 6450-01-P

### Notice of Waste Acceptance, Storage, and Transportation Services

**AGENCY:** Office of Civilian Radioactive Waste Management, Department of Energy.

**ACTION:** Request for expression of interest and comments.

**SUMMARY:** The Office of Civilian Radioactive Waste Management (OCRWM) is responsible under the Nuclear Waste Policy Act of 1982, as amended (NWP) for transporting spent nuclear fuel (spent fuel) from commercial nuclear reactor sites to a Federal facility for storage or disposal. The Standard Contract for Disposal of Spent Fuel and/or High Level Radioactive Waste (10 CFR part 961) details the arrangements between the Department and the owners and generators of spent fuel (Purchasers) for the Department to accept the spent fuel at the Purchasers' sites for transport to the receiving Federal facility. Section 137(a)2 of the NWP requires the utilization of private industry to the "fullest extent possible" in the transportation of spent fuel.

OCRWM is developing a plan for the performance of its waste acceptance, storage and transportation responsibilities which are set forth in the NWP and Standard Contract and is soliciting input from interested parties as to its proposed approach.

**DATES:** Submissions of interest and comments in response to this Notice should be received by the Department no later than three weeks from the date of this announcement. A presolicitation conference may be held this summer, if so, a separate Notice will be issued identifying the date. Respondents to this Notice will be placed on a list to receive additional information which may include draft solicitation documents in preparation for the presolicitation conference.

**ADDRESSES:** Submissions of interest including any comments should be sent to: Michelle Miskinis, Contracting Officer, U. S. Dept. Of Energy, 1000

Independence Ave. SW, Attention: HR-561.21, Washington D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Ms Michelle Miskinis (DOE/HR-561.21), 202-634-4413 or Ms Beth Tomasoni (DOE/HR-561.21), 202-634-4408.

**SUPPLEMENTARY INFORMATION:** The following describes key features of the OCRWM proposed approach:

*Scope of Services:* DOE anticipates contracting for supplies and services which would include: accepting spent-fuel from Purchasers' facilities (as identified in the Acceptance Priority Ranking and Annual Capacity Reports and supplying compatible transportation (and possibly storage) casks and equipment and transporting spent-fuel to a designated Federal facility. Contractors would also be responsible for any intermodal transport required, including heavy haul. Contractors may be permitted to alter the order of spent-fuel acceptance to achieve efficiency of operation or to lower costs. Contractors would work with Purchasers to determine the best way to service a site and would recommend preferred transportation routes to the Federal facility. Contractors will also be required to interface with those State, Local and Tribal governments along the selected routes.

The location and type of Federal facility (either a repository or an interim storage facility (ISF) cannot yet be determined. Initially, spent-fuel delivered to the Federal site would be canistered before arrival at the facility, but at some point in the service period the contractor may be required to handle uncanistered spent-fuel. Transportation and storage equipment to be supplied would be required to comply with applicable Nuclear Regulatory Commission (NRC) and Department of Transportation (DOT) regulations, OCRWM acceptance criteria, and standard commercial practices.

*Contract Type:* Competitive, fixed-price type, contracts are being considered with a phased implementation that includes sequential development of business/servicing plans describing contractors' individual approaches, fabrication/acquisition of hardware, and transportation services operations. More than one award is anticipated. One approach under consideration is to divide the country into regions, for example, the four NRC regions. No contractor would be awarded more than two regional service contracts. It is envisioned that there will be several Requests for Proposals (RFPs) issued over several decades for these

services with more than one award made under each RFP.

**Contract Term:** A contract term of five to ten years is envisioned. This would allow a contractor two to three years to procure transportation and storage equipment and achieve operational readiness. Performance of waste acceptance and transportation services would take place over the remaining period of any contract. A service period spanning several years also would allow contractors the flexibility to improve the efficiency of operations and reduce costs.

**Schedule:** Schedule specifics will be addressed in any solicitation. For planning purposes, it is expected that a Federal facility could be in operation to receive spent fuel within four years of statutory direction, and contractors could be expected to begin developing service arrangements with Purchasers two to three years before spent fuel shipment.

#### Submissions of Interest

OCRWM is interested in receiving expressions of interest and comments relating to this proposed approach for carrying out its waste acceptance, transportation and any storage functions especially with regard to the following issues:

1. The ability of transportation service contractors and individual Purchasers to reach agreement on methods and schedules for servicing specific utility sites, including ways to foster Purchaser cooperation.

2. The willingness of Purchasers to construct temporary or permanent physical plant modifications and to obtain license amendments or technical specification changes that would improve the efficiency and reduce the costs of loading and removal of spent fuel from individual plants.

3. The reasonableness of dividing the country into a number of regions to preserve competition and industrial capability in the marketplace, while still ensuring low cost services to OCRWM.

4. The capability of the nuclear industry to acquire sufficient spent fuel canister, transportation cask, and storage module production capacity to meet near-term service contractor requirements.

5. Potential business arrangements/pricing structures which might increase contractor freedom and flexibility to develop and implement innovative approaches to improve system efficiency and lower costs, reduce or eliminate the need for front-end financing by OCRWM of contractor activities and procurements, or mitigate

risks associated with programmatic uncertainties.

6. Alternative methods of structuring this procurement to ensure competition on future procurements.

DOE will consider and may utilize all information, recommendations, and suggestions provided in response to this notice. Respondents should not provide any information that they consider to be privileged or confidential or which the respondent does not want disclosed to the public. DOE does not intend to respond to comments, either to individual commentors or by publication of a formal notice. Each submittal should consist of one original and three photocopies.

This notice should not be construed (1) as a commitment by the Department to enter into any agreement with any entity submitting an expression of interest or comments in response to this Notice, (2) as a commitment to issue any RFP concerning the subject of this Notice, or (3) as a request for proposals.

Issued in Washington, DC, on May 21, 1996.

Scott Sheffield,

*Director, Headquarters Operation Division "B", Office of Placement and Administration.*

[FR Doc. 96-13244 Filed 5-24-96; 8:45 am]

BILLING CODE 6450-01-P

### Federal Energy Regulatory Commission

[Docket No. CP96-517-000]

#### Algonquin LNG, Inc.; Notice of Application

May 21, 1996.

Take Notice that on May 13, 1996, Algonquin LNG, Inc. (Algonquin LNG), 1284 Soldiers Field Road, Boston, Massachusetts, 02135, filed in Docket No. CP96-517-000 an application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act (NGA) and a request for abandonment of services and facilities under Section 7(b) of the NGA.

Algonquin LNG seeks authorization for new services and facilities so that it will have the enhanced flexibility to receive from its customers natural gas to be liquefied and stored as liquefied natural gas (LNG), and to withdraw and deliver, as requested by its customer(s), such natural gas in liquid or gaseous form. Algonquin LNG's proposal is more fully set forth in its application which is on file with the Commission and open for public inspection.

Specifically, Algonquin LNG seeks authorization to:

(1) acquire, own, and operate existing pipeline facilities for the purpose of

connecting its storage facility to the interstate pipeline grid;

(2) construct, own, and operate new pipeline, liquefaction, high-pressure vaporization, metering, and ancillary facilities; and,

(3) provide an enhanced LNG firm and interruptible handling service, which will include natural gas liquefaction, LNG storage and LNG vaporization on an open access, self-implementing blanket basis.

Algonquin LNG also wants the Commission to:

(4) approve the terms and conditions of a restated and revised FERC Gas Tariff;

(5) approve a Blanket Certificate under Part 157, Subpart F, of the Commission's Regulations for the construction from time to time of eligible facilities other than those at the LNG plant site; and,

(6) authorize the abandonment, pursuant to Section 7(b) of the NGA, of the services it presently provides, and the low-pressure vaporizers and certain other facilities currently in service at Algonquin LNG's site.

Algonquin LNG currently owns and operates a 600,000 barrel LNG storage facility located at a site on the west bank of the Providence River in Providence, Rhode Island. Algonquin LNG utilizes such LNG storage facility to provide firm and interruptible open access LNG storage and vaporization service approved under Part 284 of the Commission's regulations pursuant to Algonquin LNG's Rate Schedules FST-LG and IST-LG. Algonquin LNG says that its current LNG plant does not have direct access to the interstate pipeline grid, but that vaporized LNG is delivered into the interstate system via displacement through the local distribution facilities of Providence Gas Company (Providence Gas).

Algonquin LNG proposes by this application to enhance its LNG storage services by installing liquefaction capability at its LNG plant and to establish a direct connection to the interstate pipeline grid. Algonquin LNG will acquire two 10-inch lines under the Providence River near its LNG plant from Providence gas and will construct one mile of new 20-inch line to connect the river crossing with Algonquin Gas Transmission Company's (Algonquin Gas) mainline.<sup>1</sup> Algonquin LNG will also construct liquefaction facilities capable of liquefying natural gas at a rate of 40,000 MMBtu/d, and

<sup>1</sup> Algonquin Gas proposes to rebuild the East Providence meter station under its Subpart F blanket certificate and associated environmental requirements. Algonquin LNG will pay for the rebuild.

vaporization facilities with a vaporization capability of 375,000 MMBtu/d. Further, Algonquin LNG will construct various metering facilities, control and monitoring systems and other miscellaneous facilities. No changes to tank storage although Algonquin LNG intends to conduct a thorough inspection of the internal components of the tank and perform any necessary maintenance. The total cost of all of this work is estimated to be \$75.7 million, including the acquisition cost of the river crossing pipelines.

Algonquin LNG proposes to provide its new open access LNG handling service under the terms of its proposed Second Revised Volume No. 1—FERC Tariff, which is contained in Exhibit P of the application. Algonquin LNG says that the open access provisions of its former Volume No. 1—FERC Tariff have been replicated in the new tariff. Algonquin LNG says that the new tariff will control the nomination and scheduling of liquefaction and vaporization and may, under certain conditions, subject customers to operational flow orders. The tariff consists of a firm service rate schedule and an interruptible rate schedule, plus general terms and conditions and *pro forma* service agreements.

The proposed initial rates for Algonquin LNG's firm and interruptible services are based on a straight fixed-variable cost classification. The reservation fee has been designed on the basis of storage tank capacity. The vaporization and liquefaction services will subject the customers to fuel use retainage factors and adjustments. The rate base underlying the proposed initial rates is based on the estimated capital cost of \$75.7 million, plus the net book value as of November 1, 1997, of the existing facilities that will be used as part of this proposal. The cost of service underlying the proposed initial rates was developed utilizing the capital structure of Algonquin LNG's parent Algonquin Gas and the cost of capital, as approved in Algonquin Gas's most recent rate settlement, along with a proposed depreciation rate of 3.33 percent.

Algonquin LNG says that interruptible customers will pay a unit rate equal to the cost that a firm customer would incur for storage of one barrel of LNG for one year, but that no costs have been allocated to interruptible service. Instead, the tariff provides for crediting to firm customers of 90 percent of revenues received for interruptible storage and services.

Algonquin LNG says that the available capacity of the project, 592,000 barrels of LNG storage, has been fully

subscribed. Providence Gas has signed a binding precedent agreement obligating it to sign a service agreement for 349,452 barrels. EnergyPlus Marketing Company (EnergyPlus), an affiliate of Algonquin LNG via parent company PanEnergy Corp., has signed a binding precedent agreement obligating it to sign a service agreement for 242,548 barrels, the remainder of the available capacity. Therefore, Algonquin LNG says that it has satisfied all of the conditions required to avoid an "at risk" condition. Both Providence Gas and EnergyPlus will be responsible for obtaining gas supplies.

Algonquin LNG says that the existing Algonquin Gas system would function as both the upstream and the downstream connection to the proposed new facilities, depending upon whether Algonquin LNG is functioning in the vaporization or liquefaction mode. There is capacity on the Algonquin Gas system to take gas away from the Algonquin LNG Interconnect. Thus, no downstream capacity needs to be installed on the Algonquin Gas pipeline to support peak day vaporization operations of the Algonquin LNG facility.

Algonquin LNG says that the environmental impact of the proposed project will be minimal. Most of the construction will take place within a site that has been dedicated to industrial use for over a century. It says that the use of the existing Providence Gas-owned river crossings will further minimize the environmental impacts of the project. It further says that the environmental impacts associated with the 1 mile of 20-inch pipeline on the east side of the river will be minimal as a result of the location of a substantial portion of the pipeline within or adjacent to existing right-of-way corridors. Algonquin LNG also says that any impacts of the operation of the plant would be little affected by the proposed plant modifications and that the use of electric compressors and pumps will limit air and noise emissions from the site.

Any person desiring to be heard or to make any protest with reference to this application should on or before June 12, 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) and the Regulations under the NGA (18 CFR 157.20). 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 the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin LNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96-13217 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-212-001]

#### CNG Transmission Corporation; Notice of Section 4 Filing

May 21, 1996.

Take notice that on May 14, 1996, CNG Transmission Corporation (CNG), tendered for filing, pursuant to Section 4 of the Natural Gas Act, Substitute Original Sheets 10, 11, 12, 19, 22, 29, 30, 61, 62, 79, 84, 86, 87, 88, 89, 93, 103, and 104 to First Revised Volume 1A of CNG Transmission's FERC Gas Tariff. CNG further states that the filing is made to correct errata in the filing of First Revised Volume 1A.

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 the requirements 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 the protestants parties to the proceedings. 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. 96-13219 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP96-522-000]**

**Columbia Gulf Transmission Company, Notice of Application**

May 21, 1996.

Take notice that on May 15, 1996, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77210-4621, filed in Docket No. CP96-522-000 an abbreviated application pursuant to Section 7(b) and 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and order granting permission and approval to abandon the facilities being replaced, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that as part of its objective to ensure the more efficient and reliable operation of its pipeline system, it initiated in 1986 to install on-line pigging facilities on its mainline system. Columbia Gulf further states that as part of this program, it proposes to construct and operate approximately 0.3 mile of 30-inch pipeline crossing the Ouachita River, replacing approximately 0.3 mile of dual 24-inch pipeline located in Catahoula Parish, Louisiana. Columbia Gulf indicates that the estimated cost of the proposed construction is \$712,000. It is asserted that the proposed single 30-inch pipeline crossing will result in a *de minimus* decrease in the theoretical capacity of the crossing. It is further asserted that the proposed crossing will have no effect on the throughput of Columbia Gulf's loop pipeline system as the minimal pressure reduction can be made up at the existing Delhi Compressor Station with existing compressor units.

Any person desiring to be heard or to make protest with reference to said application should on or before June 11, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). 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 protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-13218 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP94-120-012]**

**Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff**

May 21, 1996.

Take notice that on May 16, 1996, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Substitute Eleventh Revised Sheet No. 20  
Substitute Tenth Revised Sheet No. 21  
Substitute Eleventh Revised Sheet No. 22  
Substitute Seventh Revised Sheet No. 23  
Substitute Eleventh Revised Sheet No. 24

Koch Gateway states that the purpose of this filing is to comply with the Commission's May 1, 1996 Order on Rehearing. Koch Gateway also states that these tariff sheets reflect adjustments to the gathering rate in compliance with the Order.

Koch Gateway states that copies of the filing will be served upon all parties on the official service list created by the Secretary in this proceeding.

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 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. 96-13220 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. MG96-8-001]**

**Michigan Gas Storage Company; Notice of Filing**

May 21, 1996.

Take notice that on May 13, 1996, Michigan Gas Storage Company (Michigan Gas) filed a revised Standard K, 18 CFR 161.3(k), in response to the Commission's April 12, 1996 order.<sup>1</sup>

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 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. 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. 96-13221 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP96-239-000]**

**Questar Pipeline Company; Notice of Tariff Filing**

May 21, 1996.

Take notice that on May 17, 1996, Questar Pipeline Company, tendered for filing as part of its FERC Gas Tariff, First

<sup>1</sup> 75 FERC ¶ 61,075 (1996).

Revised Volume No. 1, the below-listed tariff sheets, to be effective June 19, 1996:

Listing of Proposed Tariff Sheets

Revised title page

Original Sheet Nos. 1A and 1B

First Revised Sheet Nos. 1, 93, 94, 98B and 99

Second Revised Sheet Nos. 5A.1, 90 and 91

Third Revised Sheet Nos. 92 and 172

Fourth Revised Sheet Nos. 8 and 40

Questar states that these tariff sheets revise its tariff by incorporating certain revisions that are promulgated by Commission Order Nos. 581, 581-A, 582 and 582-A.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-13222 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-180-000]

### Stingray Pipeline Company; Notice of Technical Conference

May 21, 1996.

In the Commission's order issued April 19, 1996,<sup>1</sup> the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, June 18, 1996, at 1:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C.

20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-13223 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-524-000]

### Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

May 21, 1996.

Take notice that on May 17, 1996, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP96-524-000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to establish a delivery point for Nashville Gas Company (Nashville) authorized in blanket certificate issued in Docket No. CP82-413-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to install a new delivery point on Tennessee's system in Cheatham County, Tennessee which would be used for the delivery of natural gas to Nashville, a division of Piedmont Natural Gas Company. Tennessee states that it would install, own, operate and maintain two two-inch hot taps, approximately 60 feet of two-inch interconnect piping, one two-inch turbine meter with bypass, and electronic gas measurement equipment. The hot tap and interconnect pipe would be located on Tennessee's existing right-of-way. The meter station would be located on a site adjacent to Tennessee's existing right-of-way provided by Nashville. The estimated cost of the meter station would be \$102,024.00, which would be reimbursed by Nashville.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity 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 within 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 NGA.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-13224 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-M

### Federal Energy Regulatory Commission

[Docket No. EG94-81-000, et al.]

### PSI Argentina, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 20, 1996.

Take notice that the following filings have been made with the Commission:

1. PSI Argentina, Inc.

[Docket No. EG94-81-000]

Take notice that on April 24, 1996, pursuant to Section 365.7 of the Commission's regulations, 18 CFR 365.7, PSI Argentina, Inc. filed notification that it surrenders its status as an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

2. Enron Power Marketing, Inc., Vitol Gas & Electric LLC, Texas-Ohio Power Marketing, Inc., Northwest Regional Transmission Association, Power Exchange Corporation, KN Marketing, Inc.

[Docket No. ER94-24-012, ER94-155-013, ER94-1676-007, ER95-19-005, ER95-72-005, ER95-869-004 (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 May 1, 1996, Enron Power Marketing, Inc. filed certain information as required by the Commission's December 2, 1993 order in Docket No. ER94-24-000.

On May 1, 1996, Vitol Gas & Electric LLC filed certain information as required by the Commission's January 14, 1994 order in Docket No. ER94-155-000.

On May 16, 1996, Texas-Ohio Power Marketing, Inc., filed certain information as required by the Commission's October 31, 1994 order in Docket No. ER94-1676-000.

On May 13, 1996, Northwest Regional Transmission Association filed certain information as required by the Commission's June 28, 1995 order in Docket No. ER95-19-000.

On May 16, 1996, Power Exchange Corporation filed certain information as

<sup>1</sup> Stingray Pipeline Co., 75 FERC ¶ 61,061 (1996).

required by the Commission's February 1, 1995 order in Docket No. ER95-72-000.

On May 1, 1996 and May 13, 1996 KN Marketing, Inc. filed certain information as required by the Commission's May 26, 1995 order in Docket No. ER95-869-000.

### 3. New England Power Company

[Docket No. ER96-1004-001]

Take notice that on May 10, 1996, New England Power Company tendered for filing revised copies of its compliance filing in the above-referenced docket.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 4. Entergy Power, Inc.

[Docket No. ER96-1300-000]

Take notice that on May 3, 1996, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 5. Family Fiber Connection

[Docket No. ER96-1631-000]

Take notice that on May 15, 1996, Family Fiber Connection tendered for filing supplemental information to its April 24, 1996, filing in the above-referenced docket.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 6. Energy Tek, Inc.

[Docket No. ER96-1781-000]

Take notice that on May 10, 1996, Energy Tek, Inc. (Energy Tek), petitioned the Commission for acceptance of Energy Tek, Inc. Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission regulations. Energy Tek, Inc. is a subsidiary of AGR International Consultants, Inc. based in California.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 7. Maine Public Service Company

[Docket No. ER96-1782-000]

Take notice that on May 10, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Federal Energy Sales, Inc.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 8. Northern Indiana Public Service Company

[Docket No. ER96-1783-000]

Take notice that on May 10, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Citizens Lehman Power Sales.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Citizens Lehman Power Sales pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96-399-000 and allowed to become effective by the Commission, *Northern Indiana Public Service Company*, 71 FERC ¶ 61,014 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of June 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 9. Potomac Electric Power Company

[Docket No. ER96-1784-000]

Take notice that on May 10, 1996, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and: Public Service Electric and Gas Company, and Federal Energy Sales, Inc. An effective date of April 12, 1994, for these service agreements, with waiver of notice, is requested.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 10. Wisconsin Public Service Corporation

[Docket No. ER96-1785-000]

Take notice that on May 10, 1996, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with Manitowoc Public Utilities under its CS-1 Coordination Sales Tariff.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 11. Wisconsin Electric Power Company

[Docket No. ER96-1786-000]

Take notice that on May 10, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing

an Electric Service Agreement and a Transmission Service Agreement between itself and WPS Energy Services, Inc. (WPS). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows WPS to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95-1474.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on WPS, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 12. Florida Power & Light Company

[Docket No. ER96-1787-000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Phibro Inc. FPL requests an effective date of May 20, 1996.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 13. Florida Power & Light Company

[Docket No. ER96-1788-000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Calpine Power Service Company. FPL requests an effective date of May 20, 1996.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 14. Florida Power & Light Company

[Docket No. ER96-1789-000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Delhi Energy Services, Inc. FPL requests an effective date of May 20, 1996.

*Comment date:* June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

### 15. New England Power Pool

[Docket No. ER96-1790-000]

Take notice that on May 10, 1996, the New England Power Pool Executive Committee, filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Morgan Stanley Capital Group Inc. (Morgan

Stanley). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Morgan Stanley to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Morgan Stanley a Participant in the Pool. NEPOOL requests an effective date of July 1, 1996 for commencement of participation in the Pool by Morgan Stanley.

*Comment date:* June 3, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 96-13216 Filed 5-24-96; 8:45 am]

BILLING CODE 6717-01-P

### Office of Hearings and Appeals

#### Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy announces the procedures for disbursement of \$1,140,552.84 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Gil-Mc Oil Corporation (Case No. LEF-0054), LeClair Operating Company (Case No. LEF-0054), SRG Corporation (Case No. LEF-0056), Petroleum Carrier Company (Case No. LEF-0119) and Dane Energy Company (LEF-0122). The OHA has

determined that the funds obtained from these firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

**FOR FURTHER INFORMATION CONTACT:** Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, Washington, DC 20585, (202) 426-1562.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets for the procedures that the DOE has formulated to distribute a total of \$1,140,553, plus accrued interest, remitted to the DOE by Gil-Mc Oil Corporation, LeClair Operating Company, SRG Corporation, Petroleum Carrier Company, and Dane Energy Company. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution. The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury. Because the June 30, 1995, deadline for the crude oil refund applications has passed, no new applications from purchasers of refined petroleum products will be accepted for the 20 percent of these funds allocated to individual claimants. Instead, that share of the funds will be added to the general crude oil overcharge pool used for direct restitution.

Dated: May 16, 1996.

George B. Breznay,  
*Director, Office of Hearings and Appeals.*

Decision and Order of the Department of Energy

#### Implementation of Special Refund Procedures

*Names of Firms:* Gil-Mc Oil Corporation, LeClair Operating Company, SRG Corporation, Petroleum Carrier Company, Dane Energy Company.

*Dates of Filings:* July 20, 1993, December 7, 1993, April 8, 1994.

*Case Numbers:* LEF-0054, LEF-0055, LEF-0056, LEF-0119, LEF-0122.

The Economic Regulatory Administration (ERA) of the Department of Energy filed five

Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute funds remitted to the DOE pursuant to settlements between Gil-Mc Oil Corporation (Gil-Mc), LeClair Operating Company (LeClair), SRG Corporation (SRG), Petroleum Carrier Company, (Petroleum Carrier), and Dane Energy Company (Dane). A total of \$1,140,553, plus interest, is available for restitution. All of these funds are now being held in an interest-bearing account pending a determination regarding their proper disposition.

In accordance with the procedural regulations codified at 10 C.F.R. Part 205, Subpart V, the ERA requests in its Petitions that the OHA establish special refund procedures to remedy the effects of any regulatory violations which were resolved by these settlements. This Decision and Order sets forth the OHA's final plan to distribute these funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. §§ 4501-07 (PODRA), *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

#### I. Background

On June 16, 1982, the DOE issued a Proposed Remedial Order (PRO) to Gil-Mc which alleged that certain first sales of crude oil by Gil-Mc had been in excess of applicable ceiling prices during the period August 19, 1973 through January 27, 1981. The DOE and Gil-Mc entered into a Consent Order on March 29, 1983, which satisfied the DOE's claim against Gil-Mc. There is a total of \$10,273, plus interest, available from Gil-Mc for restitution.

On June 3, 1982, the DOE issued a PRO to LeClair which alleged that certain first sales of crude oil by LeClair had been in excess of applicable ceiling prices during the period August 19, 1973 through January 27, 1981. The DOE and LeClair entered into a Consent Order on November 5, 1982, which satisfied the DOE's claim against LeClair. There is a total of \$70,386, plus interest, available from LeClair for restitution.

On July 23, 1982, the DOE entered into a Consent Order with SRG which resolved DOE's claims against SRG. Specifically, the DOE alleged that during the period of August 19, 1973 through January 27, 1981, crude oil was sold from certain properties operated by SRG in excess of the applicable lawful ceiling prices. There is a total of \$171,041, plus interest, available from SRG for restitution.

On June 26, 1987, the DOE issued a Remedial Order to Petroleum Carrier for violations of the crude oil pricing regulations during the period from June 1974 through December 1977. The DOE collected a total of \$18,853 from Petroleum Carrier pursuant to the Remedial Order. That amount, plus interest, is available for restitution.

On December 10, 1992, the DOE issued a Remedial Order to Dane for violations of the crude oil pricing regulations during the period December 1978 through December 1980. The DOE and Dane entered into a Consent Order on December 16, 1993, which

satisfied the DOE's claim against Dane. There is a total of \$870,000, plus interest, available from Dane for restitution.

## II. The Proposed Decisions

On October 26, 1993, May 20, 1994, and June 6, 1994, we issued Proposed Decisions and Orders (PDOs) that tentatively concluded that ERA's Petitions to implement Subpart V proceedings with respect to the funds collected from these five firms should be approved. *Gil-Mc Oil Corp.*, 58 FR 57595 (October 26, 1993) (also included LeClair and SRG); *Petroleum Carrier Co.*, 59 FR 26493 (May 20, 1994); *Dane Energy Co.*, 59 FR 29287 (June 6, 1994). In each of the PDOs, we tentatively determined that the funds obtained from these firms should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for payment of claims to injured parties.

The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it had received pursuant to the Order Implementing the MSRP. This notice was published at 52 FR 11737 (April 10, 1987).

The April 10, 1987 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) show that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses were unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges. End-users, therefore, need only submit documentation of their purchase volumes. See *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987). Additionally, we stated that we would calculate crude oil refunds on a per gallon (or volumetric) basis. We obtained this figure by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price

control period. OHA is currently paying crude oil refund claims at the rate of \$0.0016 per gallon. We will decide whether sufficient crude oil overcharge funds are available for additional refunds when we are better able to determine how much additional money will be collected from firms that have either outstanding obligations to the DOE or enforcement cases currently in litigation.

## III. The Refund Procedure

No comments were received on the PDOs, and we adopt the tentative determination to distribute these funds in accordance with the MSRP. These standard crude oil procedures will be used to distribute the funds remitted by Gil-Mc, LeClair, SRG, Petroleum Carrier and Dane. Accordingly, we shall initially reserve 20 percent of these funds, \$228,110.56, plus accrued interest, for direct refunds to claimants in order to ensure sufficient funds will be available for injured parties. As we have stated in prior decisions, a crude oil refund applicant need only submit one application for its share of all available crude oil overcharge funds. See, e.g., *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). June 30, 1995, was the final deadline for filing Applications for Refund from the crude oil funds. See 60 FR 19914 (April 21, 1995). A party that submitted a timely claim in the crude oil refund proceeding need not file another claim in order to share in the funds at issue in this Decision.

Under the terms of the MSRP, the remaining 80 percent of the funds collected from these five firms shall be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That: The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer \$10,273, plus all accrued interest, from the Gil-Mc subaccount (Account No. 670C00339T), \$70,386, plus all accrued interest from the LeClair subaccount (Account No. 600C20071T), \$171,041, plus all accrued interest from the SRG subaccount (Account No. 400C00200T), \$18,853, plus all accrued interest from the Petroleum Carrier subaccount (Account No. 6A0X00253Z) and \$870,000, plus all accrued interest, from the Dane subaccount (Account No. 6A0X00320Z), for a total of \$1,140,553, plus all accrued interest, pursuant to Paragraphs (2), (3), and (4) of this Decision.

(2) The Director of Special Accounts and Payroll shall transfer \$456,221 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—States," Number 999DOE003W.

(3) The Director of Special Accounts and Payroll shall transfer \$456,221 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—Federal," Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer \$228,111 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—Claimants 4," Number 999DOE010Z.

(5) This is a final Order of the Department of Energy.

Dated: May 16, 1996.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 96-13245 Filed 5-24-96; 8:45 am]

BILLING CODE 6450-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5510-1]

### San Gabriel Valley Superfund Sites, Areas 1-4; Proposed Notice of Administrative Settlement

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

**ACTION:** Notice; Request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed prospective purchaser agreement associated with the San Gabriel Valley Superfund Sites, Areas 1-4 was executed by the United States Environmental Protection Agency ("EPA") on May 13, 1996. The proposed prospective purchaser agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against the Monsanto Company (the "Purchaser"). The proposed settlement would require the purchaser to pay EPA a one-time payment of \$150,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the effected area. EPA's response to any comments received will be available for public

inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before June 27, 1996.

**AVAILABILITY:** The proposed prospective purchaser agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Mark Klaiman, Assistant Regional Counsel (RC-3-1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "Monsanto Company, San Gabriel Valley Superfund Sites, Areas 1-4" and "Docket No. 96-09" and should be addressed to Mark Klaiman at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mark Klaiman, Assistant Regional Counsel (RC-3-1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: KLAIMAN.MARK@EPAMAIL.EPA.GOV; phone: (415) 744-1473.

Keith Takata,

*Acting Director, Hazardous Waste Management Division, U.S. EPA, Region IX.*

[FR Doc. 96-13191 Filed 5-24-96; 8:45 am]

**BILLING CODE 6560-50-M**

## FEDERAL COMMUNICATIONS COMMISSION

### FCC Amends Charter of Network Reliability and Interoperability Council

April 18, 1996.

The Federal Communications Commission has renewed and amended the charter of its advisory committee, the "Network Reliability Council" and renamed it the "Network Reliability and Interoperability Council" (the "Council"). Under its amended charter, the Council will develop recommendations to the Commission as to how it might best accomplish responsibilities placed on it by Section 256 of the Telecommunications Act of 1996.

These include developing procedures to oversee coordinated network planning by providers of telecommunications service and participating in the development, by standards-setting organizations, of public telecommunications network interconnectivity standards. The purposes of Section 256 are, first, to promote nondiscriminatory accessibility

by the broadest number of users and vendors of telecommunications products and services to public telecommunications networks through (a) coordinated network planning and design and (b) interconnectivity of public networks and devices to those networks, and, second, to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

The Council will also continue to provide recommendations to the Commission and to the industry that will help assure optimal reliability of the public telecommunications networks.

Building on the accomplishments of the committee to date and in view of the wider purposes of the committee under the amended charter, the Commission has selected members of the Council on the basis of their technical knowledge, the impact of their activities on network reliability and the impact of network availability on the constituencies the members represent. Any new members will be chosen so that the largest possible diversity of interests, given the function to be performed, will be represented.

The continuation of the Council is necessary and in the public interest to prepare recommendations of the FCC as to how it might best accomplish responsibilities placed on it by Section 256 of the Telecommunications Act of 1996. Continuation is also necessary to prepare recommendations to the industry and to the FCC for avoiding, and minimizing the impact of, future network outages. Continuation of the Council is also necessary so that the telecommunications industry and the Commission can effectively monitor and encourage the implementation of the Council's prior recommendations by the industry, and assess the effectiveness of the implemented recommendations on network access during outages and help assure maximum availability of crucial telecommunications services.

For additional information, contact Robert Kimball 202/418-2339.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-13248 Filed 5-24-96; 8:45 am]

**BILLING CODE 6712-01-M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1112-DR]

### Illinois; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Illinois, (FEMA-1112-DR), dated May 6, 1996, and related determinations.

**EFFECTIVE DATE:** May 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Illinois, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1996:

Adams, Brown, Hamilton, Hancock, Menard, Schuyler and Vermilion Counties for Public Assistance and Hazard Mitigation. Cass, Douglas, Jackson, Sangamon, White and Williamson Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 96-13280 Filed 5-24-96; 8:45 am]

**BILLING CODE 6718-02-P**

[FEMA-1112-DR]

### Illinois; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Illinois (FEMA-1112-DR), dated May 6, 1996, and related determinations.

**EFFECTIVE DATE:** May 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective May 17, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 96-13281 Filed 5-24-96; 8:45 am]

BILLING CODE 6718-02-P

[FEMA-1113-DR]

**Montana; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA-1113-DR), dated May 16, 1996, and related determinations.

**EFFECTIVE DATE:** May 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 16, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Montana, resulting from severe storms, flooding, ice jams, and excessive soil saturation on March 9, 1996 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I

hereby appoint David P. Grier, IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

Blain, Flathead, Hill, Liberty, Phillips and Toole Counties for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

*Director.*

[FR Doc. 96-13279 Filed 5-24-96; 8:45 am]

BILLING CODE 6718-02-P

**FEDERAL MARITIME COMMISSION**

**Notice of Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in section 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 224-010730-005.

*Title:* City of Los Angeles/Los Angeles Cruise Ship Terminals, Inc. Terminal Agreement.

*Parties:* City of Los Angeles ("Port"), Los Angeles Cruise Ship Terminals, Inc. ("LACST").

*Filing Agent:* Raymond P. Bender, Esquire, Office of the City Attorney, City of Los Angeles, P.O. Box 151, San Pedro, CA 90733-0151.

*Synopsis:* The proposed amendment permits LACST to have preferential berthing at Berths 91-92 and 93A-C for five years eight months ending December 31, 2000.

*Agreement No.:* 224-200852-002.

*Title:* Port of New Orleans/International Shipholding Corp. Terminal Agreement.

*Parties:* Port of New Orleans, International Shipholding Corporation.

*Filing Agent:* Joseph W. Fritz, Jr., Esquire, Port of New Orleans, P.O. 60046, New Orleans, LA 70160.

*Synopsis:* The proposed amendment extends the term of the Agreement for one year.

Dated: May 21, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 96-13233 Filed 5-24-96; 8:45 am]

BILLING CODE 6730-01-M

**Notice of Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 232-011417-001.

*Title:* Thompson/CIS Agreement.

*Parties:* Thompson Shipping Co., Ltd. ("Thompson"), Cayman Island Shipping, Ltd.

*Synopsis:* The proposed amendment substitutes Tropical Shipping and Construction Co., Ltd. for Thompson by acquiring certain assets of Thompson that are utilized in the U.S. foreign commerce. It also changes the name of the Agreement from Thompson/CIS Agreement to Tropical/CIS Agreement. The parties have requested a shortened review period.

Dated: May 21, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 96-13234 Filed 5-24-96; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 11, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Stephen Elsmar Cone, Jr.*, Lubbock, Texas; to acquire an additional 21.79 percent, for a total of 29.19 percent of the voting shares of Sundown Bankshares, Inc., Sundown, Texas, and thereby indirectly acquire Sundown State Bank, Sundown, Texas.

Board of Governors of the Federal Reserve System, May 21, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-13227 Filed 5-24-96; 8:45 am]

BILLING CODE 6210-01-F

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also

be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Chambers Bancshares, Inc.*, Danville, Arkansas; to acquire 100 percent of the voting shares of ACME Holding Company, Inc., Mulberry, Arkansas, and thereby indirectly acquire Bank of Mulberry, Mulberry, Arkansas.

Board of Governors of the Federal Reserve System, May 21, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-13228 Filed 5-24-96; 8:45 am]

BILLING CODE 6210-01-F

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or

other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for 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 on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *FCFT, Inc.*, Princeton, West Virginia; to engage *de novo* in community development activities through an investment in South Oakwood Plaza Limited Partnership, III, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Tattnall Bancshares, Inc.*, Reidsville, Georgia; to acquire Reidsville Insurance Agency, Inc., Reidsville, Georgia, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. The geographic scope of this activity will be Reidsville, Georgia.

Board of Governors of the Federal Reserve System, May 21, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-13229 Filed 5-24-96; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research

#### Nominations of Outcomes and Effectiveness Research Priority Topics

The Agency for Health Care Policy and Research (AHCPR) is inviting suggestions for priority topics for research related to prevention, diagnosis, treatment and/or management of common diseases and clinical conditions. These suggestions will be considered in AHCPR's plans for future research on the outcomes and effectiveness of health care services. The process AHCPR will employ in establishing priorities and selecting topics for outcomes/effectiveness research is described below.

#### Background

AHCPR is charged under Title IX of the Public Health Service Act (42 U.S.C. 299-299c-6) with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHCPR accomplishes these goals through scientific research that promotes improvements in clinical practice (including the prevention of diseases and other health conditions) and improvements in the organization, financing, and delivery of health care services. Section 1142 of the Social Security Act (42 U.S.C. 1320b-12) enhances and elaborates on AHCPR's program of outcomes and effectiveness research. Outcomes of care and effectiveness research constitutes a major portion of AHCPR's health services research agenda.

#### Outcomes and Effectiveness Research Program

The outcomes and effectiveness research program grew out of awareness of significant unexplained variations in clinical (medical, nursing, and allied health) practice and the inadequacy of scientific evidence to support many common treatments and procedures. Outcomes and effectiveness research encompasses three main areas of emphasis for the prevention, diagnosis, treatment, and management of illness: (1) Determination of the clinical

interventions that are most effective, cost effective, and appropriate; (2) development of methods and data to advance effectiveness research; and (3) dissemination and evaluation of the impact of research findings on clinical practice and outcomes. Other distinctive characteristics of outcomes and effectiveness research include its multidisciplinary nature; use of a variety of research designs (e.g., observational studies, prospective trials, database studies) and analytical methods (e.g., decision analysis, utility analysis, and cost-effectiveness analysis); incorporation of both objective and subjective measures of outcomes; and emphasis on policy relevance.

To date, AHCPR's outcomes and effectiveness research has focused on conditions that meet the following criteria:

- High incidence or prevalence in the general population or in major population subgroups, as defined by age, gender, or ethnicity;
- Controversy or uncertainty about the effectiveness and relative effectiveness of available clinical strategies;
- High cost, whether due to the number of people needing care, high unit cost of care, or high indirect costs;
- Needs, of the Medicare and Medicaid programs; and
- Data available, or readily developed.

In addition, all outcomes and effectiveness research is expected to be:

- Generalizable: Outcomes and effectiveness research is concerned with the outcomes that can be expected in typical patients, receiving care in typical clinical situations, not with outcomes that can be achieved only in selected patients and in controlled clinical situations. Thus, critical features of all outcomes and effectiveness research projects are that the questions have broad applicability and the research designs support wide generalizability of findings.
- Pragmatic: Outcomes and effectiveness research projects address questions that have high clinical and policy significance and are designed with attention to the eventual implementation of findings. They strengthen the science base in ways that can directly contribute to improved patient outcomes and decisionmaking processes (including practice guidelines), and to a more equitable and cost-effective health care system. The usefulness of outcomes and effectiveness research stems, in part, from the requirement that the clinical problems and practices addressed are

common and costly, and from attention to the realities of clinical practice.

- *Patient-Centered*: Outcomes and effectiveness research evaluates health care in terms of outcomes that emphasize the patient's experience and perspective. In addition to survival, morbidity, and complications, outcomes and effectiveness studies consider patient-reported symptom relief, functional capacity, quality of life, satisfaction with care, and economic burden. Demographic, social and cultural characteristics, as well as personal preferences, are important independent variables.

- *Multidisciplinary*: Outcomes and effectiveness research requires theoretical and practical understanding of a wide range of clinical and non-clinical variables that determine the structure, processes, and outcomes of health care. Studies typically involve teams of researchers who bring together the knowledge and methodological expertise of both the clinical and social sciences, plus understanding of the perspectives of patients, providers, and policymakers.

Since 1989, AHCPR has supported significant advances in medical effectiveness research, especially through the set of special projects known as Patient Outcomes Research Teams (PORTs). PORTs are large-scale, 5-year studies designed to determine "what works best" in clinical treatment for common diseases and conditions. PORTs have succeeded in (1) documenting the scientific basis for many common clinical practices, (2) demonstrating the relative benefits of different interventions, and (3) identifying areas for further research. The following clinical conditions addressed by the AHCPR PORT program meet the criteria of being common, costly, and feasible to study:

- Acute Myocardial Infarction
- Ischemic Heart Disease
- Low Back Pain
- Total Knee Replacement
- Hip Fracture and Osteoarthritis
- Low Birth Weight Prevention
- Cataract
- Community-Acquired Pneumonia
- Childbirth
- Schizophrenia
- Stroke Prevention
- Type II Diabetes
- Biliary Tract Disease
- Prostate Disease

In July 1993, AHCPR introduced a new generation of PORT research, known as PORT II. A program announcement inviting applications for PORT IIs was published in the May 13, 1994 "NIH Guide for Grant and

Contracts," Vol. 23, No. 18. Like the original PORTs, PORT IIs are pragmatic, methodologically sophisticated, multidisciplinary projects that focus on patient outcomes for common clinical problems. They differ from the original PORTs by their individualized research strategies and are also distinguished by their expected impact on clinical practice, patient outcomes, and health care policy. PORT IIs focus on the establishment of direct linkages between practice and outcomes and on research methods that facilitate direct comparisons of two or more distinct clinical strategies. Clinical conditions addressed to date by the AHCPR PORT II program include:

- Localized Breast Cancer
- Cardiac Arrhythmia
- End-stage Renal Disease
- Depression
- Prostate Disease
- Infant Dehydration
- Cataract: Preoperative Testing
- Pelvic Inflammatory Disease

In addition to PORTs and PORT IIs, AHCPR has funded approximately 130 other outcomes and effectiveness research clinical studies. For clinical subjects as diverse as AIDS, dental disease, emergency medicine, and cancer, these studies document patterns of practice, describe the natural history of diseases, synthesize the evidence for various clinical strategies, or answer relatively discrete effectiveness questions. Major ongoing program areas focus on pharmaceutical therapy, minority health, and primary care.

#### AHCPR Process for Determining Priority Topics

Topic selection for the original PORT projects was guided by work of the Institute of Medicine (IOM) which was described in the 1990 IOM publication entitled "National Priorities for the Assessment of Clinical Conditions and Medical Technologies." A new process to identify priorities for future outcomes research was discussed at a November, 1995 expert panel meeting. During this meeting, the AHCPR conferred with health services and effectiveness experts, representing multiple disciplines, specialties, and institutions. Alternative approaches for prioritizing topic areas and identification of populations whose major health conditions have not yet been adequately addressed (e.g., young children, the very elderly, women, and ethnic minorities) were considered.

Based on the IOM work and expert discussions, AHCPR has initiated a three stage process for identifying topics:

1. Develop a preliminary list of priority topics and reasons for importance, representing the views of health care providers, insurers, medical and health specialty societies, consumers, and the general public;

2. Convene an expert panel to review and assess the preliminary research priorities and suggested criteria; and

3. Identify which topic areas can be most appropriately addressed using outcomes and effectiveness research methods.

This Notice initiates the first step, that is, a solicitation of topics from health care providers, insurers, health-related societies, consumers, and the public. Written suggestions for research topics that fit within the parameters of AHCPR's outcomes and effectiveness research program are invited.

For each suggestion, the nominee should provide a clear rationale and supporting evidence for the topic's importance and clinical relevance. Responses should be submitted by July 29, 1996 to: Carolyn Clancy, M.D., Acting Director, Center for Outcomes and Effectiveness Research, Agency for Health Care Policy and Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852. All responses will be available for public inspection at the Center for Outcomes and Effectiveness Research, Telephone (301) 594-1485, weekdays between 8:30 a.m. and 5 p.m. The AHCPR will not reply to individual responses, but will consider all submissions in developing the research priorities.

For further information on the outcomes and effectiveness research program, contact: Carolyn Clancy, M.D., Acting Director, Center for Outcomes and Effectiveness Research, Agency for Health Care Policy and Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852; Telephone (301) 594-1485.

Dated: May 16, 1996.  
Clifton R. Gaus,  
*Administrator.*  
[FR Doc. 96-13195 Filed 5-24-96; 8:45 am]  
BILLING CODE 4160-90-M

## Centers for Disease Control and Prevention

### [ANNOUNCEMENT 648]

#### National Institute for Occupational Safety and Health; Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatality Assessment and Control Evaluation (FACE) Model

##### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for cooperative agreements to build State capacity for conducting traumatic occupational fatality surveillance, investigation, and intervention activities through the National Institute for Occupational Safety and Health (NIOSH) Fatality Assessment and Control Evaluation (FACE) Model.

The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, and Surveillance and Data Systems. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

##### Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended.

##### Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

##### Eligible Applicants

Eligible applicants are State Departments of Health, Departments of Labor, Departments of Industry, etc., located within any State or territory of the United States. Program activities, however, may not be carried out by departmental divisions that are responsible for enforcement of occupational safety and health standards. Awards will be limited to

those organizations that can exercise public health authority for intervention into occupational safety and health problems. Only one application per State will be accepted under this announcement. Stronger consideration will be given to those States or territories submitting applications which demonstrate coordination among relevant State agencies.

#### Availability of Funds

Approximately \$600,000 will be available in FY 1996 to fund five to seven awards. It is expected that the awards will range from \$60,000 to \$100,000 with an average award of \$80,000. Individual awards may vary by State, and will be based upon the scope and nature of traumatic occupational fatalities documented by the respondent, and upon proposed personnel, administrative, and associated costs. The awards will be made on or about September 30, 1996, with 12-month budget periods within project periods of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be determined on the basis of satisfactory progress and the availability of funds.

#### Purpose

The purpose of funding these cooperative agreements is to expand the State-based FACE project and significantly strengthen the occupational public health infrastructure. This will be accomplished by integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. The ultimate goal of the project is to reduce traumatic occupational fatalities within the States. Over the past seven years, State level personnel have shown that the NIOSH FACE model for investigation of occupational fatalities can be successfully implemented in the States. The most immediate products of the State level FACE programs have been accurate and timely surveillance systems for detecting traumatic occupational fatalities occurring within the State, fatality investigations identifying causal factors, and recommendations for prevention strategies. This program will permit awardees to efficiently integrate resources for prevention of occupational fatalities at the State and local level. Additionally, States will be encouraged to target occupational traumatic injury research and prevention programs based on specific State priority areas. FACE data will be shared with all award

recipients. The specific objectives for this cooperative agreement are as follows:

1. Develop a timely, comprehensive, multiple source State level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the State.
2. Conduct on-site investigations of specific traumatic occupational fatalities using the NIOSH FACE investigative model.
3. Through case investigations, identify factors common to selected types of traumatic occupational fatalities, leading to development and prioritization of prevention strategies.
4. Develop and disseminate prevention recommendations to reduce the risk of fatal occupational injuries within the State.
5. Develop and implement prevention strategies and projects for reducing State incidence of traumatic occupational injuries and fatalities.

#### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities under B. (CDC/NIOSH Activities).

##### A. Recipient Activities

1. Develop a comprehensive multiple-source, State-level surveillance system for prompt identification and reporting of epidemiologic data on all traumatic occupational fatalities occurring in the State.
2. Conduct in-depth site investigations of targeted occupational fatalities as determined by NIOSH. Currently, falls from elevations and machinery-related incidents are targeted fatality types. These are among the leading causes of work-place fatalities, as identified by national surveillance systems; however, they may change over the term of the agreement. Greatest emphasis must be placed on the determined targets; however, States may choose, in cooperation with NIOSH, to conduct in-depth investigations of other fatality types identified.
3. In specified format, develop and submit to NIOSH a narrative report of each in-depth fatality investigation which describes the fatal incident and includes recommendations for preventing future similar occurrences.
4. Submit first reports of fatalities, investigative narrative reports, and supplementary investigative data electronically to NIOSH through CDC's WONDER/PC system.

5. Evaluate surveillance data and investigative findings to identify specific worker populations to which prevention programs should be addressed.<sup>1</sup>

6. Identify entities such as employers, unions, and trade associations that can effect change in the workplace.

7. Communicate recommended preventions to those who can affect change in the workplace and to those at risk through targeted dissemination.

8. Prepare and submit periodic status reports of activities in designated format and an annual report that summarizes the activities and progress made by the State toward meeting the objectives for the State FACE program.

9. Participate in annual NIOSH-conducted FACE project workshop/conference in Morgantown, West Virginia, or other selected site.

##### B. CDC/NIOSH Activities

1. Provide formats for data reporting forms, coding formats, computer software, and State personnel training for electronic transmission of FACE surveillance and investigative data to the NIOSH data base.

2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks.

3. Provide initial training in procedures and subsequent technical assistance for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments).

4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.

5. Provide technical assistance in the dissemination of summary reports and other published findings to State and local health and labor officials, voluntary health groups, workers, unions, employers and professional organizations.

6. Provide technical assistance in identifying and evaluating effective intervention strategies.

7. CDC will provide funds to purchase one IBM-compatible, Pentium-based personal computer, printer, telecommunications equipment, and needed software for use on appropriate activities related to this cooperative agreement, if necessary.

<sup>1</sup> A Framework for Assessing the Effectiveness of Disease and Injury Prevention. Morbidity and Mortality Weekly Report (MMWR), March 27, 1992/ Vol.41/Jn. The MMWR can be accessed through CDC's DocView, World-Wide Web (<http://www.cdc.gov/epo/mmwr/mmwr.html>).

### Evaluation Criteria

Evaluation of the applications will be based on the following criteria:

1. Ability to communicate the scope and nature of traumatic occupational fatalities in the State as evidenced by the quality of the narrative and documented research and experience. (10%)
2. The qualifications and time commitment of proposed project staff (principal investigator, field investigator (if already identified), administrative and technical support staff). (30%—Total)
  - a. The existence of or potential for acquiring expertise in investigation of occupational fatalities. There should be a full-time field investigator dedicated to the project. (15%)
  - b. The existence of or potential for acquiring safety expertise relevant to formulation of injury prevention strategies. (15%)
3. Applicant's collaborative relationships with various relevant State or territorial agencies or organizations in addressing the problem of traumatic occupational fatality surveillance, investigation, and intervention. (30%—Total)
  - a. The existence of or potential for establishment of a multiple-source network for identification and reporting of traumatic occupational fatalities. (15%)
  - b. The existence of or potential for establishment of relationships with public safety departments, safety compliance agencies, and other entities that can provide background and supplementary data relating to specific fatality cases. (15%)
4. Demonstrated ability to communicate recommended preventions to those at risk through targeted dissemination. (25%)
5. Additional personnel/facilities/equipment already in place that can contribute to successful implementation of the project. (5%)
6. Human Subjects. (Not Scored)
 

Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects. Recommendations on the adequacy of protections include: (1) Protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks

are inadequate as to make the entire application unacceptable.

#### 7. Budget Justification. (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

### Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. Indian tribes are strongly encouraged to request tribal government review of the proposed application. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs or tribal governments have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" State or tribal process recommendations it receives after that date.

### Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance for this program is 93.283.

### Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 (OMB Number 0937-0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E-13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 11, 1996:

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

### Where To Obtain Additional Information

To receive additional written information, call (404) 332-4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 648. You will receive a complete program description and information on application procedures and forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E-13, Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, telephone (404) 842-6546, Internet: [oxb3@opspgo1.em.cdc.gov](mailto:oxb3@opspgo1.em.cdc.gov).

Programmatic technical assistance may be obtained from Ted A. Pettit, State FACE Project Officer, Chief, Trauma Investigations Section, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, Mailstop 180P, 1095 Willowdale Road, Morgantown, WV 26505-2888, telephone (304) 285-5972, Internet: [TAP3@NIOSR1.EM.CDC.GOV](mailto:TAP3@NIOSR1.EM.CDC.GOV), or Dr. Nancy Stout, Acting Chief, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, Mailstop 180P, 1095 Willowdale Road, Morgantown, WV 26505-2888, telephone (304) 285-5916.

Please refer to Announcement Number 648 when requesting information and submitting an application.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19–August 4). Therefore,

CDC suggests the following to get more timely responses to any questions: use Internet/email, follow all instructions in this announcement, and leave messages on the contact person's voice mail.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

Dated: May 17, 1996.

Diane D. Porter,

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96-13196 Filed 5-24-96; 8:45 am]

BILLING CODE 4163-19-P

## Food and Drug Administration

[Docket No. 95N-0200]

### Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair or Reconstruction; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair or Reconstruction." The guidance was prepared by the Center for Biologics Evaluation and Research (CBER) in consultation with the Center for Devices and Radiological Health. The document is intended to provide guidance on FDA's approach to the regulation of living autologous cells manipulated ex vivo and intended for structural repair or reconstruction (Manipulated Autologous cells or MAS cells). The agency is also inviting comments on the guidance.

**DATES:** Written comments by August 26, 1996.

**ADDRESSES:** Submit written requests for single copies of the guidance entitled "Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair or Reconstruction" to the Division of Congressional and Public Affairs (HFM-44), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401

Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail or FAX by calling the CBER Voice Information System at 1-800-835-4709.

Persons with access to the INTERNET may obtain the document in several ways. Users of "Web Browser" software, such as Mosaic, Netscape, or Microsoft Internet Explorer may obtain this document via the World Wide Web by using the following Uniform Resource Locators:

<http://www.fda.gov/cber/cberftp.html>  
<ftp://ftp.fda.gov/CBER/>

The document may also be obtained via File Transfer Protocol (FTP). Requestors should connect to FDA's FTP Server, FTP.FDA.GOV(192.73.61.21). CBER documents are maintained in a subdirectory called "CBER" on the server. Logins with the user name of anonymous are permitted, and the user's e-mail address should be sent as the password. The "READ.ME" file in that subdirectory describes the available documents that may be available as an ASCII text file (\*.TXT), or a WordPerfect 5.1 or 6.x document (\*.w51,wp6), or both. Finally, the guidance can be obtained by "bounce-back e-mail". A message should be sent to: [GDDEXV@al.cber.fda.gov](mailto:GDDEXV@al.cber.fda.gov).

Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM-630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

**SUPPLEMENTARY INFORMATION:**

FDA had recently become aware of the clinical use of MAS cell products. MAS cells are defined as cells derived from a patient's tissues, which are manipulated ex vivo, and then implanted locally into the same patient with the intent of providing repair or reconstruction of a structure. The repair

and reconstruction does not involve systemic action by the MAS cell product. Examples of MAS cells include chondrocytes expanded ex vivo and implanted in focal cartilage defects (see 60 FR 36808 at 36809 for additional information and references). The commercialization and distribution of expanded cartilage cells to provide a potential solution to a relatively common medical injury suggested that numerous patients could be receiving these cells within a short period of time.

In light of the potential public health significance of the MAS cell products, the growth of a commercial industry potentially affecting a large number of patients, and the need to decide which existing regulatory authorities (e.g., device versus biologics) would be appropriate to apply or whether a new regulatory framework was required, the agency held a public hearing on November 16 and 17, 1995 (60 FR 36808). The intent of the meeting was to solicit information on the nature and diversity of these products, and to receive comments on the formulation and implementation of any new regulatory requirements. The public hearing had 8 panels with 24 speakers, and there was general consensus that the establishment, the production process, and the MAS cell products should be of the highest quality. The speakers and attendees also agreed that MAS cell products should benefit the patient, but there was little consensus on the appropriate mechanism that should be used to show this benefit.

In the Federal Register of March 7, 1996 (61 FR 9185), after reviewing the comments and further internal discussions, the agency published a notice announcing a Commissioner's roundtable to be held on March 15, 1996. The roundtable was held to present the elements of a planned regulatory framework intended to ensure patient safety and to demonstrate patient benefit, while accommodating the development of these therapies and the need for a flexible regulatory approach. Many of the concepts presented at the roundtable were derived from ongoing FDA Reinventing Government (REGO) initiatives. In the same Federal Register notice, FDA also invited the submission of written comments concerning FDA's draft plan for the regulation of MAS cells. Based on the discussions at the March 15, 1996, roundtable and on a review of all comments received, FDA has decided that, in light of the existing and increased flexibility provided by REGO initiatives, FDA will apply the regulatory framework as detailed and explained in the guidance. CBER is

designated as the agency component with primary jurisdiction for the premarket review and regulation of MAS cell products. The products are subject to licensure as biological products under section 351 of the Public Health Service Act (42 U.S.C. 262).

The guidance document includes discussions on the following: (1) Background and recent events; (2) regulatory plan, including: A summary and discussions of products to be regulated, registration and inspection of establishments, clinical studies, investigational phase and requirements for premarket approval, cost recovery, marketing application, chemistry, manufacturing and controls section of a biologics license application, formulation of an intercenter working group, contracting of manufacture, lot release, and current good manufacturing practice requirements; (3) registration and application submission; and (4) submission of comments.

As with other procedural guidance documents, FDA does not intend this guidance to be all-inclusive. Alternative approaches could be warranted in specific situations, and certain aspects might not be applicable in all situations. If an applicant believed a procedure described in this guidance was inapplicable to a specific situation for a particular product, the applicant could provide, for CBER's consideration, information supporting an alternative process. If an applicant chooses to use an alternative process, the applicant may wish to discuss the matter further with the agency to prevent expenditure of money and resources on activities that later might be determined to be inappropriate to FDA. Although this guidance does not create or confer any rights for or on any person, and does not operate to bind FDA or the public, it does represent the agency's current thinking on the regulation of MAS cell products.

Interested persons may, on or before (*insert date 90 days after date of publication in the Federal Register*), submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and information are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments on this document will be considered in determining whether revisions to the guidance are warranted.

Dated: May 22, 1996.  
William K. Hubbard,  
*Associate Commissioner for Policy  
Coordination.*  
[FR Doc. 96-13386 Filed 5-23-96; 11:13 am]  
BILLING CODE 4160-01-F

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

[Docket No. FR-3917-N-78]

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: July 29, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 9116, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Betty Belin, Telephone number (202) 708-0614 (this is not a toll-free number) for copies of the proposed forms and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate

automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Multifamily Coinsurance Claims Package (f).

*OMB Control Number:* 2502-0420.

*Description of the need for the information and proposed use:* Under Statue 12 USC 1715z-9 and Title II, Section 244 of the National Housing Act authorizes the Secretary of HUD to coinsure eligible multifamily mortgages against default. In addition to complying with statutory requirements, the information collected is used by HUD to determine the claim amount due the mortgages. The main purpose for the forms is for lenders to file a claim for insurance benefits.

*Agency form numbers:* HUD 27008, 27009B, 27009D, 27009F.

*Members of affected public:* Mortgagees participating in Section 233(f).

An estimation of the total numbers of hours needed to prepare the information collection is 5, the number of respondents is 5, frequency of response is 1, and the hours of response is 5.

*Status of the proposed information collection:* Reinstatement with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 20, 1996.

Nicolas P. Retsinas,

*A/S Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 96-13238 Filed 5-24-96; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. FR-3917-N-81]

### Office of Administration; Submission for OMB Review; Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: June 27, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should

refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the

information; (3) the OMB approval number, is applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 17, 1996.  
David S. Cristy,  
*Acting Director, Information Resources Management Policy and Management Division.*

Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Statement and Voucher for Basic Annual Contributions—Leased Housing.  
*Office:* Public and Indian Housing.  
*OMB Approval Number:* 2577-0061.  
*Description of the Need for the Information and Its Proposed Use:* This form is needed to provide essential financial information on the operations for Public Housing Agencies (PHAs), which is used for multiple purposes by HUD, including identification of debts owed to the Department.  
*Form Number:* HUD-52981.  
*Respondents:* State, Local, or Tribal Government and Not-For Profit Institutions.  
*Frequency of Submission:* Annually.  
*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-52981 .....	125		1		.88		110

*Total Estimated Burden Hours:* 110.  
*Status:* Reinstatement, without changes.

*Contact:* Joan DeWitt, HUD, (202) 708-1872, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: May 17, 1996.

[FR Doc. 96-13235 Filed 5-24-96; 8:45 am]

BILLING CODE 4210-01-M

**[Docket No. FR3917-N-80]**

**Office of Administration; Submission for OMB Review; Comment Request**

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: June 27, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30 days from the date of this Notice. Comments should refer to the proposal by name and/or

OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total

number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 17, 1996.  
David S. Cristy,  
*Acting Director, Information Resources Management Policy and Management Division.*

Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Lease and Sale of HUD-Acquired Single Family Properties for the Homeless.  
*Office:* Housing.  
*OMB Approval Number:* 2502-0412.  
*Description of the Need for the Information and its Proposed Use:* The purpose of this program is to make available, through sale or lease, to applicants approved by HUD, certain HUD-acquired single family properties for use in housing the homeless.  
*Form Number:* None.

*Respondents:* State, Local or Tribal Government and Not-For Profit Institutions.

*Frequency of Submission:* On Occasion.  
*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection .....	300		1		2		600

*Total Estimated Burden Hours:* 600.  
*Status:* Reinstatement, without changes.

*Contact:* Marilyn Hart, HUD, (202) 708-4767 x2319, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated May 17, 1996.  
[FR Doc. 96-13236 Filed 5-24-96; 8:45 am]  
BILLING CODE 4210-01-M

[Docket No. FR 3917-N-79]

**Office of Administration; Submission for OMB Review: Comment Request**

**AGENCY:** Office of Administration, HUD.  
**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

**DATES:** Comments due date: June 27, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Management and Budget, Room

10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement;

and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 13, 1996.

David S. Cristy,

*Acting Director, Information Resources Management Policy and Management Division.*

Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Solicitation Mailing List Application.

*Office:* Administration, Office of Procurement and Contracts.

*OMB Approval Number:* 2535-0086.

*Description of the Need for the Information and Its Proposed Use:* This information will be used by potential sources to indicate their particular field(s) of expertise or interest. HUD will use this information to target the types of solicitations that organizations receive as a result of being placed on the Solicitation Mailing List.

*Form Number:* HUD-24010 and SF-129.

*Respondents:* Business or Other For-Profit, Individuals or Households, State, Local, or Tribal Government, and Non-Profit Institutions.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection .....	1,200		1		.17		200

*Total Estimated Burden Hours:* 200.  
*Status:* Extension, no changes.

*Contact:* Larry S. DeWalt, HUD, (202) 708-0294, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: May 13, 1996.  
[FR Doc. 96-13237 Filed 5-24-96; 8:45 am]  
BILLING CODE 4210-01-M

**Office of Administration; Submission for OMB Review: Comment Request**

[Docket No. FR-3950-N-05]

**AGENCY:** Office of Administration, HUD.  
**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

**DATES:** Comments due date: June 27, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and

Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable;

(6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 13, 1996.

David S. Cristy,

*Acting Director, Information Resources Management Policy and Management Division.*

Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Notice of Application for Designation as a Single

Family Foreclosure Commissioner (FR-3950).

*Office:* General Counsel.

*OMB Approval Number:* 2510-0012.

*Description of the Need for the Information and its Proposed Use:* Under the Single Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial Power of Sale of single family HUD-held mortgages and may appoint Foreclosure Commissioners to do this. HUD needs the Notice and resulting applications for compliance with the Act's requirements that commissioners be qualified. Most respondents will be attorneys, but anyone may apply.

*Form Number:* None.

*Respondents:* Business or Other For-Profit and Individuals or Households.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	BBurden hours
Applications, First Year .....	750		1		.50		375
Applications, Later Years .....	250		1		.50		100

*Total Estimated Burden Hours:* 475.  
*Status:* Extension with changes.

*Contact:* Bruce S. Albright, HUD, (202) 708-0080, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: May 13, 1996.

[FR Doc. 96-13239 Filed 5-24-96; 8:45 am]

BILLING CODE 4210-01-M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[CA-912-0777-52-241A]

**Extension of Nomination Period for Bakersfield, Susanville, and Ukiah Resource Advisory Councils, California**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to extend the nomination period for three Bureau of Land Management Resource Advisory Councils in Bakersfield, Susanville, and Ukiah, California. This nomination period was announced in a Federal Register notice published April 4, 1996, and by press releases issued throughout California.

Announcement of this extension was circulated to BLM's interested publics in a news release issued May 21, 1996.

Nominations for Resource Advisory Councils should be sent to the appropriate BLM office: Bakersfield: Ron Fellows, 3801 Pegasus Drive, Bakersfield, CA 95482. Linda Hansen, 2950 Riverside Drive, Susanville, CA 96130. Renee Snyder, 2550 N. State Street, Ukiah, CA 95482.

**DATES:** The extended nomination period will close June 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Tony Staed, Bureau of Land Management, 2800 Cottage Way, Room 2845, Sacramento, CA 95825, 916-979-2835.

Tony Staed,

*Deputy State Director, External Affairs.*

[FR Doc. 96-13271 Filed 5-24-96; 8:45 am]

BILLING CODE 4310-40-P

[WY-060-1310-00]

**Gillette South Assessment Area, WY**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for coalbed methane development projects

in the Gillette South Assessment Area in Campbell County, Wyoming.

**SUMMARY:** The Bureau of Land Management (BLM) under the National Environmental Policy Act (NEPA) must analyze the impacts of actions we permit on Federal lands and minerals. As part of this analysis, the cumulative affects of the proposed action and other activities occurring in the area must be considered. We have completed three Environmental Assessments (EA), (Pistol Point, Marquiss, and Lighthouse) to address proposed coalbed methane (CBM) development. On these projects, we found there would not be significant impacts as a result of the development and were able to write a Decision Record with a Finding of No Significant Impact (FONSI).

Shortly after the Lighthouse decision was issued in June of 1995, several companies came forward with additional proposals. Torch operating, successor operator in the Marquiss field proposed 40 additional wells; Western Gas Resources proposed 60 to 100 wells in the Lighthouse area; and Petrox Inc., proposed 35 wells within the Lighthouse area. DCD, Inc., and Duncan Oil have proposed about 10 wells. In addition to the new wells proposed

impacts such as water drawdown and water production is proceeding at a rate greater than that predicted in the EAs.

**DATES:** Comments to be considered in the draft EIS should be submitted by June 28, 1996. The draft EIS should be available for public review by mid September of 1996.

**ADDRESSES:** Questions or concerns should be addressed to Richard Zander in the Buffalo Resource Area Office, 189 North Cedar, Buffalo, Wyoming 82834.

**FOR FURTHER INFORMATION CONTACT:** Richard Zander, phone: 1-800-301-3483.

**SUPPLEMENTARY INFORMATION:** Shortly after the Lighthouse decision was issued in June of 1995, several companies came forward with proposals for approximately 200 additional wells. In addition to the new well proposals impacts were progressing at a faster rate than those predicted in the EAs. Marquiss was modeled at 6 gpm and Lighthouse was modeled at 11 gpm initially declining to an average of 7 gpm. New technological developments such as underreaming the open hole completion in the coal and fracing the coal have led to increased gas production and increased water production. We are seeing 15 to 25 gpm which is a doubling or tripling of the water production in both project areas, with no indication of any decline in water production. This is substantially greater than what was modeled for the NEPA analysis. In Marquiss, because of increased pump rates, static water level drawdowns have occurred in 3 years rather than the 10 years predicted in the NEPA analysis. We do not know if they will go lower. Model assumptions that water production would decline after 1 year are apparently not correct. Torch Operating believes 2 to 3 years may be more realistic. Since water production began in early 1993, we currently have 3 years of production. Torch Operating has stated they are at the point of balancing their production for optimum gas production and water production rates have declined from 25 gpm to 20 gpm.

Monitoring data from one of the shallow wells in the Marquiss project area is possibly showing a decline in the static water level in a sandstone aquifer above the coal. We have talked with the State Engineers Office about this and feel it is too early to determine if there is communication occurring between the two zones. We are closely watching this activity within the aquifers. This type of occurrence makes it imperative that we continue forward with the monitoring program laid out in the Lighthouse EA.

Lighthouse was modeled as a 5-year progressive project. Proposals by Western Gas Resources, Petrox, Inc., DCD, Inc., would possibly shorten the development timeframe. Western Gas has assumed responsibility for the southern two thirds of the project area from American Oil and Gas. They are currently drilling stratigraphic tests on the Durham Buffalo Ranch in Township 45 North, Range 71 and 72 West. We will not do any additional computer groundwater modeling on the areas south of Gillette. It is not feasible to credibly or accurately model as large an area we are talking about with the data available. As variables increase, accuracy decreases. We propose to extrapolate what we have modeled and what we have monitored to make a prediction on expected impacts.

We support the landowner/industry group working on a Water Well Mitigation Agreement that is designed to address the question of potential impacts to water wells, so significant impacts do not occur and we intend to utilize this agreement in the development of the proposed action for the EIS. However, static water level declines are not the only issue we need to deal with. The increased rate of development, increased rates of production, increased surface water discharges, and increased area of disturbance are also questions that need to be addressed. We must evaluate the potential for cumulative impacts as a result of coal and coalbed methane development in the same general area at a time when development areas and production levels for both are increasing.

Dated: May 21, 1996.

Alan R. Pierson,  
State Director.

[FR Doc. 96-13272 Filed 5-24-96; 8:45 am]

BILLING CODE 4310-01-P

**[NV-050-1020-001]**

**Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Resource Advisory Council meeting locations and times.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council

will be held as indicated below. The agenda includes a public comment period, discussion of laws and regulations that pertain to grazing, and an update of standards and guidelines.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647-5000.

**DATES, TIMES:** Dates are June 10 and 11, 1996, from 8 a.m. to approximately 4:30 p.m. The council will meet at the Desert Research Institute, located at 755 E. Flamingo, Las Vegas, NV 89119. The public comment period will be on June 10 from 10 a.m. to noon.

**SUPPLEMENTARY INFORMATION:** The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands. The council will vote on recommendations for Standards and Guidelines that will be presented to the State Director, Nevada on June 11.

**FOR FURTHER INFORMATION CONTACT:** Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647-5000.

Dated: May 15, 1996.

Gary L. Ryan,

Associate District Manager.

[FR Doc. 96-13289 Filed 5-24-96; 8:45 am]

BILLING CODE 4310-HC-M

**[AZ-046-1430-01; AZA 23060]**

**Public Land Order No. 7197; Withdrawal of Public Lands for the Waterman Mountains Area of Critical Environmental Concern; Arizona**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws public lands from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect the endangered Nichol Turk's Head Cactus

within the Waterman Mountains Area of Critical Environmental Concern. The lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Tony Herrell, BLM Tucson Resource Area, 12661 East Broadway, Tucson, Arizona 85748, 520-722-4289.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Waterman Mountains Area of Critical Environmental Concern:

Gila and Salt River Meridian

T. 12 S., R. 9 E.,

Sec. 29, lots 3 and 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;

Sec. 30, lots 1 to 5, inclusive, lot 9, that portion of lot 10 lying outside of Mineral Patent No. 02-79-0008, lot 11, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ , and SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 31, lots 3 and 4, those portions of lots 5 and 8 lying outside of Mineral Patent No. 02-79-0008, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ ;

Sec. 32, Mineral Survey No. 3885;

Sec. 33, N $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ , and W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ .

T. 13 S., R. 9 E.,

Sec. 5, W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 6, lots 1 to 7, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , and SE $\frac{1}{4}$ .

The areas described aggregate 2,335.21 acres in Pima County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 20, 1996.

Bob Armstrong,

*Assistant Secretary of the Interior.*

[FR Doc. 96-13200 Filed 5-24-96; 8:45 am]

**BILLING CODE 4310-32-P**

## Fish and Wildlife Service

### Issuance of Permit for Incidental Take of Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

On July 14, 1995, a notice was published in the Federal Register (60 FR 36305) that an application had been filed with the U.S. Fish and Wildlife Service (Service) by Washington County, Utah, for a permit to incidentally take, pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), threatened desert tortoise (*Gopherus agassizii*) in conjunction with otherwise legal activities including building construction, in portions of Washington County pursuant to the Implementation Agreement that implements the Washington County Habitat Conservation Plan.

Notice is hereby given that on February 23, 1996, as authorized by the provisions of the Act, the Service issued an incidental take permit PRT-811471 to the above-named party subject to certain conditions set forth therein. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policies set forth in the Act, as amended.

Additional information on this permit action may be obtained by contacting

the Assistant Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524-5001, between the hours of 7:30 a.m. and 4:30 p.m. weekdays.

Dated: May 20, 1996.

Terry Terrell,

*Deputy Regional Director Denver, Colorado, U.S. Fish and Wildlife Service*

[FR Doc. 96-13290 Filed 5-24-96; 8:45 am]

**BILLING CODE 4310-55-M**

## D'Arbonne National Wildlife Refuge, Union Parish, LA; Right-of-Way Pipeline Application

Notice is hereby given as required under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185) as amended by Public Law 93-153, that NorAm Gas Transmission Company has applied for a right-of-way for a 20-inch pipeline to be located on lands of the D'Arbonne National Wildlife Refuge in Union Parish, Louisiana, described as follows: (See Exhibits A through G Attached)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** The Fish and Wildlife Service is in the process of issuing a right-of-way permit across the D'Arbonne National Wildlife Refuge in Union Parish, Louisiana.

**SUMMARY:** The notice advises the public that the Fish and Wildlife Service plans to issue a permit to NorAm Gas Transmission Company, for a 20-inch pipeline on a portion of the D'Arbonne National Wildlife Refuge.

**EFFECTIVE DATE:** June 27, 1996.

### FOR FURTHER INFORMATION CONTACT:

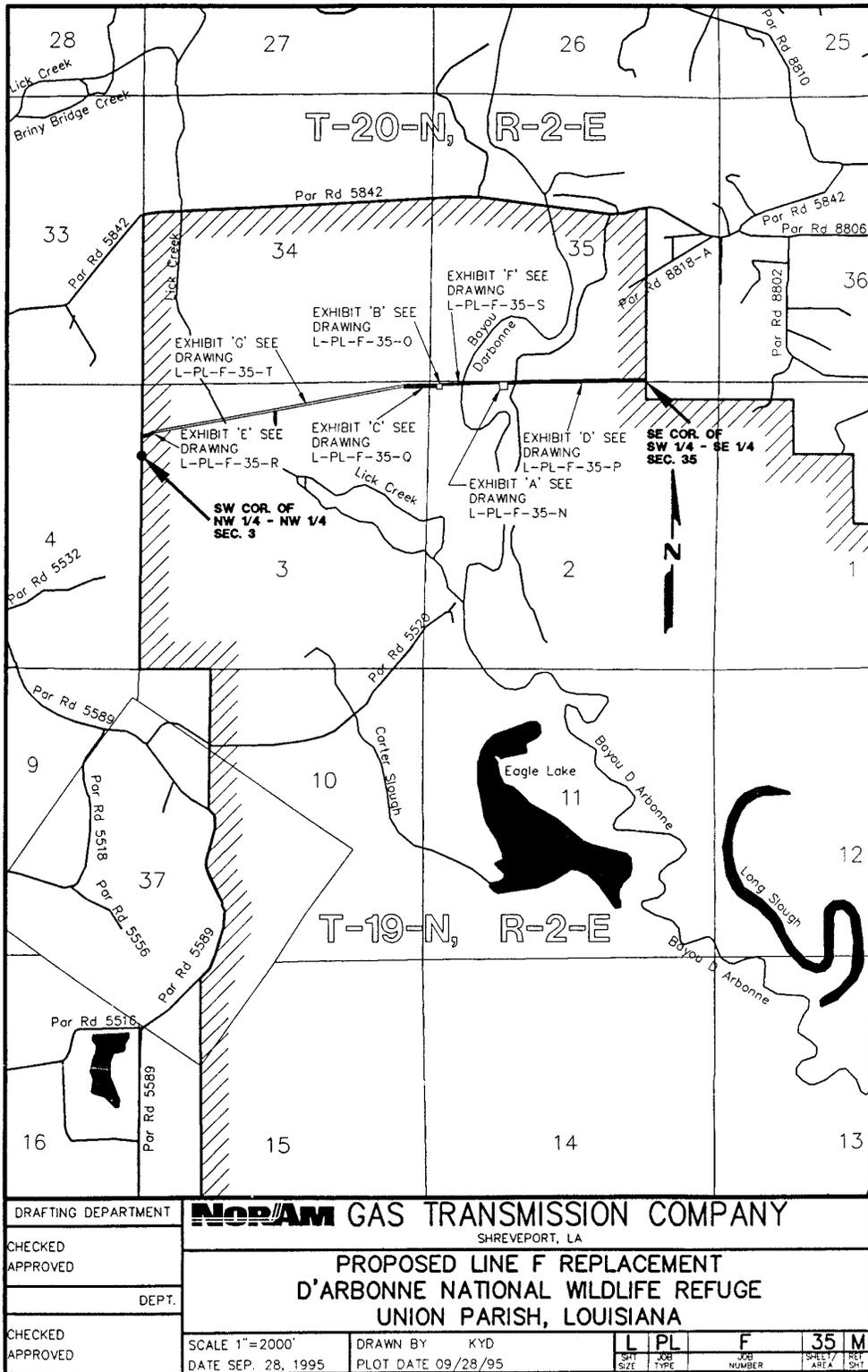
Mr. Craig McBroome, Realty Specialist, Division of Realty, Arkansas Field Office, c/o Cache River National Wildlife Refuge, Route 2, Box 126-T, Augusta, Arkansas 72006, Telephone (501) 347-5947.

Dated: May 13, 1996.

Noreen K. Clough,

*Regional Director.*

**BILLING CODE 4310-55-M**



DRAFTING DEPARTMENT		<b>NORAM</b> GAS TRANSMISSION COMPANY			
CHECKED APPROVED		SHREVEPORT, LA			
DEPT.		PROPOSED LINE F REPLACEMENT			
CHECKED APPROVED		D'ARBONNE NATIONAL WILDLIFE REFUGE			
		UNION PARISH, LOUISIANA			
SCALE 1"=2000'		DRAWN BY KYD		L	F
DATE SEP. 28, 1995		PLOT DATE 09/28/95		35	M
				SHEET / AREA	RET / SHT

Description of Proposed 0.52 Acre Temporary Work Space For Proposed Line "F" Replacement to be Acquired From  
D'Arbonne National Wildlife Refuge in Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana

EXHIBIT 'A'

A 0.52 acre temporary work space in the Northeast Quarter of Section 2, Township 19 North, Range 2 East; Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at a 2 inch iron pipe at the Northeast corner of the Northwest Quarter of the Northeast Quarter of said Section 2, point being on the East property line of the D'arbonne National Wildlife Refuge;

THENCE West 2549.8 feet and North 8.7 feet to the POINT OF BEGINNING.

THENCE South 88 degrees 09'04" West, 150.0 feet to a point;

THENCE South 01 degree 50'56" East, 150.0 feet to a point;

THENCE North 88 degrees 09'04" East, 150.0 feet to a point;

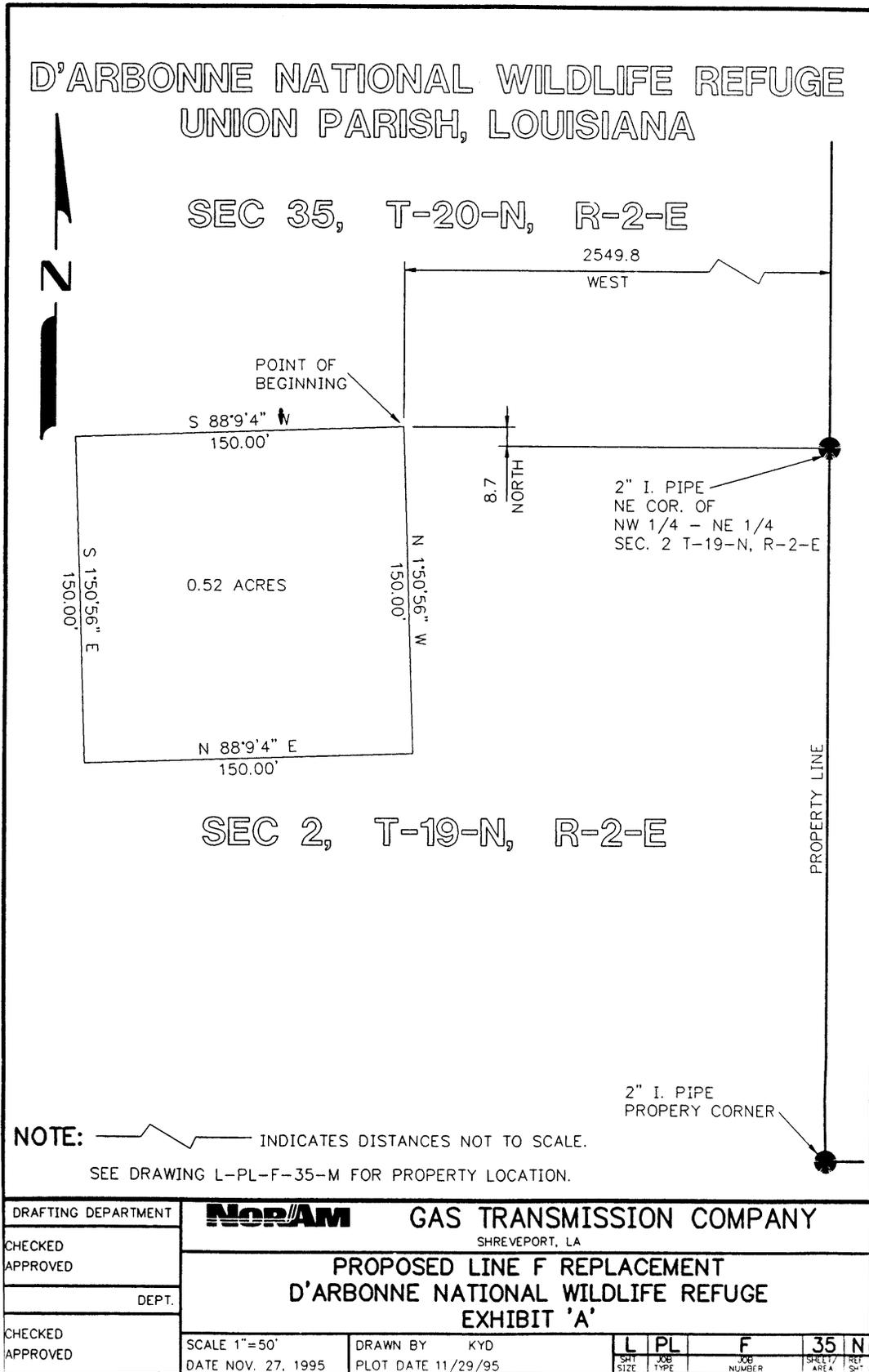
THENCE North 01 degree 50'56" West, 150.0 feet to the Point of Beginning, containing 0.52 acres more or less for a temporary work space.

A 110 foot wide strip containing 0.38 acres more or less on the South side of said temporary work space will revert back to the D'arbonne National Wildlife Refuge after construction.

Note: See drawing L-PL-F-35-N for detail.

Date: November 29, 1995.

BILLING CODE 4310-55-M



Description of a 0.23 Acre Temporary Work Space for Proposed Line "F" Replacement to be Acquired From D'arbonne National Wildlife Refuge in Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'B'

A 0.23 acre temporary work space in the Northwest Quarter of Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at a 2 inch iron pipe at the Northeast corner of the Northwest Quarter of the Northeast Quarter of said Section 2, point being on the East property line of the D'arbonne National Wildlife Refuge;

THENCE West 3751.2 feet and South 31.9 feet to the POINT OF BEGINNING;

THENCE North 89 degrees 47'11" West, 100.0 feet to a point;

THENCE South 0 degrees 12'49" West, 100.0 feet to a point;

THENCE South 89 degrees 47'11" East, 100.0 feet to a point;

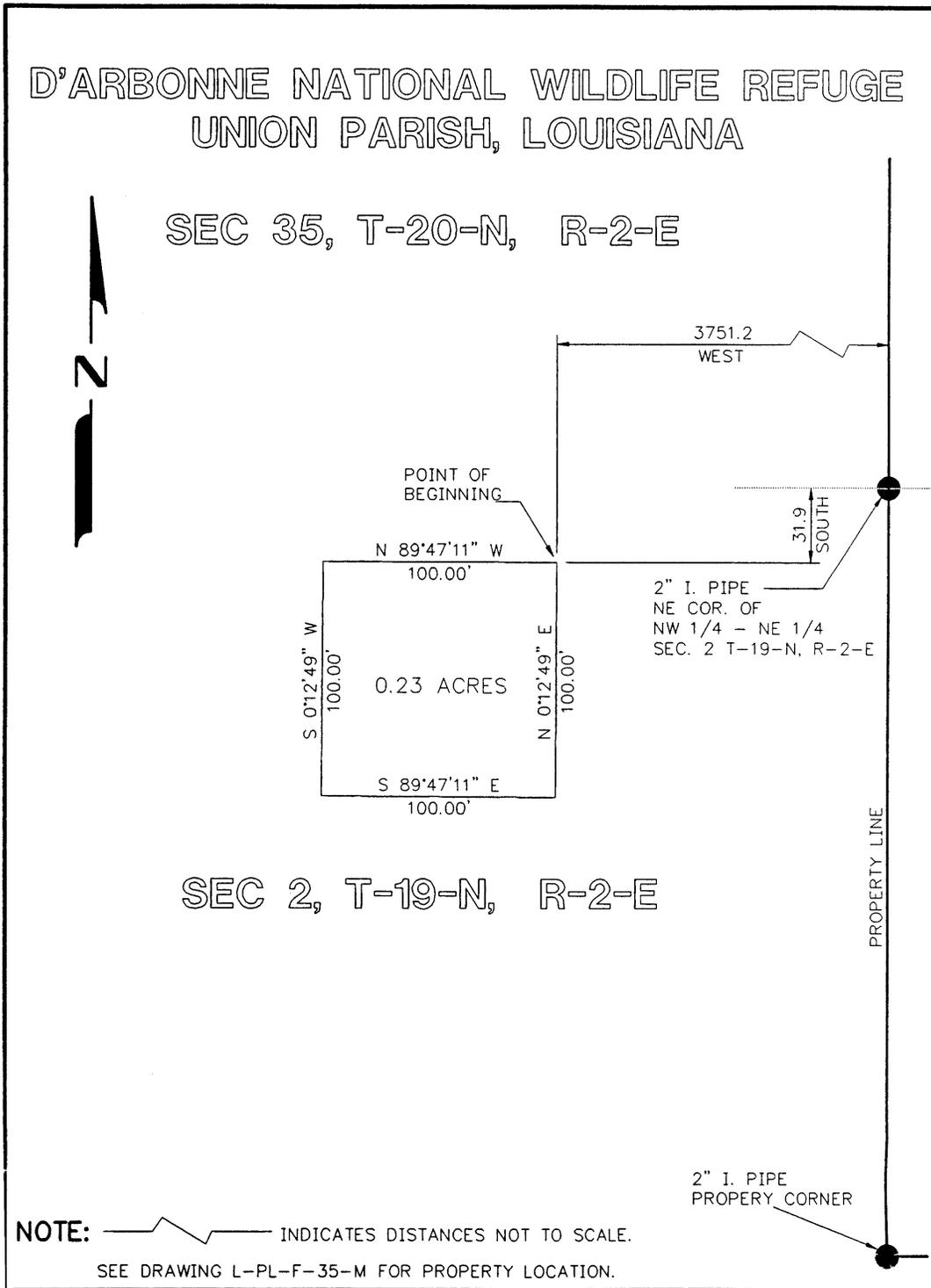
THENCE North 0 degrees 12'49" East, 100.0 feet to the Point of Beginning, containing 0.23 acres more or less for a temporary work space.

A 60 foot wide strip containing 0.14 acres more or less on the South side of said temporary work space will revert back to the D'arbonne National Wildlife Refuge after consideration.

Note: See drawing L-PL-F-35-O for detail.

Date: 11-29-95.

BILLING CODE 4310-55-M



DRAFTING DEPARTMENT	<b>NorAm</b> GAS TRANSMISSION COMPANY SHREVEPORT, LA				
CHECKED APPROVED	<b>PROPOSED LINE F REPLACEMENT D'ARBONNE NATIONAL WILDLIFE REFUGE EXHIBIT 'B'</b>				
DEPT.	SCALE 1"=50'	DRAWN BY KYD	L	PL	F
CHECKED APPROVED	DATE NOV. 27, 1995	PLOT DATE 11/28/95	35	0	
	SHT SIZE	JOB TYPE	JOB NUMBER	SHEET AREA	TOT SH

Description of Proposed Temporary Right of Way for Proposed Line "F" Replacement to be Acquired From D'Arbonne National Wildlife Refuge in Sections 2 and 3, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'C'

A proposed temporary right of way across part of the lands of D'Arbonne National Wildlife Refuge in the Northwest Quarter of Section 2 and the Northeast Quarter of Section 3, Township 19 North, Range 2 East, Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at a 2 inch iron pipe at the Northeast Corner of the Northwest Quarter of the Northeast Quarter of Section 2, point being on the East property line of the D'Arbonne National Wildlife Refuge.

THENCE West 3851.2 feet and South 31.5 feet to the POINT OF BEGINNING.

THENCE South 0 degrees 12'49" West, 75.00 feet to a point;

THENCE North 89 degrees 47'11" West, 104.39 feet to a point;

THENCE South 88 degrees 56'31" West, 438.94 feet to a point;

THENCE South 79 degrees 34'17" West, 57.77 feet to a point;

THENCE North 0 degrees 12'49" East, 76.31 feet to a point;

THENCE North 79 degrees 34'17" East, 49.83 feet to a point;

THENCE North 88 degrees 56'31" East, 445.92 feet to a point;

THENCE South 89 degrees 47'11" East, 105.22 feet to the Point of Beginning, containing 1.03 acres more or less or 36.90 rods of Right of Way to be acquired.

A 35 foot wide strip containing 0.48 acres more or less on the South side of said temporary right of way will revert back to the D'Arbonne National Wildlife Refuge after construction.

Note: See drawing L-PL-F-35-Q for detail.

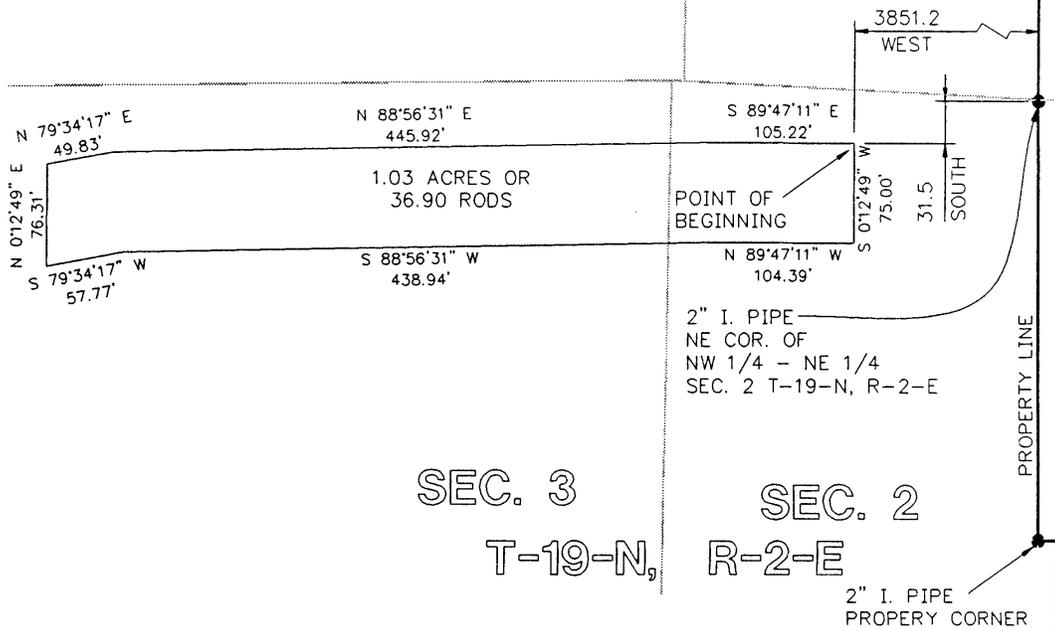
Date: 11-29-95.

**BILLING CODE 4310-55-M**

# D'ARBONNE NATIONAL WILDLIFE REFUGE UNION PARISH, LOUISIANA



T-20-N, R-2-E  
SEC. 34 SEC. 35



SEC. 3 SEC. 2  
T-19-N, R-2-E

**NOTE:** INDICATES DISTANCES NOT TO SCALE.  
SEE DRAWING L-PL-F-35-M FOR PROPERTY LOCATION.

DRAFTING DEPARTMENT	<b>NORAM</b> GAS TRANSMISSION COMPANY SHREVEPORT, LA		
CHECKED APPROVED	<b>PROPOSED LINE F REPLACEMENT D'ARBONNE NATIONAL WILDLIFE REFUGE EXHIBIT 'C'</b>		
DEPT.	SCALE 1"=100'	DRAWN BY KYD	DATE NOV. 28, 1995
CHECKED APPROVED	PLOT DATE 11/29/95	L PL F 35 Q	SHEET / TOTAL AREA

Description of Proposed 60 Foot Wide Right of Way for Proposed Line "F" Replacement to be Acquired from D'Arbonne National Wildlife Refuge in Section 35, Township 20 North, Range 2 East and Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'D'

A 60 foot wide right of way across part of the lands of the D'Arbonne National Wildlife Refuge in the Southeast Quarter of Section 35, Township 20 North Range 2 East and the Northeast Quarter of Section 2, Township 19 East, Union Parish Louisiana, being more particularly described as follows:

BEGINNING at a 2 inch iron pipe at the Southeast corner of the Southwest Quarter of the Southeast Quarter of said Section 35, point being on the East property line of the D'Arbonne National Wildlife Refuge;

THENCE South 0 degrees 24'30" East, 1.4 feet to a point;

THENCE South 88 degrees 52'27" West, 914.19 feet to a point;

THENCE South 89 degrees 20'50" West, 1110.68 feet to a point;

THENCE South 87 degrees 35'30" West, 524.12 feet to a point;

THENCE North 1 degrees 50'56" West, 60.00 feet to a point;

THENCE North 87 degrees 35'30" East, 524.45 feet to a point;

THENCE North 89 degrees 20'50" East, 1111.36 feet to a point;

THENCE North 88 degrees 52'27" East, 914.69 feet to a point;

THENCE South 0 degrees 24'30" East, 58.6 feet to a Point of Beginning, containing 3.51 acres more or less or 154.58 rods of Right of Way to be acquired.

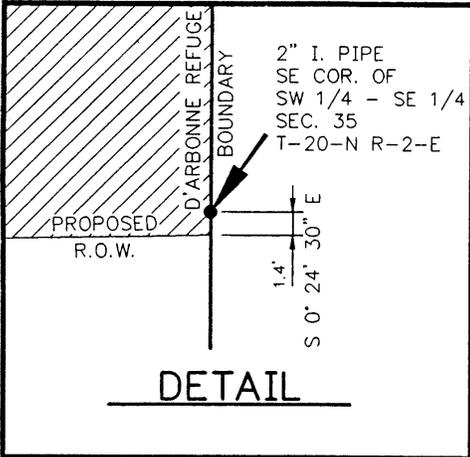
A 20 foot wide strip containing 1.17 acres more or less on the south side of said right of way will revert back to the D'Arbonne National Wildlife Refuge after construction.

Note: See drawing L-PL-F-35-P for detail.

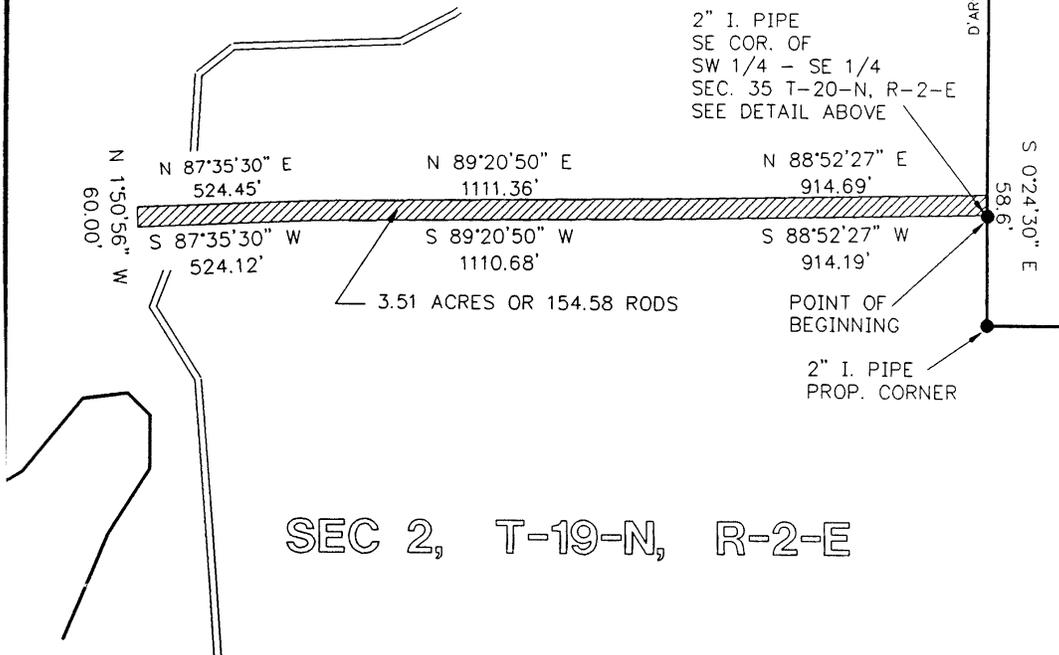
Date: 11-29-95.

BILLING CODE 4310-55-M

# D'ARBONNE NATIONAL WILDLIFE REFUGE UNION PARISH, LOUISIANA



SEC 35, T-20-N, R-2-E



**NOTE:** SEE DRAWING L-PL-F-35-M FOR PROPERTY LOCATION.

DRAFTING DEPARTMENT  CHECKED APPROVED  DEPT.  CHECKED APPROVED	<b>NORAM</b> GAS TRANSMISSION COMPANY SHREVEPORT, LA <b>PROPOSED LINE F REPLACEMENT                  D'ARBONNE NATIONAL WILDLIFE REFUGE                  EXHIBIT 'D'</b>																
SCALE 1"=400' DATE NOV. 27, 1995	DRAWN BY KYD PLOT DATE 11/29/95																
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">L</td> <td style="width: 25%;">PL</td> <td style="width: 25%;">F</td> <td style="width: 25%;">35</td> </tr> <tr> <td style="font-size: small;">SHT SIZE</td> <td style="font-size: small;">JOB TYPE</td> <td style="font-size: small;">JOB NUMBER</td> <td style="font-size: small;">SHEET/ AREA</td> </tr> </table>	L	PL	F	35	SHT SIZE	JOB TYPE	JOB NUMBER	SHEET/ AREA	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">P</td> <td style="width: 25%;">35</td> <td style="width: 25%;">P</td> <td style="width: 25%;">P</td> </tr> <tr> <td style="font-size: small;">RET CHG</td> <td style="font-size: small;">RET CHG</td> <td style="font-size: small;">RET CHG</td> <td style="font-size: small;">RET CHG</td> </tr> </table>	P	35	P	P	RET CHG	RET CHG	RET CHG	RET CHG
L	PL	F	35														
SHT SIZE	JOB TYPE	JOB NUMBER	SHEET/ AREA														
P	35	P	P														
RET CHG	RET CHG	RET CHG	RET CHG														

Description of Proposed Temporary Right of Way for Proposed line "F" Replacement to be Acquired From D'Arbonne National Wildlife Refuge in Section 3, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'E'

A proposed temporary right of way across part of the lands of D'Arbonne National Wildlife Refuge in the Northwest Quarter of the Northwest Quarter of Section 3, Township 19 North, Range 2 East, Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at an iron rod with a cap at the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 3, point being on the West property line of the D'Arbonne National Wildlife Refuge.

THENCE North 0 degrees 26'18" East, 3746.6 feet to a POINT OF BEGINNING;

THENCE North 79 degrees 30'38" East, 126.25 feet to a point;

THENCE North 64 degrees 30'38" East, 104.23 feet to a point;

THENCE North 25 degrees 29'22" West, 60.00 feet to a point;

THENCE South 64 degrees 30'38" West, 96.33 feet to a point;

THENCE South 79 degrees 30'38" West, 106.77 feet to a point;

THENCE South 0 degrees 26'18" West, 61.11 feet to a Point of Beginning, containing 0.30 acres more or less of 13.97 rods of Right of Way to be acquired.

A 20 foot wide strip containing 0.10 acres more or less on the South side of said temporary right of way will revert back to the D'Arbonne National Wildlife Refuge after construction.

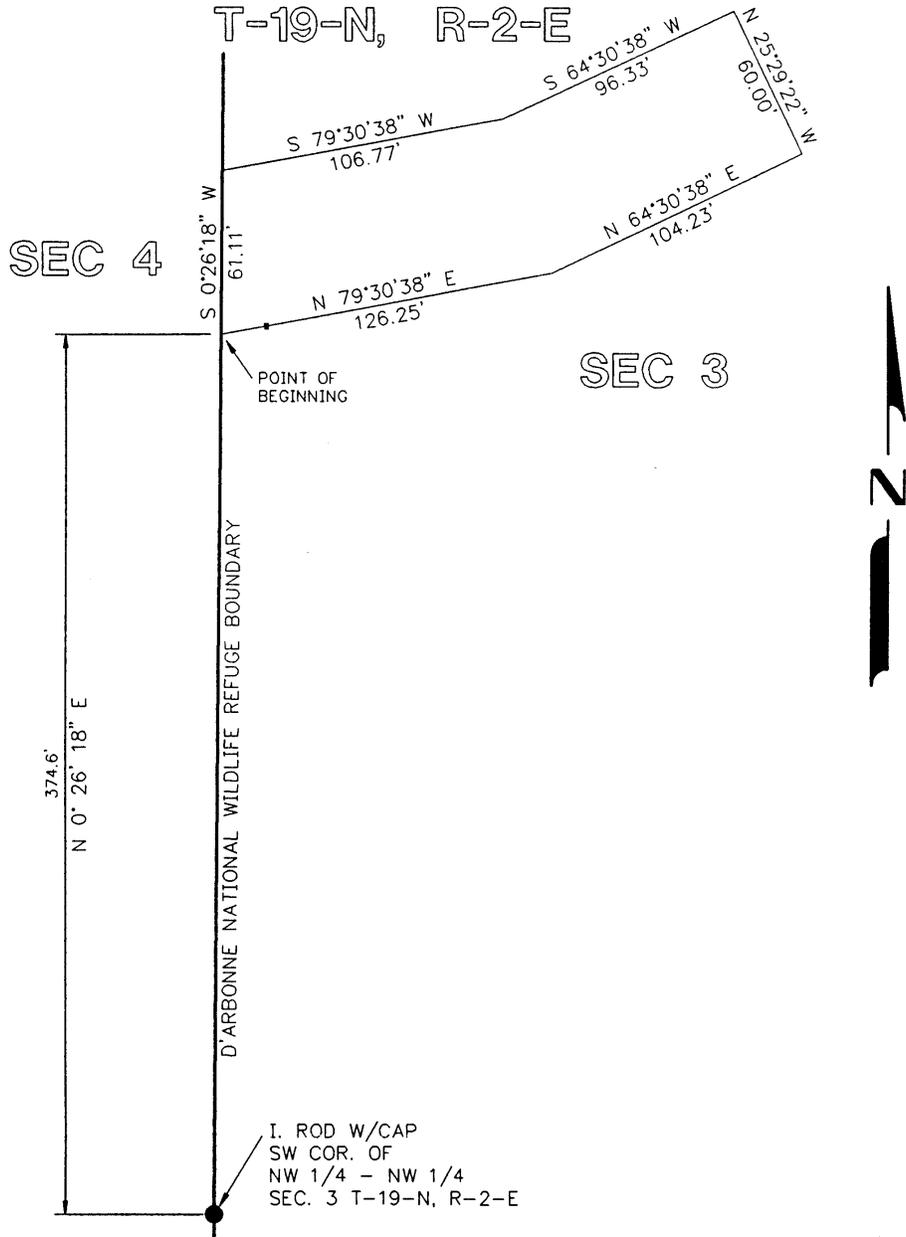
Note: See drawing L-PL-F-35-P for detail.

Date: 11-29-95.

BILLING CODE 4310-55-M

# D'ARBONNE NATIONAL WILDLIFE REFUGE UNION PARISH, LOUISIANA

## T-19-N, R-2-E



**NOTE:** SEE DRAWING LPL-F-35-M FOR PROPERTY LOCATION.

DRAFTING DEPARTMENT	<b>NORAM</b> GAS TRANSMISSION COMPANY												
CHECKED APPROVED	SHREVEPORT, LA												
DEPT.	<b>PROPOSED LINE F REPLACEMENT D'ARBONNE NATIONAL WILDLIFE REFUGE EXHIBIT 'E'</b>												
CHECKED APPROVED	SCALE 1"=50' DATE NOV. 28, 1995	DRAWN BY KYD PLOT DATE 11/29/95	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">L</td> <td style="text-align: center;">PL</td> <td style="text-align: center;">F</td> <td style="text-align: center;">35</td> <td style="text-align: center;">R</td> </tr> <tr> <td style="font-size: 8px;">SHT SIZE</td> <td style="font-size: 8px;">JOB TYPE</td> <td style="font-size: 8px;">JOB NUMBER</td> <td style="font-size: 8px;">SHEET/ AREA</td> <td style="font-size: 8px;">REF SHT</td> </tr> </table>	L	PL	F	35	R	SHT SIZE	JOB TYPE	JOB NUMBER	SHEET/ AREA	REF SHT
L	PL	F	35	R									
SHT SIZE	JOB TYPE	JOB NUMBER	SHEET/ AREA	REF SHT									

Description of Proposed Permanent Right of Way for Proposed Line "F" Replacement To Be Acquired From D'arbonne National Wildlife Refuge in Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'F'

A proposed permanent right of way across part of the lands of the D'arbonne National Wildlife Refuge in the Northwest Quarter of Section 2, Township 19 North, Range 2 West, Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at a 2 inch iron pipe at the Northeast of the Northwest Quarter of the Northeast Quarter of Section 2, point being on the East property line of the D'arbonne National Wildlife Refuge.

THENCE West 2699.7 feet and 8.7 feet North to the POINT OF BEGINNING.

THENCE South 1 degree 50'56" East, 40.0 feet to a point;

THENCE South 88 degrees 9'4" West, 1053.50 feet to a point;

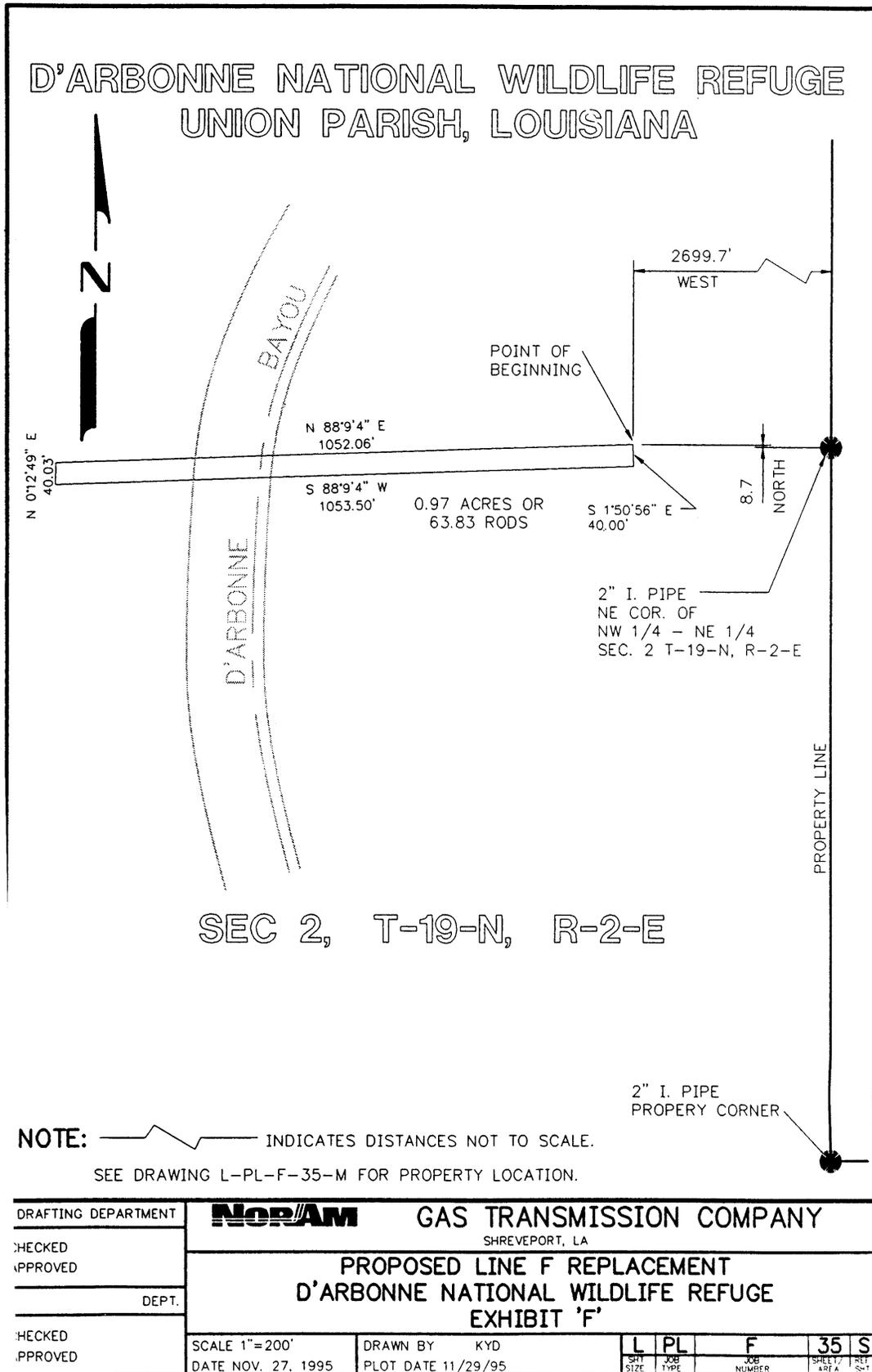
THENCE North 0 degrees 2'49" East, 40.03 feet to a point;

THENCE North 88 degrees 9'4" East, 1052.06 feet to a point to the Point of Beginning, containing 0.97 acres or 63.83 rods of Right of Way to be acquired.

Note: See drawing L-PL-F-35-S for detail.

Dated: 11-29-95.

BILLING CODE 4310-55-M



Description of Existing Right of Way for Existing Line "F" Across the Lands of D'arbonne National Wildlife Refuge  
in Section 3, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'G'

An existing right of way across part of the lands of D'arbonne National Wildlife Refuge, in the North Quarter of Section 3, Township 19 North, Range 2 East, Union Parish Louisiana, being more particularly described as follows:

COMMENCING at an iron rod with a cap at the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 3, point being on the West property line of the D'arbonne National Wildlife Refuge;

THENCE North 374.6 feet and East 212.77 feet to the POINT OF BEGINNING;

THENCE North 25 degrees 29'22" West, 41.42 feet to a point;

THENCE North 79 degrees 31'56" East, 887.57 feet to a point;

THENCE North 79 degrees 42'57" East, 2015.14 feet to a point;

THENCE North 79 degrees 34'17" East, 1784.68 feet to a point;

THENCE South 0 degrees 12'49" West, 40.70 feet to a point;

THENCE South 79 degrees 34'17" West, 1777.22 feet to a point;

THENCE South 79 degrees 42'57" West, 2015.13 feet to a point;

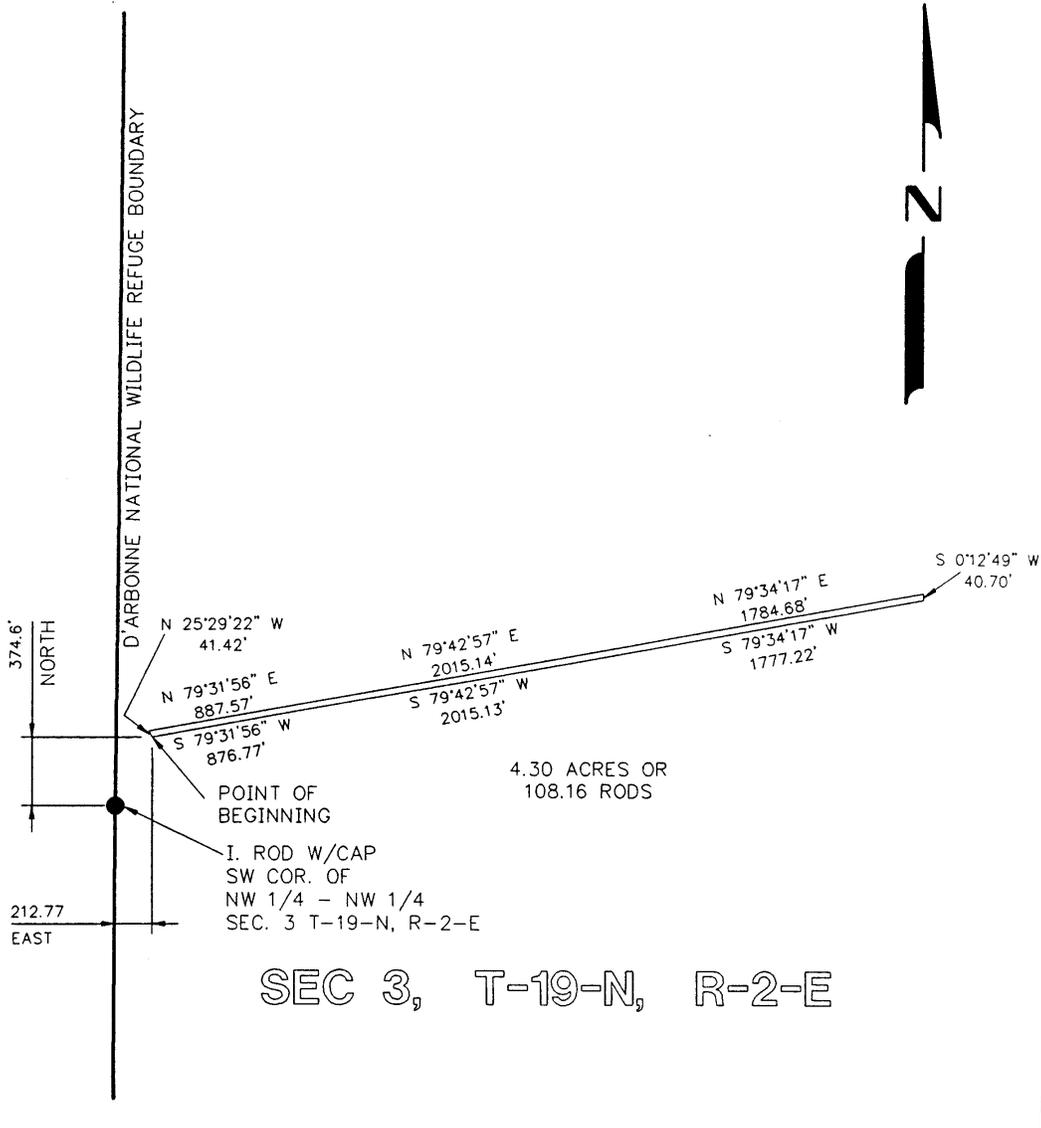
THENCE South 79 degrees 31'56" West, 876.77 feet to the Point of beginning, containing 4.30 acres or 108.16 rods of existing Right of Way.

Note: See drawing L-PL-F-35-T for detail.

Date: 11-29-95.

BILLING CODE 4310-55-M

# D'ARBONNE NATIONAL WILDLIFE REFUGE UNION PARISH, LOUISIANA



**NOTE:** SEE DRAWING L-PL-F-35-M FOR PROPERTY LOCATION.

DRAFTING DEPARTMENT	<b>NORAM</b> GAS TRANSMISSION COMPANY SHREVEPORT, LA		
CHECKED APPROVED	EXISTING LINE F RIGHT OF WAY D'ARBONNE NATIONAL WILDLIFE REFUGE EXHIBIT 'G'		
DEPT.	SCALE 1"=800'	DRAWN BY KYD	L PL F 35 T
CHECKED APPROVED	DATE NOV. 28, 1995	PLOT DATE 11/29/95	SHT SIZE JOB TYPE JOB NUMBER SPLIT AREA

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Advisory, Committee on Voluntary Foreign Aid; Notice of Meeting

Pursuant to the Federal Advisory Commission Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

*Date:* June 12, 1996 (9:00 a.m. to 5:00 p.m.).

*Location:* State Department, Loy Henderson Auditorium, 23rd Street Entrance.

The purposes of the meeting are to discuss and provide nongovernmental input on: USAID collaboration with private voluntary organizations (PVOs) in limited or non-presence countries, the status of USAID procurement reforms, and additional feasible actions for inclusion in the USAID Gender Plan of Action.

The meeting is free and open to the public. However, notification by June 7, 1996, through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must call Lisa J. Douglas (703) 351-0243 or Susan Saragi (703) 351-0244 or FAX (703) 351-0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

*Dated:* May 20, 1996.

John P. Grant,

*Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.*

[FR Doc. 96-13192 Filed 5-24-96; 8:45 am]

BILLING CODE 6116-01-M

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

"Federal Register" CITATION OF PREVIOUS ANNOUNCEMENT: 61FR20541—dated May 7, 1996.

#### CHANGE OF DATE, AND TIME:

Original Date and Time: May 29, 1996 at 11:00 a.m.

New Date and Time: June 4, 1996 at 10:00 a.m.

Notice is given that a Commission meeting was scheduled at 11:00 a.m., on May 29, 1996 and in conformity with 19 CFR §201.37(a), the Commission has voted to change the date and time for the meeting to June 4, 1996 at 10:00 a.m.

Commissioners Watson, Nuzum, Rohr, Newquist, Crawford, and Bragg determined by circulation of an action jacket that Commission business requires the change in the date and time, and affirmed that no earlier notice of the change was possible, and directed the issuance of this notice at the earliest practicable time.

**CONTACT PERSON FOR MORE INFORMATION:** Donna R. Koehnke, Secretary (202) 205-2000.

*Issued:* May 23, 1996.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 96-13447 Filed 5-23-96; 2:50 pm]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Federal Prison Industries, Inc.

#### Planning, Research and Activation Branch; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; public involvement procedures regarding proposals to produce new products or expand the production of existing products.

The proposed information collection is published to obtain comments from the public. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

The purpose of this notice is to request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information.

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have comments, suggestions or need a copy of the proposed information collection, please contact Edward J. Spear, Planning, Research and Activation, 202-508-8552, Federal Prison Industries, Inc., ACACIA Building, 320 First Street, NW., Washington, D.C. 20534 or via facsimile at 202-628-0855.

Overview of this information collection:

(1) Type of Information Collection: Existing collection in use without an OMB control number.

(2) Title of the Form/Collection: Public Involvement Procedures Information Collection.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No forms. Planning, Research and Activation, Federal Prison Industries, Federal Bureau of Prisons, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: Business or other for profit. Other: Federal Government. The information is collected in order to provide private industry the opportunity to comment on new product and expansion proposals. All comments received become part of the public record submitted to the Federal Prison Industries, Board of Directors. This record is the basis from which the Board of Directors makes its decision on the proposal.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 25 responses at .50 hours, or 30 minutes per comment.

(6) An estimate of the total public burden (in hours) associated with the collection: 62 total annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, D.C. 20530.

*Dated:* May 21, 1996.

Robert B. Briggs,

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 96-13213 Filed 5-24-96; 8:45 am]

BILLING CODE 4410-06-M

### Office of the Assistant Attorney General for Civil Rights

#### Certification of the State of Texas Accessibility Standards Under the Americans With Disabilities Act

**AGENCY:** Department of Justice.

**ACTION:** Notice of preliminary determination of equivalency and certification hearings.

**SUMMARY:** The Department of Justice (Department) has determined that the State of Texas Accessibility Standards

(Texas Standards) meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA). The Department proposes to issue a final certification, pursuant to 42 U.S.C. 12188(b)(1)(A)(ii) and 28 C.F.R. § 36.601 *et seq.*, which would constitute rebuttable evidence, in any enforcement proceeding, that a building constructed or altered in accordance with the Texas Standards meets or exceeds the requirements of the ADA. The Department will hold informal hearings on the proposed certification in Washington, D.C. and Austin, Texas.

**DATES:** To be assured of consideration, comments must be in writing and must be received on or before July 29, 1996. The hearing in Austin, Texas is scheduled for Tuesday, June 25, 1996 at 1:00 pm, Central Time. The hearing in Washington, D.C. is scheduled for Thursday, August 1, 1996 at 9:30 am, Eastern Time.

**ADDRESSES:** Comments on the preliminary determination of equivalency and on the proposal to issue final certification of equivalency of the Texas Standards should be sent to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738.

The hearings will be held at:

Austin, Texas: State of Texas, Capitol Building Extension, Room E2.012, Austin, Texas

Washington, D.C.: U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738. Telephone number (800) 514-0301 (Voice) or (800) 514-0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514-0301 (Voice) or (800) 514-0383 (TDD). Copies of the Texas Standards and supporting materials may be inspected by appointment at 1425 New York Avenue, N.W., Suite 4039, Washington, D.C. by calling Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

**Background**

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a

State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. 12188(b)(1)(A)(ii); 28 CFR 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated November 17, 1994, the Texas Department of Licensing and Regulation requested that the Department of Justice (Department) certify that the State of Texas Accessibility Standards, effective April 1, 1994, as adopted pursuant to Texas Civil Statutes, Article 9102, as amended effective September 1, 1993, and the Architectural Barriers Administrative Rules, Chapter 68, as amended effective June 1, 1994 (Texas Standards), meet or exceed the new construction and alterations requirements of title III of the ADA.

The Department has analyzed the Texas Standards, and has preliminarily determined that they meet or exceed the new construction and alterations requirements of title III of the ADA. By letter dated May 10, 1996, the Department notified the Texas Department of Licensing and Regulation of its preliminary determination of equivalency.

**Effect of Certification**

The certification determination will be limited to the version of the Texas Standards that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the Texas Standards that are not addressed by the ADA Standards for Accessible Design, such as the provisions for children's facilities in the Texas Standards.

Finally, certification does not apply to variances or waivers granted under the Texas Standards by the Commissioner of Licensing and Regulation. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the Texas Standards for any element of construction or alterations, the certification determination will not constitute

evidence of ADA compliance with respect to that element.

**Procedure**

The Department will hold informal hearings in Washington, DC and Austin, Texas to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Texas Standards. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

The hearing sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

Dated: May 21, 1996.

Deval L. Patrick,

*Assistant Attorney General for Civil Rights.*

[FR Doc. 96-13292 Filed 5-24-96; 8:45 am]

**BILLING CODE 4410-01-M**

**Certification of the State of Texas Accessibility Standards Under the Americans With Disabilities Act**

**AGENCY:** Department of Justice.

**ACTION:** Notice of hearings.

**SUMMARY:** The Department of Justice will hold informal hearings on the proposed certification that the State of Texas Accessibility Standards meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA) in Washington, D.C. and Austin, Texas.

**DATES:** The hearing in Austin, Texas is scheduled for Tuesday, June 25, 1996 at 1:00 PM, Central Time. The hearing in Washington, D.C. is scheduled for Thursday, August 1, 1996, at 9:30 AM, Eastern Time.

**ADDRESSES:** The hearings will be held at: Austin, Texas: State of Texas, Capitol Building Extension, Room E2.012, Austin, Texas

Washington, D.C.: U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738. Telephone number (800) 514-0301 (Voice) or (800) 514-0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514-0301 (Voice) or (800) 514-0383 (TDD).

**SUPPLEMENTARY INFORMATION:** On May 28, 1996, the Department of Justice (Department) published a notice in the Federal Register announcing that it had preliminarily determined that the State of Texas Accessibility Standards, effective April 1, 1994, as adopted pursuant to Texas Civil Statutes, Article 9102, as amended effective September 1, 1993, and the Architectural Barriers Administrative Rules, Chapter 68, as amended effective June 1, 1994 (Texas Standards), meet or exceed the new construction and alternations requirements of title III of the ADA. The Department also noted that it intended to issue final certification of the Texas Standards and requested written comments on the preliminary determination and the proposed final certification. Finally, the Department noted that it intended to hold informal hearings in Washington, D.C. and Austin, Texas.

The purpose of the informal hearings is to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Texas Standards. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

The meeting sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307-0663 (Voice/TDD). This is not a toll-free number.

Dated: May 21, 1996.

Deval L. Patrick,

*Assistant Attorney General for Civil Rights.*

[FR Doc. 96-13293 Filed 5-24-96; 8:45 am]

BILLING CODE 4410-01-M

## Immigration and Naturalization Service

### Agency Information Collection Activities: Extension of Existing Collection; Comment Request

**ACTION:** Notice of Information Collection Under Review; Application for Certificate of Citizenship in Behalf of an Adopted Child.

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 on March 21, 1996 at 61 FR 11651, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

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, Suite 850, 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 estimate 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:* Extension of a currently approved collection.
- (2) *Title of the Form/Collection.* Application for Certificate of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N-643. Office of Examinations, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Household. The information collected is used to allow U.S. citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 respondents at one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,000 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: May 20, 1996.

Robert B. Briggs,

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 96-13214 Filed 5-24-96; 8:45 am]

BILLING CODE 4410-18-M

## Office of Justice Programs

### Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection Under Review; Subgrant Award Report for Violence Against Women Formula Grant Program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

- (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 agencies estimate 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.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact the Violence Against Women Grants Office, 202-307-6026, U.S. Department of Justice, Fourth Floor, 633 Indiana Avenue, NW, Washington, DC 20531. Additionally, 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 address and phone number set forth.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: STOP Violence Against Women Formula Grant Program Subgrant Award Report

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Violence Against Women Branch, Crime Act Support Division, Bureau of Justice Assistance, Office of Justice Programs, 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. The Crime Act of 1994 enacted the Violence Against Women Formula Grant Program. This program awards grant money to the states and territories to combat violence against women. The Subgrant Award Report will be completed by each of the states and territories and will provide information on each subgrant awarded under the program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 560 responses at 1.0 hour each.

(6) An estimate of the total public burden (in hours) associated with the collection: 560 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management

Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 20, 1996.

Robert B. Briggs,

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 96-13215 Filed 5-24-96; 8:45 am]

BILLING CODE 4410-21-M

### Office of Juvenile Justice and Delinquency Prevention

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection Under Review; Survey to examine the relationship between juvenile delinquency and gang and nongang affiliation of Southeast Asian refugee youths.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(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 agencies estimate 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.

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 D. Elen Grigg (phone number and address listed below). If you have additional comments, suggestions, or need a copy

of the proposed information collection instrument with instructions, or additional information, please contact D. Elen Grigg, 202-307-5929, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New survey to examine the relationship between juvenile delinquency and gang and nongang affiliation of Southeast Asian refugee youths.

(2) Title of the Form/Collection: Delinquency and Criminal Street Gang Affiliation Among Southeast Asian-American Youth Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: none. Office of Juvenile Justice and Delinquency Prevention, office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Delinquent and non-delinquent youth involved in gang or non-gang law violating groups and a parent or guardian. Other: None. The information collected is used to document the proportion of total juvenile delinquency for which gang and non-gang involved law-violating youth are responsible and to document the contribution of gang membership versus that of other law-violating youth groups to serious, violent and chronic juvenile careers.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be 800 respondents and it will take about one hour to respond to the questions for a total of 800 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 800 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 22, 1996.

Robert B. Briggs,

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 96-13294 Filed 5-24-96; 8:45 am]

BILLING CODE 4410-18-M

**NATIONAL SCIENCE FOUNDATION****Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Cross Disciplinary Activities (#1193).

*Date and Time:* June 14, 1996; 8:30 am-5 pm.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 1150 and 1120, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person(s):* Rita V. Rodriguez, Program Director, CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1980.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate NSF-CONACyT Collaborative Research Opportunities proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96-13295 Filed 5-24-96; 8:45 am]

**BILLING CODE 7555-01-M**

**Special Emphasis Panel in Materials Research; Notice of Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended), the National Science Foundation announces the following meetings:

*Name:* Special Emphasis Panel in Materials Research (DMR) #1203.

*Dates and Times:* June 5, 1996, 7 p.m.-9 p.m.; June 6, 1996, 8 a.m.-6 p.m.

*Place:* National Science Foundation; 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meetings:* Closed.

*Contact Person:* Dr. W. Lance Haworth, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 22230. Telephone (703) 306-1815.

*Purpose of Meetings:* To provide advice and recommendations concerning proposals submitted to NSF for financial support by the

Materials Research Science and Engineering Centers Program.

*Agenda:* Review and evaluate proposals as part of the selection process for NSF support.

*Reason for Closing:* The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

*Reason for Late Notice:* Times and dates could not be finalized until all details concerning panelists for reverse site visit panels meeting between May 13 and May 24, 1996 were finalized.

Dated: May 22, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96-13296 Filed 5-24-96; 8:45 am]

**BILLING CODE 7555-01-M**

**NUCLEAR REGULATORY COMMISSION**

[Docket No. IA 96-020; ASLBP No. 96-715-03-EA]

**Establishment of Atomic Safety and Licensing Board**

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Juan and Laurene Guzman

*Order Prohibiting Unescorted Access or Involvement in NRC-Licensed Activities (Effective Immediately)*

IA 96-020

This Board is being established as a result of a April 19, 1996 NRC staff order. The petitioners, Juan and Laurene Guzman, are requesting a hearing in accordance with 10 C.F.R. § 2.202.

The Board is comprised of the following administrative judges:

G. Paul Bollwerk, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77843.

All correspondence, documents and other materials shall be filed with the

Judges in accordance with 10 C.F.R. § 2.701.

Issued at Rockville, Maryland, this 20th day of May 1996.

B. Paul Cotter, Jr.,

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 96-13242 Filed 5-24-96; 8:45 am]

**BILLING CODE 7590-01-P**

**OFFICE OF PERSONNEL MANAGEMENT**

[RI 38-107]

**Proposed Collection; Comment Request for Review of a Revised Information Collection**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of personnel Management intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38-107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

We estimate 25,400 RI 38-107 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to jmfarron@mail.opm.gov.

**DATES:** Comments on this proposal should be received by no later than July 29, 1996.

**ADDRESSES:** Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Mary Beth Smith-Toomey, Management Services Division, (202) 606-0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

*Deputy Director.*

[FR Doc. 96-13269 Filed 5-24-96; 8:45 am]

**BILLING CODE 6325-01-M**

[RI 25-15]

**Submission for OMB Review;  
Comment Request Review of a  
Revised Information Collection**AGENCY: Office of Personnel  
Management.

ACTION: Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. RI 25-15, Notice of Change In Student's Status, is used to collect sufficient information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

We estimate 2,500 certifications will be processed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 417 hours.

For copies of this proposal, contact Jim Farron on (202) 418-3208, or E-mail to [jmfarron@mail.opm.gov](mailto:jmfarron@mail.opm.gov).

**DATES:** Comments on this proposal should be received by no later than June 27, 1996.

**ADDRESSES:** Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and  
Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING**

**ADMINISTRATIVE COORDINATION—CONTACT:** Mary Beth Smith-Toomey, Management Services Division, (202) 606-0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

*Deputy Director.*

[FR Doc. 96-13270 Filed 5-24-96; 8:45 am]

BILLING CODE 6325-01-M

**SECURITIES AND EXCHANGE  
COMMISSION****Sunshine Act Meetings**

Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 27, 1996.

An open meeting will be held on Thursday, May 30, 1996, at 10:00 a.m. A closed meeting will be held on Thursday, May 30, 1996, following the 10:00 a.m. open meeting.

Commissioners, Counsel of the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Thursday, May 30, 1996, at 10:00 a.m., will be:

(1) Consideration of whether to issue a release proposing rule changes that would implement recommendations made in the March 5, 1996 Report of the Task Force on Disclosure Simplification. The proposed rules would eliminate two forms and one rule, and amend several other forms and regulations to eliminate unnecessary disclosure requirements and to streamline the registration process. FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Division of Corporation Finance, at (202) 942-2990.

(2) Consideration of whether to issue a release adopting rule changes that eliminate a number of rules and forms, as recommended by the Task Force on Disclosure Simplification in its March 5, 1996 report, and that effect other minor and technical amendments to the Commission's rules. FOR FURTHER INFORMATION CONTACT: James R. Budge, Division of Corporation Finance at (202) 942-2910.

(3) Consideration of whether to issue (1) a release adopting amendments to rules under Section 16 of the Exchange Act, and (2) a release extending the phase-in period for Rule 16b-3. FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Division of Corporation Finance, at (202) 942-2900.

The subject matter of the closed meeting scheduled for Thursday, May 30, 1996, following the 10:00 a.m. open meeting, will be: Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted

or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: May 22, 1996.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96-13455 Filed 5-23-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37230; File No. SR-GSCC-96-04]

**Self-Regulatory Organizations;  
Government Securities Clearing  
Corporation; Notice of Proposed Rule  
Change Relating to Interdealer Broker  
Netting Members Participating in the  
Netting and Settlement Services for  
Repurchase and Reverse Repurchase  
Transactions Involving Government  
Securities**

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 10, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on May 13, 1996, amended the filing,<sup>2</sup> which is described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's  
Statement of the Terms of Substance of  
the Proposed Rule Change**

GSCC proposes to modify its rules to allow interdealer broker ("IDB") netting members to become eligible for GSCC's netting service for repurchase and reverse repurchase transactions involving government securities as the underlying instrument ("repos").<sup>3</sup>

**II. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Christine Sibille, Division of Market Regulation, Commission (May 13, 1996).

<sup>3</sup> The text of the proposed revised rules is attached as Exhibit A to File No. SR-GSCC-96-04 which is available for review in the Commission's Public Reference Room.

in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>4</sup>

*(a) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

GSCC's long-range plans for repo services entail the full and complete automation of all aspects of start and close leg processing, including the intraday settlement of repo start legs. These services have been and will continue to be introduced in phases.

In a previous rule filing, GSCC sought and received authority to implement the first phase of repo netting services, which was the provision of netting and risk management services for the non-same-day settling aspects of next-day and forward-settling repo transactions.<sup>5</sup> During the first phase, GSCC did not make IDB netting members eligible for GSCC's repo netting services because brokering in the repo market currently is done on a give-up basis (*i.e.*, the brokers give up the names of each counterparty to the other and drop out of the transaction). GSCC anticipated addressing the various issues related to IDB members' participation in GSCC's repo netting system in its next repo rule filing relating to a netting and settlement service for same-day-settling start legs. However, because the settlement of same-day-settling start legs involves significant technological issues, GSCC realizes it will not be able to implement such a service until the last quarter of this year at the earliest. Therefore, GSCC is making this rule filing in order to allow its IDB netting members to participate in its current repo netting services.

Pursuant to this rule change, IDB netting members and non-IDB netting members (*i.e.*, dealers) will submit data on brokered repos to GSCC in the same manner as they do for cash transaction. GSCC will compare, net, and settle repo start legs which are submitted prior to the start date (*i.e.*, non-same-day-settling start legs) and repo close legs pursuant to GSCC's existing procedures for the netting and settlement of repos. GSCC Rule 18, Special Provisions for Repo Transactions, will also apply to brokered repos.<sup>6</sup> The parties to brokered

repos will assume the responsibility for the intraday settlement of same-day-settling start legs outside of GSCC.

Under this proposal, only IDBs that have and agree to maintain a level of excess net capital or excess liquid capital, as applicable, of at least \$10 million will be eligible to submit data on repo transactions to GSCC.<sup>7</sup> To further minimize risk, GSCC will only accept from IDBs that participate in this repo netting process data on repo transactions that have been executed between two dealers that have been designated as eligible to participate in GSCC's repo netting services.<sup>8</sup> As a result, the IDBs' position will always net out.

GSCC will impose operational requirements on IDB repo netting members to minimize errors or problems, to help ensure a low level of uncomparated trades, and to achieve the highest possible netting factor for IDBs. These operation requirements are: (1) Upon being informed by either GSCC or another netting member of an error in or problem with the data on an eligible repo transaction that it has submitted to GSCC, an IDB netting member must act promptly and in good faith to correct the error; (2) each IDB repo netting member will be assigned a second GSCC

novation of a repo transaction, and sets forth a netting member's obligation to submit repo transactions to GSCC, another registered clearing agency, or a clearing agency that has been exempted from registration as a clearing agency.

<sup>7</sup> File No. SR-GSCC-96-02, currently pending with the Commission, will require all IDBs, regardless of whether they participate in the repo netting service, to have and to maintain a minimum level of excess liquid/net capital of at least \$10 million. GSCC stated in that filing that it is the intention of the Board of Directors of GSCC no longer to consider applications for Category 1 IDB netting membership unless the IDB applicant meets the new financial criteria. It is the Board's further intention that if File No. SR-GSCC-96-02 has not yet been approved prior to the approval of this filing, GSCC nonetheless will not permit a Category 1 IDB with less than \$10 million in excess liquid/net capital to participate in the repo netting service. For a complete description of the modifications to the minimum financial criteria for Category 1 IDB netting members, refer to Securities Exchange Act Release No. 36945 (March 7, 1996), 61 FR 10614 (notice of proposed rule change modifying the minimum financial criteria for Category 1 interdealer broker netting membership).

<sup>8</sup> GSCC proposes to amend the definitions for Category 1 and Category 2 IDBs to account for repo transactions with non-GSCC members. Specifically, Category 1 IDBs will not be limited to acting exclusively as brokers on behalf of GSCC netting members and/or grandfathered nonmembers with respect to repo transactions. Similarly, Category 2 IDBs will not be limited to acting exclusively as brokers or conducting at least ninety percent of their business with GSCC netting members and/or grandfathered nonmembers with respect to repo transactions. Similarly, IDB netting members will not need to report data on repos pursuant to Section 3 of Rule 15 and the continuance standards of Rule 3, Section 5 (g) and (i) will not take into account repo transactions.

participant number, and all repos must be processed using that number;<sup>9</sup> and (3) each IDB repo netting member will be required to establish a separate account with a separate Fedwire address at a clearing bank that will be used exclusively for the intraday settlement outside of GSCC of same-day-settling start legs. (*I.e.*, the dealer member on the repo side of the start leg will deliver securities to this separate Fedwire account, and the IDB will redeliver the securities to the counterparty from this account.) GSCC intends to require each IDB repo netting member to authorize its clearing bank to allow GSCC to review this clearing account. This review will be performed solely in order to facilitate the correction of errors and problems. GSCC will not have or assume any responsibility for the settlement of a same-day settling start leg.

As set forth below, the benefits of allowing IDBs to participate in the existing repo netting process are numerous.

#### 1. Immediate Implementation

GSCC and its netting members, including IDBs, already have the systems in place to submit data to and receive output from GSCC for repo transactions. Thus, IDBs will only need to make minor changes to their regular cash input and output specifications to accommodate repos and then to test with GSCC.

#### 2. Enhanced Risk Protection

In the same manner as it does now for netting-eligible repo legs, GSCC will become the legal counterparty to all eligible netted close legs and start legs submitted prior to the settlement date through novation and will guarantee their settlement.

#### 3. More Efficient Settlement

By encompassing more transactions into the net, the total number of daily settlements for participants will be reduced. This will make the settlement process more efficient, will lower clearance costs, and will reduce participants' exposure to daylight overdraft costs.

#### 4. Anonymity

Through repo blind brokering, IDBs will no longer give up the name of the dealer counterparties. In this way, the dealer counterparties will only know the IDB and will not see through to the other side of the repo. This is the manner in which secondary market

<sup>9</sup> The second account will make it easier for GSCC to monitor an IDB's repo activity.

<sup>4</sup> The Commission has modified the text of the summaries prepared by GSCC.

<sup>5</sup> Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 61577 (order approving proposed rule change relating to the netting and risk management services for the non-same-day-settling aspects of next-day and forward-settling repo transactions).

<sup>6</sup> Rule 18 limits eligibility to participate in the repo netting process, establishes the timing for

activity currently is conducted for cash activity and is the means of trading preferred by GSCC's members because of its efficiencies.

#### 5. East of Transition to Fully Automated Services

GSCC and its participants will gain experience in processing blind-broker repos during this first implementation stage. This experience will aid GSCC in developing and fine-tuning the fully automated blind brokering service that will provide for the settlement of same-day-settling repo start legs directly through GSCC. In the future, when fully automated services are available, IDBs will make the processing switch to submitting locked-in trade data, and GSCC anticipates a smooth transition to the new service.

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>10</sup> because it is designed to assure the safeguarding of securities and funds that are in the custody or control of GSCC or for which it is responsible, and it will reduce the risk exposure to its solvent participants from the default of common participants. Further, the proposed rule change will foster cooperation and coordination with entities engaged in the clearance and settlement of securities transactions.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

GSCC does not believe that the proposed rule will have an 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*

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (1) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate

and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission 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 filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR-GSCC-96-04 and should be submitted by June 18, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 96-13251 Filed 5-24-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37227; File No. SR-PTC-96-01]

#### **Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of a Proposed Rule Change Eliminating the Deduction of Reserve on Gain in the Calculation of Net Free Equity for Proprietary and Agency Accounts of a Receiving Participant in Certain Transactions**

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> notice is hereby given that on February 5, 1996, the Participants Trust Company ("PTC") filed with the

Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PTC-96-01) as described in Items I, II, and III below, which items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend Article I, Rule 1 of PTC's Rules to eliminate the deduction of reserve on gain ("ROG") in the calculation of net free equity ("NFE") for proprietary and agency accounts of a receiving participant in certain transactions while retaining the deduction of ROG as it applies to the calculation of NFE for proprietary and agency accounts of a delivering participant.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

#### *(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 amend Article I, Rule 1 of PTC's Rules to eliminate the deduction of ROG in the calculation of NFE for proprietary and agency accounts of a receiving participant in certain transactions. PTC intends to retain the deduction of ROG as it applies to the calculation of NFE for proprietary and agency accounts of a delivering participant.

Under PTC's current rules, in connection with any account transfer versus payment, ROG is: (1) With respect to a delivering participant, the amount by which the contract value credited to the cash balance of the account of the delivering participant exceeds the market value of the securities delivered or (ii) with respect

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1995).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> The Commission has modified the text of the summaries submitted by PTC.

<sup>1</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

to a receiving participant, the amount by which the market value of the securities credited to the transfer account associated with the account of the receiving participant exceeds the contract value of the transaction. As explained below, ROG (if applicable) is excluded in the computation of NFE for proprietary and agency accounts.

As set forth in Article II, Rule 9 of PTC's Rules, NFE for any agency or proprietary account is calculated as the sum of (i) the applicable percentage, as defined in Article I, Rule 1 of PTC's rules, of the market value of securities in the account and the associated transfer account, (ii) the cash balance in the account, and (iii) the participant's supplemental processing collateral, as calculated pursuant to the formula set forth in Article I, Rule 1 of PTC's rules, to the extent not required to collateralize an account transfer in any other account, minus the amount (if any) of ROG with respect to the account.

NFE measures the value associated with the account of a participant that is available to support transaction processing to or from the participant's account. Under Article II, Rule 9, Section 2 and Article II, Rule 13, PTC will not process an account transfer of securities if as a result of such transfer the account of that delivering participant or receiving participant will have negative NFE.

In any account transfer versus payment from a proprietary of agency account in which the contract value of the securities exceed the market value, the deliverer's ROG is the difference in those values. The deliverer's ROG is deduced in calculating the NFE of the account of the delivering participant to prevent the delivering participant from using the gain on the transaction to increase its NFE (*i.e.*, the amount available to the participant to support other activity in its account). The deduction of the deliverer's ROG creates an NFE "reserve" to ensure that if necessary sufficient funds exist in the delivering participant's account to permit the debit of the contract value from the cash balance in the account of the delivering participant in the event the transaction is reversed (*i.e.*, "DK'ed") by the receiving participant because of error or other circumstances permitted under the guidelines for good delivery. The ROG deduction also prevents a delivering participant, who inputs the terms of the trade on PTC's system, from abusing the system by creating additional NFE through the delivery versus payment of securities at an artificially inflated value.

The receiver's ROG is the difference in value that results when the market

value of securities received into a proprietary or agency account versus payment exceeds the contract value of the securities. (*I.e.*, On the receive-side of the transaction, the amount of the potential NFE gain would be the excess of market value of the securities over contract value.) Currently, the receiver's ROG is deducted in the calculation of NFE of the account of the receiving participant. However, the rationale for deducting the receiver's ROG is different from that for deducting the deliverer's ROG. Unlike deliver-side ROG, receive-side ROG is not needed to ensure a receiving participant's ability to reverse a securities transaction because the receiving participant initiates the reversal and controls the availability of NFE in its account.

The deduction of the receiver's ROG in the NFE calculation for an account of a receiving participant was incorporated into PTC's rules in 1989 pursuant to the order granting PTC's registration as a clearing agency. The rule's purpose was to assure sufficient NFE in an account to enable PTC to reverse securities deliveries to achieve settlement in the event of participant default.<sup>3</sup> The provisions of PTC's rules providing the ability to reverse transactions has been deleted.<sup>4</sup> Accordingly, deduction of ROG from the NFE on the receive-side is no longer required.

PTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposal facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's possession or control or for which PTC is responsible.

<sup>3</sup> In 1988, MBS Clearing Corporation ("MBSCC"), PTC's predecessor, proposed a rule change to its Depository Division rules to include receiver's ROG in the NFE calculation of a receiving participant's account. Securities Exchange Act Release No. 26101 (September 22, 1988), 53 FR 37895 [File No. SR-MBS-88-14] (notice of filing of proposed rule change relating to Depository Division rules). Subsequently, the order granting PTC's registration as a clearing agency incorporated the proposed rule change stating that PTC's rules were essentially identical to MBSCC's Depository Division rules including the most recently proposed rule changes. Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266, [File No. 600-25] (order granting registration as a clearing agency and statement of reasons).

<sup>4</sup> For a more complete discussion of PTC's reasons for removing the reversal capability, refer to Securities Exchange Act Release No. 27193 (August 29, 1989), 54 FR 37065 [File No. SR-PTC-89-02] (order approving proposed rule change).

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change will impose a burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited nor received written comments on this proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR-PTC-96-01 and should be submitted by June 18, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

<sup>5</sup> 17 CFR 200.30-3(a)(12) (1995).

Margaret H. McFarland,  
Deputy Secretary.  
[FR Doc. 96-13250 Filed 5-24-96; 8:45 am]  
BILLING CODE 8010-01-M

## SURFACE TRANSPORTATION BOARD

### Sunshine Act Meeting; Board Conference

**TIME AND DATE:** 10:00 a.m., June 5, 1996.  
**PLACE:** Hearing Room A, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423.  
**STATUS:** The Board will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

#### MATTERS TO BE DISCUSSED:

STB Ex Parte No. 529, *Class Exemption for Acquisition or Operation of Rail Line by Class III Rail Carriers Under 49 U.S.C. 10902.*

Docket No. AB-452 (Sub-No. 1X), *The Western Stock Show Association—Abandonment Exemption—in Denver, CO.*  
Finance Docket No. 32802, *Philadelphia Belt Line Railroad Company v. Consolidated Rail Corporation, CP Rail System, and CSX Transportation, Inc.* Docket No. AB-1 (Sub-No. 192X) *Chicago and North Western Transportation Company—Abandonment Exemption—Guthrie and Dallas Counties, IA.*<sup>1</sup>

#### CONTACT PERSONS FOR MORE

**INFORMATION:** Dennis Watson, Office of Congressional and Press Service, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Vernon A. Williams,  
Secretary.

[FR Doc. 96-13445 Filed 5-23-96; 8:45 am]  
BILLING CODE 4915-00-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board<sup>1</sup>

[STB Finance Docket No. 32888]

#### Angelina & Neches River Railroad Company—Purchase Exemption—Texas South-Eastern Railroad Company

**AGENCY:** Surface Transportation Board.

<sup>1</sup> Includes Docket No. AB-6 (Sub-No. 374), *Burlington Northern Railroad Company—Adverse Discontinuance—in Denver, CO*, Docket No. AB-33 (Sub-No. 92), *Union Pacific Railroad Company—Adverse Discontinuance—in Denver, CO*, and Docket No. AB-446 (Sub-No. 2), *Denver Terminal Railroad Company—Adverse Abandonment—in Denver, CO*.

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce

**ACTION:** Notice of exemption.

**SUMMARY:** The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10902, the acquisition of approximately 2.9 miles of rail line in Lufkin, Angelina County, TX, by Angelina & Neches River Railroad Company, a Class III railroad.

**DATES:** The exemption will be effective June 28, 1996. Petitions to stay must be filed by June 10, 1996. Petitions to reopen must be filed by June 18, 1996.

**ADDRESSES:** Send pleadings, referring to STB Finance Docket No. 32888 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue N.W., Washington, DC 20423; and (2) petitioner's representative: Peter A. Greene, THOMPSON HINE & FLORY P.L.L., Suite 800, 1920 N Street, N.W., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

#### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: May 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,  
Secretary.

[FR Doc. 96-13277 Filed 5-24-96; 8:45 am]  
BILLING CODE 4915-00-P

### Surface Transportation Board<sup>1</sup>

[STB Docket No. AB-413 (Sub-No. 1X)]

#### Great Western Railway of Iowa, L.L.C., d/b/a Council Bluffs Railway—Abandonment Exemption—in Council Bluffs, IA

Great Western Railway of Iowa, L.L.C., d/b/a Council Bluffs Railway

Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, 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). This notice

(CBGR) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1 mile of its line of railroad from milepost 409.5 on the west side of Iowa State Highway 192 (also known as the South Expressway), to milepost 410.5 near South 17th Street, including the Milwaukee Connector Track, in the City of Council Bluffs, Pottawattamie County, IA.

CBGR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 27, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>4</sup> must be filed by June 7, 1996. Petitions to reopen or requests for public use conditions under 49 CFR

relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>4</sup> The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

1152.28 must be filed by June 17, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael J. Ogborn, Manager, Great Western Railway of Iowa, L.L.C., d/b/a Council Bluffs Railway, Clayton Street, Fourth Floor, Denver, CO 80206.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CBGR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 31, 1996.

Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 21, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,  
Secretary.

[FR Doc. 96-13276 Filed 5-24-96; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### Information Collection; Comment Request

**ACTION:** Federal Register Pre-Clearance Notice.

**SUMMARY:** The Department of the Treasury, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the U.S. Department of the Treasury's Office of Foreign Assets Control is soliciting comments concerning the travel to Cuba declaration requirements authorized pursuant to § 515.602 of the Cuban

Assets Control Regulations, 31 CFR Part 515.

**DATES:** Written comments should be received on or before July 29, 1996.

**ADDRESSES:** Direct all written comments to Dorene F. Erhard, Sr. Sanctions Advisor, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW Washington, DC 20220, (tel.: 202/622-2500). Internet Address: Dorene.Erhard@treas.sprint.com.

#### FOR FURTHER INFORMATION CONTACT:

Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), for questions concerning licensing policy; or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), for legal questions; Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220.

#### SUPPLEMENTARY INFORMATION:

*Title:* Travel to Cuba, U.S. Department of the Treasury, Office of Foreign Assets Control, Declaration.

*OMB Number:* 1505-0118.

*Abstract:* Declarations are to be completed by persons traveling from the U.S. to Cuba in order to provide the U.S. Government information to be used in administering and enforcing economic sanctions imposed against Cuba pursuant to 31 CFR Part 515.

*Current Action:* Extension.

*Type of Review:* Extension.

*Affected Public:* Individuals/businesses and other for-profit institutions/banking institutions.

*Estimated Number of Respondents:* 26,000.

*Estimated Time Per Respondent:* .0833 hour to process.

*Estimated Annual Burden Hours:* 2,166 hours.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 of the 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.

Dated: May 14, 1996.

William B. Hoffman,

Chief Counsel, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 96-13208 Filed 5-24-96; 8:45 am]

BILLING CODE 4810-25-M

#### Information Collection; Comment Request; Federal Register Pre-Clearance Notice

**SUMMARY:** The Department of the Treasury, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Treasury Department's Office of Foreign Assets Control is soliciting comments concerning the civil penalty provisions, of the Cuban Assets Control Regulations, 31 CFR §§ 515.703 and 515.704.

**DATES:** Written comments should be relieved on or before July 29, 1996 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Dorene F. Erhard, Sr. Sanctions Advisor, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, DC 20220, (tel.: 202/622-2500). Internet Address: Dorene.Erhard@treas.sprint.com.

#### FOR FURTHER INFORMATION CONTACT:

Betsy Sue Scott, Penalties Program Manager (tel.: 202/622-6140); or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), for legal questions; Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220.

#### SUPPLEMENTARY INFORMATION:

*Title:* Cuban Assets Control Regulations, Civil Penalties Provisions.

*OMB Number:* 1505-0145.

*Abstract:* A recipient of a prepenalty notice alleging a violation of the Cuban Assets Control Regulation is permitted to respond in writing requesting assets control regulation requesting a hearing and/or setting forth his or her belief that a penalty should not be imposed, or if imposed, should be in a lesser amount than proposed.

*Current Actions:* Extension.

*Type of Review:* Extension.

*Affected Public:* Businesses and other for-profit institutions/banking institutions/individuals.

*Estimated Number of Respondents:* 50.

*Estimated Time Per Respondent:* 2 hours to process.

*Estimated Annual Burden Hours:* 100 hours.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 of the 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 or respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: May 14, 1996.

William B. Hoffman,  
Chief Counsel, Office of Foreign Assets Control, U.S. Department of the Treasury.  
[FR Doc. 96-13209 Filed 5-24-96; 8:45 am]  
BILLING CODE 4810-25-M

## Internal Revenue Service

### Commissioner's Advisory Group: Public Meeting

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of public meeting of Commissioner's Advisory Group.

**SUMMARY:** Public meeting of the Commissioner's Advisory Group (CAG) will be held in Washington, DC.

**DATES:** The meeting will be held June 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Merci del Toro at (202) 622-5081 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the CAG will be held on June 20, 1996, beginning at 10 a.m. in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. The agenda will include the following topics: various IRS issue updates and reports by the CAG subgroups on Compliance, Small

Business, and Improving Services to Customers.

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space and security specifications, notification of intent to attend the meeting must be made with Lorenza Wilds. Ms. Wilds can be reached on (202) 622-6440 (not toll-free). Attendees are encouraged to allow enough time to clear security at the 1111 Constitution Avenue, NW entrance.

If you would like to have the Committee consider a written statement, please call or write: Merci del Toro, Office of Public Liaison, C:I, Internal Revenue Service, 1111 Constitution Avenue, NW., room 3308 IR, Washington, DC 20224.

Dated: May 17, 1996.  
Margaret Milner Richardson,  
Commissioner of Internal Revenue.  
[FR Doc. 96-13190 Filed 5-24-96; 8:45 am]  
BILLING CODE 4830-01-U

Federal Reserve

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Tuesday  
May 28, 1996

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**Part II**

**Office of  
Management and  
Budget**

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**Economic Classification Policy  
Committee: Standard Industrial  
Classification Replacement—The North  
American Industry Classification System  
Proposed Industry Classification  
Structure; Notice**

## OFFICE OF MANAGEMENT AND BUDGET

### Economic Classification Policy Committee: Standard Industrial Classification Replacement—The North American Industry Classification System Proposed Industry Classification Structure

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of solicitation of comments for North American Industry Classification System industries.

**SUMMARY:** Under Title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is seeking public comment on a series of notices documenting the development of the new North American Industry Classification System (NAICS), the industry classification system being proposed to replace the current Standard Industrial Classification (SIC) system. All Federal agencies that collect establishment-based data are expected to utilize the new system.

This notice, the fifth related to preparation of NAICS and the third in a series seeking comment on proposed industry structures, presents the proposed industry structure for the NAICS subsectors listed in the Supplementary Information section below. This notice also presents alternatives for the NAICS coding system.

OMB is seeking comments on the usefulness and advisability of the proposed new NAICS subsectors submitted by the Economic Classification Policy Committee (ECPC), an interagency committee established by OMB, and on the NAICS coding system.

The next Federal Register notice will present the entire structure of NAICS and seek comment on that structure and other industry sectors and subsector proposals. NAICS is being developed in cooperation with Statistics Canada and Mexico's Instituto Nacional de Estadística, Geografía e Informática (INEGI). The new NAICS system provides common industry definitions for Canada, Mexico, and the United States to facilitate economic analyses that cover the economies of the three North American countries. The three country collaboration on an industry classification system for North America was announced for public comment in the Federal Register, July 26, 1994, pp. 38092-38096.

The July 26, 1994 Federal Register notice includes the concepts for the new system, as developed by Statistics

Canada, Mexico's INEGI, and the ECPC. It also includes a copy of the joint statement of the three countries' statistical agencies regarding the development of NAICS. That agreement includes the following principles:

(1) NAICS will be erected on a production-oriented, or supply-based, conceptual framework. This means that producing units that use identical or similar production processes will be grouped together in NAICS.

(2) The system will give special attention to developing production-oriented classifications for (a) new and emerging industries in general, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity will be maintained to the extent possible. However, changes in the economy and proposals from data users must be considered. In addition, adjustments will be required for sectors where the United States, Canada, and Mexico presently have incompatible industry classification definitions in order to produce a common industry system for all three North American countries.

(4) The system will strive for compatibility with the 2-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC, Rev. 3) of the United Nations.

ECPC Report No. 3, Summary of Public Responses to the Proposed New North American Industry Classification System, provides a summary of public comments received in response to the July 26, 1994, Federal Register notice.

A notice was published in the Federal Register, July 26, 1995, pp. 38436-38452, requesting comment on proposed industry structures for petroleum and coal product manufacturing, chemical manufacturing, and rubber and plastic manufacturing; for broadcasting and telecommunications; and for food services and drinking places and accommodations. A Federal Register notice was published on February 6, 1996, pp. 4524-4578, requesting comment on proposed industry structures for crop production, animal production, forestry and logging, fishing, hunting, and trapping, and support activities for agriculture and forestry; textile mills, textile product mills, apparel manufacturing, and leather and allied product manufacturing; food manufacturing and beverage and tobacco product manufacturing; fabricated metal product manufacturing; machinery manufacturing; electrical equipment, appliance, and component manufacturing; and transportation equipment manufacturing.

**DATES:** To ensure consideration and response to all comments on the proposals set forth in this notice, comments must be in writing and should be submitted as soon as possible, but no later than July 29, 1996. This proposed industry system would become effective in the U.S. on January 1, 1997.

**ADDRESSES:** Correspondence about the industry proposals of the NAICS structure announced in this Federal Register notice should be sent to: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633-3, Washington, DC 20233, telephone number: (301) 457-2668, FAX number: (301) 457-1343.

Correspondence about the NAICS numbering system should be sent to: Jack E. Triplett, Chairman, Economic Classification Policy Committee, Bureau of Economic Analysis (BE-42), U.S. Department of Commerce, Washington, DC 20230, telephone number: (202) 606-9615, FAX number: (202) 606-5311. Copies of all ECPC issues papers, previous Federal Register notices, and ECPC reports are available from the same address.

**ELECTRONIC AVAILABILITY AND COMMENTS:** This document is available on the Internet from the Census Bureau via WWW browser, ftp, and E-mail.

To obtain this document via WWW browser, connect to "http://www.census.gov" then select "Economy," then select "Economy-Wide Programs," then select "NAICS Documents."

To obtain this document via ftp, log in to ftp.census.gov as anonymous, and retrieve the file "prop01.txt" from the "/pub/epcd/naics" directory. (That directory also contains previous NAICS Federal Register Notices and related documents.)

To obtain this document via Internet E-mail, send a message to majordomo@census.gov with the body text as follows: "get gatekeeper prop01.txt". The document will be delivered as a message attachment.

Comments may be sent via Internet E-mail to the Census Bureau at naics@census.gov (do not include any capital letters in the address). Comments received at this address by the dates specified above will be included as part of the official record.

**FOR FURTHER INFORMATION CONTACT:** Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633-3, Washington, DC 20233, telephone

number: (301) 457-2668, FAX number: (301) 457-1343.

**SUPPLEMENTARY INFORMATION:**

Structure of Notice

There are 20 parts to this notice. Part I includes the proposals for health and social assistance; Part II includes educational services; Part III includes computer and electronic product manufacturing; Part IV includes furniture manufacturing; Part V includes printing and related support activities; Part VI includes professional, scientific, and technical services; Part VII includes performing arts, spectator sports and related industries, museums, historical sites and similar institutions, and recreation, amusement, and gambling; Part VIII includes information; Part IX includes wood product manufacturing, except furniture; Part X includes rental and leasing; Part XI includes repair and maintenance; Part XII includes management and support; Part XIII includes transportation; Part XIV includes retail and wholesale trade; Part XV includes mining; Part XVI includes paper manufacturing; Part XVII includes nonmetallic mineral manufacturing; Part XVIII includes primary metal manufacturing; Part XIX includes miscellaneous manufacturing; and Part XX includes postal service and couriers.

Each of the 20 parts of the notice is organized into two sections. The first section includes a copy of the proposed agreement signed by the ECPC, Statistics Canada, and INEGI; the structure of NAICS; and an explanation of the structure. For a number of reasons, NAICS industries do not always provide as much industry detail as has been present in the U.S. SIC. Each country may add additional detailed industries, below the industry level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a NAICS industry in order to ensure full comparability among the three countries. The proposed United States NAICS system would include U.S. national industries. These represent important industries in the U.S. that cannot be recognized in the statistical systems of either Canada or Mexico because of size restrictions, confidentiality or other reasons. The

second section of each part includes the U.S. detailed industries within NAICS and two comparison tables showing the differences between the 1987 SIC and the 1997 NAICS with United States detail.

The NAICS numbering system is still under development; therefore the hierarchical structure is displayed in this document with X's representing the following:

- X Industry Sector
- XX Industry Subsector
- XXX Industry Group
- XXXX Industry
- XXXXX U.S. National Industry

The terms "Industry Sector" and "Industry Subsector" are changes from the terms "Division" and "Major Group" used in the 1987 SIC manual.

**NAICS Coding System: Issue for Comment**

The ECPC is requesting public comment on two alternatives for a NAICS coding system—a 5-character alphanumeric system and a 6-character, all numeric system. In the initial stages of its review, the ECPC was informed that the computer systems of some U.S. statistical agencies could not accommodate six characters, which ruled out consideration of a 6-character system. Further investigation has indicated, however, that 6-character fields are possible and may offer certain advantages.

**Background**

NAICS is organized in a hierarchical structure, much like the existing U.S. SIC. The 1987 SIC employed a 4-digit coding system, in which the first two digits designate what in NAICS is known as a "subsector," the third digit designates the industry group, and the fourth digit designates the industry. For example, in the 1987 SIC, the two digits 26 designate the manufacture of "Paper and Allied Products," within which the digits 262 designate an industry group titled "Paper Mills," which contains one 4-digit industry, SIC 2621, also titled "Paper Mills."

The NAICS coding system must be expanded beyond the four digits used in the SIC for two reasons. First, the NAICS agreements among the ECPC, INEGI, and Statistics Canada permit each country to designate detailed

industries, below the level of a NAICS industry, to meet national needs. The United States will have such national industry detail in many places in the new classification, and this national detail can only be accommodated by expanding the coding system to at least five characters. This national industry detail has been shown schematically in previous Federal Register notices.

Second, it is desirable that the first character or characters in a coding system designate the sector (the term "industry sector" is replacing the term "division" used in the 1987 SIC). A modern economy is too complex to be described adequately if the first character of the coding system restricts the number of sectors to nine or ten. The ECPC, INEGI, and Statistics Canada are proposing that NAICS have 18 industry sectors. Accordingly, either the first character of the coding system must be a letter, rather than a number, or two digits must be used to designate the sector in NAICS.

The foregoing considerations lead to two options for the coding system in NAICS:

(1) A 5-character, alphanumeric coding system, in which the first character (a letter) designates the NAICS sector, and the second, third, fourth, and fifth numerical characters designate, respectively, the subsector, industry group, NAICS industry, and U.S. national industry (if any).

(2) A 6-character, all numeric coding system, in which the first two digits designate the NAICS sector, and the third, fourth, fifth, and sixth digits designate, respectively, the subsector, industry group, NAICS industry, and U.S. national industry (if any).

To illustrate the differences between the two coding systems, the following table shows a portion of the proposed NAICS structure, with U.S. national detail, for two manufacturing subsectors, and for one non-manufacturing subsector. In the example, hypothetical 5-character and 6-character coding systems are displayed for illustration (the actual positions of these subsectors in the classification system, and hence the actual codes to be assigned to them, will be determined later).

ILLUSTRATIVE PORTION OF THE NAICS STRUCTURE, SHOWING HYPOTHETICAL ALTERNATIVE CODING SYSTEMS

	5-character alphanumeric system	6-character all numeric system
Manufacturing .....	E, F, G	21, 22, 23
Food Manufacturing .....	E1	211
Animal Food Manufacturing .....	E11	2111

ILLUSTRATIVE PORTION OF THE NAICS STRUCTURE, SHOWING HYPOTHETICAL ALTERNATIVE CODING SYSTEMS—  
Continued

	5-character alphanumeric system	6-character all numeric system
Animal Food Manufacturing .....	E111	21111
Dog and Cat Food Manufacturing .....	E1111	211111
Other Animal Food Manufacturing .....	E1112	211112
Grain and Oilseed Milling .....	E12	2112
Flour Milling and Malt Manufacturing .....	E121	21121
Flour Milling .....	E1211	211211
Rice Milling .....	E1212	211212
Malt Manufacturing .....	E1213	211213
Starch and Vegetable Fats and Oils Manufacturing .....	E122	21122
Soybean Processing .....	E1221	211221
Wet Corn Milling .....	E1222	211222
Other Oilseed Processing .....	E1223	211223
Edible Fats and Oils Manufacturing .....	E1224	211224
Breakfast Cereal Manufacturing .....	E123	21123
Sugar and Confectionery Product Manufacturing .....	E13	2113
(Classification continues) .....	...	...
Textile Mills .....	E2	212
Fibre, Yarn, and Thread Mills .....	E21	2121
Fiber, Yarn, and Thread Mills .....	E211	21211
Yarn Spinning Mills .....	E2111	212111
Yarn Texturing, Throwing, and Twisting Mills .....	E2112	212112
Thread Mills .....	E2113	212113
Fabric Mills .....	E22	2122
Broadwoven Fabric Mills .....	E221	21221
Narrow Fabric Mills and Schiffli Machine Embroideries .....	E222	21222
Narrow Fabric Mills .....	E2221	212221
Schiffli Machine Embroideries .....	E2222	212222
Nonwoven Fabric Mills .....	E223	21223
Knit Fabric Mills .....	E224	21224
Weft Knit Fabric Mills .....	E2241	212241
Other Knit Fabric and Lace Mills .....	E2242	212242
(Classification continues) .....	...	...
Computer and Electronic Product Manufacturing .....	F1	221
Computer and Peripheral Equipment Manufacturing .....	F11	2211
Computer and Peripheral Equipment Manufacturing .....	F111	22111
Electronic Computer Manufacturing .....	F1111	221111
Computer Storage Device Manufacturing .....	F1112	221112
Computer Terminal Manufacturing .....	F1113	221113
Other Computer Peripheral Equipment Manufacturing .....	F1114	221114
Communication Equipment Manufacturing .....	F12	2212
Telephone Apparatus Manufacturing .....	F121	22121
Broadcast and Studio Equipment for Radio, TV, and Cable Manufacturing .....	F122	22122
Other Communication Equipment Manufacturing .....	F123	22123
Audio and Video Equipment Manufacturing .....	F13	2213
(Classification continues) .....	...	...
Information .....	J	71
Publishing .....	J1	711
Newspaper, Periodical, Book and Database Publishing .....	J11	7111
Newspaper Publishing .....	J111	71111
Periodical Publishing .....	J112	71112
Book Publishing .....	J113	71113
Database Publishing .....	J114	71114
Other Publishing .....	J115	71115
Greeting Card Publishing .....	J1151	711151
All Other Publishing .....	J1152	711152
(Classification continues) .....	...	...

Advantages and Disadvantages of the Two Options

*6-Character All Numeric System*

Advantages

- An all numeric code can be key-punched more efficiently, i.e., more

quickly and accurately. First, a 6-character all numeric code can be keyed faster than a 5-character alphanumeric one. Second, an all numeric code can more readily be verified by the computer system with a check-digit. Third, an all numeric code is less subject to misinterpretation since

numerals are more distinct than certain letters (e.g., E & F, M & N, or U & V) even if letters such as I, O, and S are omitted because of their similarity to certain numerals. These productivity advantages reduce the cost of key-punching, compared with a 5-character alphanumeric system. This is the

primary advantage of a 6-character, all numeric system to Government agencies.

- Using an all numeric system allows more flexibility for future expansion of NAICS industry sectors. Under a 5-character alphanumeric system, NAICS would use 22 letters of the alphabet (18 NAICS industry sectors, plus four extra letters for industry sectors, such as Manufacturing, that contain more than ten subsectors). Eliminating the three or four letters that are similar to numerals leaves essentially no room for expansion of the number of NAICS industry sectors under the 5-character alphanumeric proposal, whereas the 6-character all numeric system would permit future expansion of NAICS industry sectors.

- Most other industry classification systems used throughout the world are all numeric, though most of them are 4- or 5-digit systems.

#### Disadvantages

- Some of the numerical codes used in the 1987 SIC would be reused for NAICS, but they would describe different levels of aggregation of different industries compared to their use in the 1987 SIC. Even though at any given number of digits, the codes will designate different levels in the two classification systems, reusing codes could lead to some initial confusion about the meaning of a given code. For example, using the hypothetical codes shown above, NAICS code 2111 could represent the industry group for Animal Food Manufacturing, which contains one NAICS industry and two U.S. national industries, while the 1987 SIC code 2111 represents the 4-digit industry for the manufacture of cigarettes.

- Because expanding a field can be expensive for existing database systems, some users may prefer a 5-character field to one that requires 6-characters, especially since, of the 99 available initial two-digits in a 6-character system, NAICS will only use 22 of them (18 NAICS sectors, plus four extra initial digit pairs for industry sectors, such as Manufacturing, that contain more than ten subsectors).

#### 5-Character Alphanumeric System

##### Advantages

- Only 5-character fields must be carried in government and nongovernment data bases thereby potentially lessening database-related transition costs to the new system. However, since the field would need to be changed from a numeric to an alphanumeric one, the extent of potential savings is not clear.

- A 5-character system beginning with a letter provides for unique codes as compared to the 1987 SIC. This will help minimize initial confusion between the new and old systems.

##### Disadvantages

- A 5-character alphanumeric system is expected to impose substantially higher data entry costs on the U.S. statistical agencies responsible for industry coding. Key-punching of 5-character alphanumeric industry codes takes longer and is less accurate than a 6-character all numeric system for the reasons discussed above under advantages of the 6-character system.

- Using a 5-character alphanumeric system permits essentially no flexibility for future expansion of NAICS industry sectors. Under a 5-character alphanumeric system, NAICS would use 22 letters of the alphabet (18 NAICS industry sectors, plus four more letters for industry sectors, such as Manufacturing, that contain more than ten subsectors). Eliminating the three or four letters that are similar to numerals leaves essentially no room for expansion of the number of NAICS industry sectors under the 5-character alphanumeric proposal, whereas the 6-character all numeric system would permit future expansion of NAICS industry sectors.

##### Disadvantages of Both Systems

- With either coding system, multiple initial characters must be used for large sectors, such as manufacturing, transportation, and wholesale and retail trade. Manufacturing, for example, has 21 subsectors in NAICS, so that the 5-character alphanumeric system will require three letters to designate manufacturing and the 6-character all numeric system will require three sets of 2-digit codes. This is an inconvenience in working with the system because tabulating manufacturing will require entering three letters or three 2-digit codes, rather than just one. However, this characteristic is also present in the 1987 SIC system (where initial digits 2 and 3 designate manufacturing).

- In public comments to the ECPC, some users have requested a more "user friendly" coding system than the present 4-digit SIC. Neither of the two systems is an improvement in this respect.

##### ECPC Proposal: Request for Comment

The ECPC is proposing the adoption of the 6-character, all numeric coding system for NAICS. The principal reasons for this proposal are the additional key-punching costs to Government agencies if an

alphanumeric system were to be adopted as well as the flexibility for future expansion that a 6-character system permits. Other advantages and disadvantages of one coding system over the other seem less compelling because they are more or less offsetting. Of the other countries that are partners in NAICS, Statistics Canada has indicated a strong preference for an all numeric system, and INEGI (which now uses a 6-character numeric system for its industry classification system) has indicated that either system would be acceptable. The ECPC requests comments on its proposal to adopt the 6-digit coding system.

##### Time Series Summary

The standard approach to preserving time series continuity after classification revisions is to create linkages where the series break. This is accomplished by producing the data series using both the old and new classifications for a given period of transition. With the dual classifications of data, the full impact of the revision can be assessed. Data producers then may measure the reallocation of the data at aggregate industry levels and develop a concordance between the new and old series for that given point in time. The concordance creates a crosswalk between the old and new classification systems. This link between the 1987 U.S. SIC and NAICS (with U.S. national detail) will be developed by the statistical agencies in the U.S.

##### Outreach Activities

OMB and the Economic Classification Policy Committee (ECPC) are seeking comments on the proposed NAICS structure for the industries described in this notice. In carrying out its mandate to ensure maximum public participation in the process of constructing NAICS, the ECPC has already discussed many of these industry proposals with industry and user groups and will continue to do so. In addition, the ECPC is replying, on a flow basis as soon as the work is completed for industry subsectors, to respondents to previous Federal Register notices. Thus, this Federal Register notice supplements other ECPC public outreach activities in the development of NAICS.

Part I—Proposed New Industry Structure for Ambulatory Health Care Services, Hospitals, Nursing and Residential Care Facilities, and Social Assistance

##### Section A—NAICS Structure

North American Industry Classification System

(NAICS)

Agreement Number 11

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

- Ambulatory Health Care Services Hospitals
- Nursing and Residential Care Facilities
- Social Assistance

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995—September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

- XX Ambulatory Health Care Services
- XXX Offices of Physicians
- XXXX Offices of Physicians
- XXX Offices of Dentists
- XXXX Offices of Dentists
- XXX Offices of Other Health Practitioners
- XXXX Offices of Chiropractors
- XXXX Offices of Optometrists
- XXXX Offices of Mental Health Practitioners, except Physicians
- XXXX Offices of Physical, Occupational, and Speech Therapists and Audiologists
- XXXX Offices of All Other Health Practitioners
- XXX Outpatient Care Facilities
- XXXX Family Planning Centers
- XXXX Outpatient Mental Health Facilities
- XXXX Other Outpatient Care Facilities
- XXX Medical and Diagnostic Laboratories
- XXXX Medical and Diagnostic Laboratories
- XXX Home Health Care Services
- XXXX Home Health Care Services
- XXX Miscellaneous Ambulatory Health Care Services
- XXXX Ambulance Services
- XXXX Other Miscellaneous Ambulatory Health Care Services
- XX Hospitals
- XXX General Medical and Surgical Hospitals

- XXXX General Medical and Surgical Hospitals
- XXX Psychiatric and Substance Abuse Hospitals
- XXXX Psychiatric and Substance Abuse Hospitals
- XXX Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals
- XXXX Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals
- XX Nursing and Residential Care Facilities
- XXX Nursing Care Facilities
- XXXX Nursing Care Facilities
- XXX Mental Health, Mental Retardation, and Substance Abuse Facilities
- XXXX Mental Retardation Facilities
- XXXX Mental Health and Substance Abuse Facilities
- XXX Community Care Facilities for the Elderly
- XXXX Community Care Facilities for the Elderly
- XXX Other Residential Care Facilities
- XXXX Other Residential Care Facilities
- XX Social Assistance
- XXX Individual and Family Services
- XXXX Child and Youth Services
- XXXX Services for the Elderly and Persons with Disabilities
- XXXX Other Individual and Family Services
- XXX Community Food, Shelter, and Emergency and Relief Services
- XXXX Community Food Services
- XXXX Community Housing Services
- XXXX Emergency and Other Relief Services
- XXX Job Training and Vocational Rehabilitation Services
- XXXX Job Training and Vocational Rehabilitation Services
- XXX Child Day-care Services
- XXXX Child Day-care Services

Attachment 2—North American Industry Classification System

Draft Classification for:

- Ambulatory Health Care Services Hospitals
- Nursing and Residential Care Facilities
- Social Assistance

Representatives of the statistical agencies of Canada, Mexico and the United States agree to a draft classification for these industries.

The draft classification constitutes the sector Health and Social Assistance. The sector is subdivided into 4 subsectors, 18 industry groups, and 30 industries.

A General Outline

The health and social services industries provide health care and social assistance for individuals. Because it is sometimes difficult to distinguish between the boundaries of health care and social assistance, these industries are grouped together in a new Health and Social Assistance sector. The industries are arranged in order from those providing the most intensive type of health care to those providing minimal health care with social

assistance to those providing only social assistance to individuals.

Industries in the Ambulatory Health Care Services subsector provide health care services directly or indirectly to ambulatory patients and do not usually provide inpatient overnight services. Health practitioners in this subsector provide outpatient services, with the facilities and equipment not usually being the most significant part of the production process.

The Hospitals subsector includes establishments that provide medical, diagnostic, and treatment services that include physician, nursing and other health services to inpatients and the specialized accommodation services required by inpatients. Hospitals also may provide outpatient services as a secondary activity. Establishments in the Hospitals subsector provide inpatient health services, many of which can only be provided using the specialized facilities and equipment that form a significant and integral part of the production process.

The Nursing and Residential Care Facilities subsector includes establishments that provide residential care combined with either nursing, supervisory or other types of care as required by the residents. In this subsector, the facilities are a significant part of the production process and the care provided is a mix of health and social services with the health services being largely some level of nursing services.

The Social Assistance subsector includes establishments that provide a wide variety of assistance services directly to their clients. These services do not include residential or accommodation services except on a short stay basis.

Limitations and Constraints of the Classification

The draft classification avoids the problem of the delineation of the boundary between health and social services by incorporating both into a continuum.

General Medical and Surgical Hospitals is a very large industry group. NAICS developers considered subdividing this NAICS industry; however, research indicated a wide range of services are typically provided at general medical and surgical hospitals. Some hospitals provide specific advanced medical procedures such as organ transplants that require skilled specialists and special equipment for the operating and recovery phases of the procedures. Other hospitals may offer the same or different advanced medical procedures

with their corresponding technologies, along with the less specialized services and less sophisticated technologies that are offered by virtually all hospitals. The mix of services and technologies among hospitals varies significantly along this continuum, but no clear basis for differentiating among general and surgical hospitals based on their mix of services or technological threshold was found.

*Relationship to ISIC*

All of the 30 industries included in these subsectors are contained within Division 85, Health and Social Work, in the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. ISIC Division 85, however, includes veterinary services; in NAICS, veterinary services are in the Professional, Scientific, and Technical Services subsector.

*Some Changes to the National Classifications*

Changes to the Canadian SIC include splitting CSIC 8621, Homes for Personal and Nursing Care, into Nursing Care Facilities and Community Care Facilities for the Elderly, and expanding CSIC 8646, Meal Services (Non-Commercial), to include a broader range of food services in the new industry Community Food Services. Community Housing Services and Emergency and Other Relief Services are essentially new industries for Canada. Air ambulance services move out of CSIC 4513, Non-Scheduled Air Transport, Specialty Industry, to Ambulance Services. CSIC 8689, Other Health Laboratories, moves out of this sector. CSIC 8693, Health Care Research Agencies, moves out of this sector.

For Mexico, the new Health and Social services sector represents the grouping of medical and social assistance classified in CMAP groups 9231, Medical, Dental, and Veterinary Services (Private Sector); 9232, Medical, Dental, and Veterinary Services (Public Sector); 9241, Social Security Services (Private Sector); and 9242, Social Security Services (Public Sector). Veterinary services are no longer included in this sector. A distinction is made between the public and private

sector in CMAP for both health and social services. Because this distinction is not maintained in NAICS, it will be made by Mexico at the national industry level.

For the United States, there is a major change to 1987 SIC's 8011, Offices and Clinics of Doctors of Medicine, and 8031, Offices and Clinics of Doctors of Osteopathy. NAICS industry Offices of Physicians now includes both doctors of medicine and doctors of osteopathy. The 1987 distinction between the two types of doctors has been eliminated to recognize the convergence of the two types of medical service. The training and the specialties in which the doctors of medicine and doctors of osteopathy are engaged in many cases are the same and it is more and more common for the two types of doctors to practice together. The U.S. will define a separate national industry for physicians who practice mental health specialties. In addition to this change to 1987 SIC's 8011 and 8031, HMO medical centers and ambulatory surgical and free-standing emergency centers have been moved to NAICS industry Other Outpatient Care Facilities. The U.S. will recognize separate industries for these activities in its national detail. Another major change is the transfer of ambulance services from 1987 SIC's 4119, Local Passenger Transportation, Not Elsewhere Classified, and 4522, Air Transportation, Nonscheduled, into Ambulatory Health Care Services. The medical services included in the Ambulance Services industry are judged to be of greater significance than the vehicle used and the significance of the medical service dwarfs the transportation service also provided. Dental Laboratories, 1987 SIC 8072, are moved from the medical subsector to the Miscellaneous Manufacturing subsector, because making dentures, crowns, bridgework and artificial teeth is similar to other manufacturing processes classified there.

*Achievements of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It is comprised of industries that group establishments with similar production processes, that is, it applies the

production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. All countries agree on the definitions of the industries.

Other objectives of the NAICS project have also been met. New industries that recognize current health and social service establishments have been established. New and emerging service industries have been created, especially in the area of social assistance.

The industries are economically significant. Some NAICS industries are much larger than others, but this was necessary to ensure comparability among the countries or because it was not possible to further subdivide large industries.

Finally, disruptions to time series, while they exist, have been minimized to the extent possible. Most of the changes to time series reflect the changing structure of health care across the three countries. For the U.S., additional changes have been made to the national detail to reflect these changes.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the four NAICS industry subsectors presented in Part 1, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the four NAICS industry subsectors covered in Part I of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Ambulatory Health Care Services:			
XXX .....	Offices of Physicians:			
XXXX ...	Offices of Physicians:			

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Offices of Physicians except Mental Health Specialists.	N	*8011	Offices and Clinics of Doctors of Medicine (except mental health specialists).
			*8031	Offices and Clinics of Doctors of Osteopathy (except mental health specialists).
XXXXX	Offices of Physicians, Mental Health Specialists.	N	*8011	Offices and Clinics of Doctors of Medicine (mental health specialists).
			*8031	Offices and Clinics of Doctors of Osteopathy (mental health specialists).
XXX .....	Offices of Dentists:			
XXXX ..	Offices of Dentists .....	E	8021	Offices and Clinics of Dentists.
XXX .....	Offices of Other Health Practitioners:			
XXXX ..	Offices of Chiropractors .....	E	8041	Offices and Clinics of Chiropractors.
XXXX ..	Offices of Optometrists .....	E	8042	Offices and Clinics of Optometrists.
XXXX ..	Offices of Mental Health Practitioners, except Physicians.	N	*8049	Offices and Clinics of Health Practitioners, NEC (mental health practitioners except physicians).
XXXX ..	Offices of Physical, Occupational, and Speech Therapists and Audiologists.	N	*8049	Offices and Clinics of Health Practitioners, NEC (physical, occupational, speech therapists, and audiologists).
XXXX ..	Offices of All Other Health Practitioners:			
XXXXX	Offices of Podiatrists .....	E	8043	Offices and Clinics of Podiatrists.
XXXXX	Miscellaneous Health Practitioners .....	N	*8049	Offices and Clinics of Health Practitioners, NEC (except mental health practitioners, physical, occupational, speech therapists, and audiologists).
XXX .....	Outpatient Care Facilities:			
XXXX ..	Family Planning Centers .....	N	*8093	Speciality Outpatient Facilities, NEC (family planning centers).
			*8099	Health and Allied Services, NEC (childbirth preparation).
XXXX ..	Outpatient Mental Health Facilities .....	N	*8093	Specialty Outpatient Facilities, NEC (mental health facilities).
XXXX ..	Other Outpatient Care Facilities:			
XXXXX	HMO Medical Centers .....	N	*8011	Offices and Clinics of Doctors of Medicine (HMO Medical Centers).
XXXXX	Kidney Dialysis Centers .....	E	8092	Kidney Dialysis Centers.
XXXXX	Ambulatory Surgical and Freestanding Emergency Centers.	N	*8011	Offices and Clinics of Doctors of Medicine (surgical and emergency centers).
XXXXX	All Other Outpatient Care Facilities .....	N	*8093	Specialty Outpatient Facilities, NEC (except family planning and mental health centers).
XXX .....	Medical and Diagnostic Laboratories:			
XXXX ..	Medical and Diagnostic Laboratories:			
XXXXX	Medical Laboratories .....	R	*8071	Medical Laboratories (except diagnostic imaging centers).
XXXXX	Diagnostic Imaging Centers .....	N	*8071	Medical Laboratories (diagnostic imaging centers).
XXX .....	Home Health Care Services:			
XXXX ..	Home Health Care Services:			
XXXXX	Home Health Agencies .....	N	*8082	Home Health Care Services (home health agencies).
XXXXX	Other Home Health Care Services .....	N	*8082	Home Health Care Services (except home health agencies).
XXX .....	Miscellaneous Ambulatory Health Care Services:			
XXXX ..	Ambulance Services .....	N	*4119	Local Passenger Transportation, NEC (land ambulance)
			*4522	Air Transportation, Nonscheduled (air ambulance).
XXXX ..	Other Miscellaneous Health Care Services:			
XXXXX	Blood and Organ Banks .....	N	*8099	Health and Allied Services, NEC (blood and organ banks).
XXXXX	All Other Miscellaneous Health Care Services.	N	*8099	Health and Allied Services, NEC (except blood and organ banks).
XX .....	Hospitals:			
XXX .....	General Medical and Surgical Hospitals:			
XXXX ..	General Medical and Surgical Hospitals .....	R	8062	General Medical and Surgical Hospitals.
			*8069	Specialty Hospitals, Except Psychiatric (childrens' hospitals).
XXX .....	Psychiatric and Substance Abuse Hospitals:			
XXXX ..	Psychiatric and Substance Abuse Hospitals	R	8063	Psychiatric Hospitals
			*8069	Specialty Hospitals, Except Psychiatric (substance abuse hospitals).
XXX .....	Specialty Hospitals, except Psychiatric and Substance Abuse Hospitals:			
XXXX ..	Specialty Hospitals, except Psychiatric and Substance Abuse Hospitals.	R	*8069	Specialty Hospitals, Except Psychiatric (except childrens' and substance abuse hospitals).
XX .....	Nursing and Residential Care Facilities:			
XXX .....	Nursing Care Facilities:			
XXXX ..	Nursing Care Facilities .....	N	*8051	Skilled Nursing Care Facilities (except continuing care retirement communities).
			*8052	Intermediate Care Facilities (except continuing care retirement communities and mental retardation facilities).
			*8059	Nursing and Personal Care Facilities, NEC (except continuing care retirement communities).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXX .....	Mental Health, Mental Retardation, and Substance Abuse Facilities:			
XXXX ...	Mental Retardation Facilities .....	N	*8052	Intermediate Care Facilities (mental retardation facilities).
XXXX ...	Mental Health and Substance Abuse Facilities.	N	*8361	Residential Care (mental health and substance abuse facilities).
XXX .....	Community Care Facilities for the Elderly:			
XXXX ...	Community Care Facilities for the Elderly:			
XXXXX	Continuing Care Retirement Communities .....	N	*8051	Skilled Nursing Care Facilities (continuing care retirement communities).
			*8052	Intermediate Care Facilities (continuing care retirement communities).
			*8059	Nursing and Personal Care Facilities, NEC (continuing care retirement communities).
XXXXX	Homes for the Elderly .....	N	*8361	Residential Care (homes for the elderly).
XXX .....	Other Residential Care Facilities:			
XXXX ...	Other Residential Care Facilities .....	N	*8361	Residential Care (except mental health and substance abuse facilities, homes for the elderly).
XX .....	Social Assistance:			
XXX .....	Individual and Family Services:			
XXXX ...	Child and Youth Services .....	N	*8322	Individual and Family Social Services (child and youth services).
XXXX ...	Services for the Elderly and Persons with Disabilities.	N	*8322	Individual and Family Social Services (services for the elderly and disabled).
XXXX ...	Other Individual and Family Services .....	N	*8322	Individual and Family Social Services (except services for children, youth, elderly, disabled; food, housing, emergency and relief).
XXX .....	Community Food, Shelter, and Emergency Relief Services:			
XXXX ...	Community Food Services .....	N	*8322	Individual and Family Social Services (food services).
XXXX ...	Community Housing Services:			
XXXXX	Temporary Shelter .....	N	*8322	Individual and Family Social Services (temporary shelter).
XXXXX	Other Community Housing Services .....	N	*8322	Individual and Family Social Services (housing services except temporary shelter).
XXXX ...	Emergency and Other Relief Services .....	N	*8322	Individual and Family Social Services (emergency and relief services).
XXX .....	Job Training and Vocational Rehabilitation Services:			
XXXX ...	Job Training and Vocational Rehabilitation Services.	E	8331	Job Training and Vocational Rehabilitation Services.
XXX .....	Child Day Care Services:			
XXXX ...	Child Day-care Services .....	E	8351	Child Day Care Services.

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
4119@ .....	Local Passenger Transportation, NEC .....	Ambulance Services (pt.).
4522@ .....	Air Transportation, Nonscheduled .....	Ambulance Services (pt.).
8011@ .....	Offices and Clinics of Doctors of Medicine:	
	Clinics of Physicians, Surgical and Emergency Centers.	Ambulatory Surgical and Freestanding Emergency Centers.
	HMO Medical Centers .....	HMO Medical Centers.
	Offices of Physicians, Mental Health Specialists	Offices of Physicians, Mental Health Specialists (pt.).
	Other Offices of Physicians .....	Offices of Physicians, Except Mental Health Specialists (pt.).
8021 .....	Offices and Clinics of Dentists .....	Offices of Dentists.
8031@ .....	Offices and Clinics of Doctors of Osteopathy:	
	Offices of Doctors of Osteopathy, Except Mental Health.	Offices of Physicians, Except Mental Health Specialists (pt.).
	Offices of Doctors of Osteopathy, Mental Health Specialists.	Offices of Physicians, Mental Health Specialists (pt.).
8041 .....	Offices and Clinics of Chiropractors .....	Offices of Chiropractors.
8042 .....	Offices and Clinics of Optometrists .....	Offices of Optometrists.
8043 .....	Offices and Clinics of Podiatrists .....	Offices of Podiatrists.
8049 .....	Offices and Clinics of Health Practitioners, Not Elsewhere Classified:	
	Mental Health Practitioners, Except Physicians	Offices of Mental Health Practitioners, Except Physicians.

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Offices of Physical, Occupational, and Speech Therapists and Audiologists.	Offices of Physical, Occupational, and Speech Therapists and Audiologists.
	Other Offices of Health Practitioners .....	Miscellaneous Health Practitioners.
8051@ .....	Skilled Nursing Care Facilities:	
	Continuing Care Retirement Communities .....	Continuing Care Retirement Communities (pt.).
	All Other Skilled Nursing Care Facilities .....	Nursing Care Facilities (pt.).
8052@ .....	Intermediate Care Facilities:	
	Continuing Care Retirement Communities .....	Continuing Care Retirement Communities (pt.).
	Mental Retardation Facilities .....	Mental Retardation Facilities.
	Other Intermediate Care Facilities .....	Nursing Care Facilities (pt.).
8059@ .....	Nursing and Personal Care Facilities, Not Elsewhere Classified:	
	Continuing Care Retirement Communities .....	Continuing Care Retirement Communities (pt.).
	Other Nursing and Personal Care Facilities .....	Nursing Care Facilities (pt.).
8062@ .....	General Medical and Surgical Hospitals .....	General Medical and Surgical Hospitals (pt.).
8063@ .....	Psychiatric Hospitals .....	Psychiatric and Substance Abuse Hospitals (pt.).
8069@ .....	Specialty Hospitals, Except Psychiatric:	
	Children's Hospitals .....	General Medical and Surgical Hospitals (pt.).
	Psychiatric and Substance Abuse Hospitals .....	Psychiatric and Substance Abuse Hospitals (pt.).
	Other Specialty Hospitals .....	Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals.
8071 .....	Medical Laboratories:	
	Diagnostic Imaging Centers .....	Diagnostic Imaging Centers.
	Medical Laboratories, Except Diagnostic Imaging Centers.	Medical Laboratories.
8072 .....	Dental Laboratories .....	Dental Laboratories (Included in Miscellaneous Manufacturing subsector).
8082 .....	Home Health Care Services:	
	Home Health Agencies .....	Home Health Agencies.
	Home Health Care Services, Except Home Health Agencies.	Other Home Health Care Services.
8092 .....	Kidney Dialysis Centers .....	Kidney Dialysis Centers.
8093 .....	Specialty Outpatient Facilities, Not Elsewhere Classified:	
	Family Planning Centers .....	Family Planning Centers.
	Outpatient Mental Health Facilities .....	Outpatient Mental Health Facilities.
	Other Specialty Outpatient Facilities .....	All Other Outpatient Care Facilities.
8099 .....	Health and Allied Services, Not Elsewhere Classified:	
	Blood and Organ Banks .....	Blood and Organ Banks.
	Medical artists .....	Graphic Design Services (pt.) (Included in Professional, Scientific, and Technical Services subsector).
	Medical Photography .....	Commercial Photography (pt.) (Included in Professional, Scientific, and Technical Services subsector).
	Other Health and Allied Services .....	All Other Miscellaneous Health Care Services.
8322 .....	Individual and Family Social Services:	
	Child and Youth Services .....	Child and Youth Services.
	Community Food Services .....	Community Food Services.
	Community Housing Services, Except Temporary Shelters.	Other Community Housing Services.
	Emergency and Other Relief Services .....	Emergency and Other Relief Services.
	Services for the Elderly and Persons with Disabilities.	Services for the Elderly and Persons with Disabilities.
	Temporary Shelter .....	Temporary Shelter.
	Other Individual and Family Services .....	Other Individual and Family Services.
8331 .....	Job Training and Vocational Rehabilitation Services.	Job Training and Vocational Rehabilitation Services.
8351 .....	Child Day-care Services .....	Child Day Care Services.
8361 .....	Residential Care:	
	Homes for the Elderly .....	Homes for the Elderly.
	Mental Health and Substance Abuse Facilities	Mental Health and Substance Abuse Facilities.
	Other Residential Care .....	Other Residential Care Facilities.

The abbreviation "pt" mean "part of". @ means a time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

*Description of Changes to the U.S. System*

1. Ambulatory Health Care Services—Sixteen new NAICS or national

industries were added to the 1997 industry structure for this subsector to better describe the growing and changing U.S. Ambulatory Health Care

Services industries. A number of these new industries were created from 1987 Not Elsewhere Classified (NEC) industries. The new industries are:

Offices of Physicians, except Mental Health Specialists from part of 1987 SIC code 8011, Offices and Clinics of Doctors of Medicine, and part of 1987 SIC code 8031, Offices and Clinics of Doctors of Osteopathy. In most cases, these two types of physicians provide the same services.

Offices of Physicians, Mental Health Specialists from Part of 1987 SIC code 8011, Offices and Clinics of Doctors of Medicine, and part of 1987 SIC code 8031, Offices and Clinics of Doctors of Osteopathy. Mental health is separated from other physicians because the production process they use most differs from that used by other physicians.

Offices of Mental Health Practitioners, Except Physicians from part of 1987 SIC 8049, Offices of Health Practitioners, NEC. This new industry was created because it had a unique production process.

Offices of Physical, Occupational, and Speech Therapists and Audiologists from part of 1987 SIC 8049, Offices of Health Practitioners, NEC. This new industry was created because it had a unique production process.

Miscellaneous Health Practitioners from part of 1987 SIC 8049, Offices and Clinics of Health Practitioners, NEC. This is one of two new residual categories from the current NEC category. It includes only offices of practitioners.

Family Planning Centers from part of 1987 SIC 8093, Specialty Outpatient Clinics, NEC, and part of 1987 SIC 8099, Health and Allied Services, NEC. This new industry was created because it had a unique production process.

Outpatient Mental Health Facilities from part of 1987 SIC 8093, Specialty Outpatient Clinics, NEC. This new industry was created because it had a unique production process.

HMO Medical Centers from part of 1987 SIC 8011, Offices and Clinics of Doctors of Medicine. The range of services provided in these centers are generally greater than in physician offices.

Ambulatory Surgical and Freestanding Emergency Centers from part of 1987 SIC 8011, Offices and Clinics of Doctors of Medicine. This new industry was created because it had a unique production process.

All Other Outpatient Care Facilities from part of 1987 SIC 8049, Offices and Clinics of Health Practitioners, NEC. This is the second residual category from the current NEC. It contains only outpatient care facilities.

Diagnostic Imaging Centers from part of 1987 SIC 8071, Medical Laboratories. This new industry was created because it had a unique production process.

Home Health Agencies from part of 1987 SIC 8082, Home Health Care Services. This industry provides skilled nursing, physical and other therapy, and other services provided in the home.

Other Home Health Care Services from part of 1987 SIC 8082, Home Health Care Services. This residual of the current industry includes, for example, home inhalation, infusion, and perfusion therapy.

Ambulance Services from parts of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified, and 1987 SIC 4522, Air Transportation, Nonscheduled. The medical service provided by ambulance personnel is more important than the transportation.

Blood and Organ Banks from part of 1987 SIC 8099, Health and Allied Services, NEC. The new industry was created because it had a unique production process.

All Other Miscellaneous Health Care Services from part of 1987 SIC 8099, Health and Allied Services, NEC. This is the new residual category for the current 8099.

2. Hospitals—There are no new industries, but some content changes were made to achieve comparability among the three countries. These are:

Children's hospitals were moved from 1987 SIC 8069, Specialty Hospitals, except Psychiatric, to General Medical and Surgical Hospitals. These hospitals provide the wide variety of services found in general hospitals.

Alcohol and drug abuse hospitals were moved from 1987 SIC 8069, Specialty Hospitals, except Psychiatric, to form part of Psychiatric and Substance Abuse Hospitals to recognize the growing number of these hospitals.

3. Nursing and Residential Care Facilities—The three industries in 1987 SIC Industry Group 805, Nursing and Personal Care Facilities, and 1987 SIC 8361, Residential Care, have been redistributed into five NAICS industries and two additional National industries to better describe this growing activity and to eliminate the distinction made in 1987 based on the Medicare/Medicaid programs. The new industries are:

Nursing Care Facilities from parts of 1987 SIC 8051, Skilled Nursing Care Facilities; 1987 SIC 8052, Intermediate Care Facilities; and 1987 SIC 8059, Nursing and Personal Care Facilities, NEC. These industries were combined because many establishments provide care for persons needing varying levels of health care.

Mental Retardation Facilities from part of 1987 SIC 8052, Intermediate Care Facilities. This new industry was

created because it had a production process not found in nursing homes.

Mental Health and Substance Abuse Facilities from part of 1987 SIC 8361, Residential Care. This new industry was created because it had a unique production process.

Continuing Care Retirement Communities from parts of 1987 SIC 8051, Skilled Nursing Care Facilities; 1987 SIC 8052, Intermediate Care Facilities; and 1987 SIC 8059, Nursing and Personal Care Facilities, NEC. This new industry was created to handle the growing number of establishments having facilities for various levels of care at one facility, including nursing care, housekeeping, meal service, and other services to assist elderly persons in daily living.

Homes for the Elderly from part of SIC 1987 8361, Residential Care. This new industry was created to provide data on establishments known as retirement homes or assisted living facilities, where medical care is incidental.

Other Residential Care Facilities from part of 1987 SIC 8361, Residential Care. This is a new residual category from the current 8361, Residential Care.

4. Social Assistance—1989 SIC 8322, Individual and Family Social Services, has been split into seven new industries in two industry groups. These new industries reflect the growing and changing character of social assistance industries. Additional industries for social assistance were requested by several organizations interested in activities of not for profit organizations. These new industries were created to fill that need and because the new industries had different production processes.

The industries included in the industry group Individual and Family Services are:

Child and Youth Services  
Services for the Elderly and Persons with Disabilities  
Other Individual and Family Services

The industries under the new industry group Community Food, Shelter, and Emergency Relief Services are:

Community Food Services  
Temporary Shelter (U.S. national industry)  
Other Community Housing Services (U.S. national industry)  
Emergency and Other Relief Services

Part II—Proposed New Industry Structure for Educational Services

Section A—NAICS Structure

North American Industry Classification System (NAICS)

Agreement Number 12

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector:

Educational Services

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

- X Educational Services
- XXX Elementary and Secondary Schools
- XXXX Elementary and Secondary Schools
- XXX Junior Colleges
- XXXX Junior Colleges
- XXX Colleges, Universities, and Professional Schools
- XXXX Colleges, Universities, and Professional Schools
- XXX Business, Computer and Management Training Schools
- XXXX Business and Secretarial Schools
- XXXX Computer Training Schools
- XXXX Professional and Management Development Training Schools
- XXX Technical and Trade Schools
- XXXX Technical and Trade Schools
- XXX Miscellaneous Schools and Instruction
- XXXX Fine Arts Schools
- XXXX Athletic Instruction
- XXXX Language Schools
- XXXX Other Miscellaneous Schools and Instruction
- XXX Educational Support Services
- XXXX Educational Support Services

Attachment 2—North American Industry Classification System

Draft Classification for: Educational Services

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

This draft classification applies to the subsector Educational Services. This subsector is subdivided into 7 industry groups and 12 industries.

A General Outline

Educational services industries provide instruction and training in a wide variety of subjects. The industry groups within this subsector (Elementary and Secondary Schools; Junior Colleges; Colleges, Universities, and Professional Schools; Business, Computer and Management Training Schools; Technical and Trade Schools; Miscellaneous Schools and Instruction; and Educational Support Services) are based on the level of educational services provided, and therefore on the level and types of training that are required of the instructors and teachers.

The Elementary and Secondary Schools industry group includes establishments that furnish courses that comprise each country's basic preparatory education. Included are parochial schools and military academies furnishing basic preparatory academic courses and secondary schools that furnish both academic and technical courses.

Junior Colleges furnish academic or academic and technical courses and grant associate or equivalent academic degrees, diplomas, or certificates that are below the college or university level. This grouping includes community colleges that offer associate degrees. The requirement for admission to an associate or equivalent degree program is at least a high school diploma or equivalent general academic training. Schools having junior college grades in conjunction with secondary grades are classified in Elementary and Secondary Schools.

Colleges, Universities, and Professional Schools furnish academic courses and grant academic degrees at the baccalaureate or postgraduate level. The requirement for admission is at least a high school diploma or equivalent general academic training.

Business, Computer and Management Training Schools include establishments that provide training in business, secretarial, computer, and related fields. This industry group contains three industries. Business and Secretarial Schools offer courses in

office procedures and secretarial and stenographic skills and may offer courses in basic computer skills, word processing, spreadsheet, and desktop publishing. In addition, they offer such classes as office machine operation, reception, communications, and other skills designed for individuals pursuing a clerical or secretarial career or a career in court reporting. Colleges of business within universities are excluded. The Computer Training Schools industry reflects the increasing demand for on-site and specialized computer training. Establishments included in this industry conduct training on all phases of computer activities including computer programming, software packages, computerized business systems, computer electronics technology, computer operations, and local area network management. Establishments that design custom computer systems and then provide training in the use of these custom systems are excluded; these establishments are included in the Professional, Scientific and Technical Services subsector. Professional and Management Development Training Schools include establishments that offer an array of short duration courses and seminars for career development. These establishments may customize or modify their courses to meet the special needs of customers. The courses typically focus on executive management and professional development and may be provided directly to individuals or through employers' training programs. The courses may be offered on-site or off-site.

Technical and Trade Schools provide training in a wide variety of technical subjects and trades. Because the nature of technical training varies so widely among the three countries, only one NAICS 4-digit industry is defined within this industry group. Each country may provide national industry detail below the NAICS industry level to reflect technical and trade schools found within each country.

The Miscellaneous Schools and Instruction industry group includes 4-digit industries for Fine Arts Schools, Athletic Instruction, and Language Schools. Fine Arts Schools include art schools, drama schools, music schools, professional dance schools, other dance schools and studios. However, schools that offer high school diplomas or academic degrees are placed in the other appropriate industry groups, even if they specialize in fine arts. Athletic Instruction includes establishments that provide training in athletic activities such as baseball, basketball, golf, martial

arts, and skiing. Language Schools are establishments that teach foreign languages. They are designed to offer language instruction ranging from conversational skills for personal enrichment to intensive training courses for career or educational opportunities. Skills taught by these establishments may include speaking, reading, and writing in another language.

Educational Support Services include educational consultants, educational test development and evaluation services, educational testing services, student exchange programs, educational curriculum development, and other non-instructional services that support educational processes or systems. Establishments primarily engaged in providing job training for the unemployed, underemployed, persons with disabilities, and persons who have a job market disadvantage because of a lack of education, job skills, or experience are classified in the Health and Social Assistance sector.

#### *Limitations and Constraints of the Classification*

Defining educational services industries that are economically significant and homogeneous was often difficult due to lack of data. Some industries that were considered when establishing NAICS industries for educational services are either too small or not specialized in all three countries, for example correspondence schools. It is not possible to use the proposed system to identify specific fields of study because many establishments offer a wide range of courses. Further, it is not possible to differentiate career-oriented training from training taken for personal development as many types of establishments provide both kinds of training.

The way activities are defined in establishments differs in the three countries, preventing the establishment of additional NAICS industries. For example, in Mexico there are separate establishments that provide special educational instruction for elementary and secondary school students with learning disabilities while in the United States and Canada, special educational instruction is generally provided by schools serving all students. Also in the United States, establishments providing trade apprenticeship training are separately identifiable, whereas in the other countries this type of training generally occurs "on the job."

Changes were required in each country's national classification to reach international comparability. The production principle was applied whenever these changes were required.

#### *Relationship to ISIC*

Most 4-digit NAICS industries in this sector are contained within Division 80, Education, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Therefore, data tabulated using NAICS also can be tabulated according to ISIC with the following exceptions: (1) Informal education activities below kindergarten (or preschool in Mexico) are often combined with day-care, and are classified with the Child Day-care industry in the NAICS subsector for Social Assistance and (2) NAICS classifies athletic instruction in Educational Services, but ISIC classifies it in 924, Sporting and Other Recreational Activities. There are five 4-digit industries covering educational services in ISIC while NAICS is more detailed, providing for twelve industries. The NAICS industries for Junior Colleges and Colleges, Universities, and Professional Schools are directly comparable to ISIC industry, 8030, Higher Education. In ISIC, Elementary and Secondary Schools are separate industries, while in NAICS they are combined, because in the U.S. data on schools are usually collected from school systems that operate both levels.

#### *Some Changes to National Classification*

In Canada CSIC 8521, Post-Secondary Non-University Education, has been split into Junior Colleges, Business and Secretarial Schools, Computer Training, Technical and Trade Schools, and Fine Arts Schools. Aviation Schools have been moved out of CSIC 4513, Non-Scheduled Air Transport Specialty Industry, to this subsector because they primarily provide instruction, even though aircraft may be required in some portions of the instruction process. Sports instruction has been moved out of CSIC 96, Amusement and Recreational Service Industries, and becomes NAICS industry, Athletic Instruction. CSIC 8599, Other Educational Services, has been split into Language Schools, Other Miscellaneous Instruction and Educational Support Services. Two industries have been moved from Educational Service Industries. These are CSIC 8541, Library Services, to the new Information sector, and CSIC 8551 Museums and Archives, to the new Museums, Historical Sites and Similar Institutions subsector. Both will be published separately.

The Mexican CMAP groups 9211, Education Services (Private), and CMAP 9212, Education Services (Public), are

combined in the NAICS Educational Services subsector. The NAICS Educational Services subsector does not distinguish between establishments in the private and public sectors. Mexico will make this distinction in its national detail. The only activities that came from another CMAP subsector are athletic instruction and educational support services.

For the United States, cosmetology and barber schools moved into Educational Services from 1987 SIC's 7231, Beauty Shops, and 7241, Barber Shops. Dance schools move into Educational Services from 1987 SIC 7911, Dance Studios, Schools, and Halls. A dancing school is not closely related to a ballroom, though both may have dance floors. Athletic instruction moves from 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified, to Educational Services. Libraries, 1987 SIC 8231, have been moved from Educational Services to the new Information sector, to be published separately.

#### *Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. All countries agree on the detailed definitions of the industries. However, each country will use terminology that reflects its own educational system.

Other objectives of the NAICS project have also been met. New industries have been added to reflect trends in adult education and professional training.

The industries are highly specialized and economically significant. This enhances the classification's suitability for sampling and other aspects of survey operations. Finally, disruptions to time series, while they exist, have been minimized and generally result from subdividing existing "not elsewhere classified" industries. The major changes are well-defined and can be taken into account in linking time series.

#### *Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the

NAICS industry subsector presented in Part II, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions

that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry

subsector covered in Part II of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Educational Services:			
XXX .....	Elementary and Secondary Schools:			
XXXX ...	Elementary and Secondary Schools .....	E	8211	Elementary and Secondary Schools.
XXX .....	Junior Colleges:			
XXXX ...	Junior Colleges .....	E	8222	Junior Colleges and Technical Institutes.
XXX .....	Colleges, Universities, and Professional Schools:			
XXXX ...	Colleges, Universities, and Professional Schools.	E	8221	Colleges, Universities, and Professional Schools.
XXX .....	Business, Computer, and Management Training Schools:			
XXXX ...	Business and Secretarial Schools .....	E	8244	Business and Secretarial Schools.
XXXX ...	Computer Training Schools .....	E	8243	Data Processing Schools.
XXXX ...	Professional and Management Development Training Schools.	N	*8299	Schools and Educational Services, Not Elsewhere Classified (professional and management development training).
XXX .....	Technical and Trade Schools:			
XXXX ...	Technical and Trade Schools:			
XXXXX	Cosmetology and Barber Schools .....	N	*7231	Beauty Shops (beauty and cosmetology schools).
			*7241	Barber Shops (barber colleges).
XXXXX	Vocational and Technical Schools .....	N	*8249	Vocational Schools, Not Elsewhere Classified (vo-tech schools, except high schools).
XXXXX	Aviation and Flight Training .....	N	*8249	Vocational Schools, Not Elsewhere Classified (aviation schools, excluding flying instruction).
			*8299	Schools and Educational Services, Not Elsewhere Classified (flying instruction).
XXXXX	Apprenticeship Training .....	N	*8249	Vocational Schools, Not Elsewhere Classified (vocational apprenticeship training).
XXXXX	Other Technical and Trade Schools .....	N	*8249	Vocational Schools, Not Elsewhere Classified (except vo-tech schools, aviation and flight training, apprenticeship training, and driving schools).
XXX .....	Miscellaneous Schools and Instruction:			
XXXX ...	Fine Arts Schools .....	N	*8299	Schools and Educational Services, Not Elsewhere Classified (art, drama, and music schools).
			*7911	Dance Studios, Schools, and Halls (dance instructors, and professional and other dance schools).
XXXX ...	Athletic Instruction .....	N	*7999	Amusement and Recreation Services, Not Elsewhere Classified (baseball, basketball, bowling, gymnastic, judo, karate, parachute, scuba and skin diving, skating, ski, swimming, tennis, and other sports instruction; and sports instructional schools and camps).
XXXX ...	Language Schools .....	N	*8299	Schools and Educational Services, Not Elsewhere Classified (language schools).
XXXX ...	Other Miscellaneous Schools and Instruction:			
XXXXX	Exam Preparation and Tutoring .....	N	*8299	Schools and Educational Services, Not Elsewhere Classified (exam preparation and tutoring).
XXXXX	Automobile Driving Schools .....	N	*8249	Vocational Schools, Not Elsewhere Classified (truck driving schools).
			*8299	Schools and Educational Services, Not Elsewhere Classified (automobile driving instruction).
XXXXX	All Other Miscellaneous Schools and Instruction.	N	*8299	Schools and Educational Services, Not Elsewhere Classified (except professional and management training, aviation and flight training, fine arts schools, language schools, exam preparation and tutoring, automobile driving schools, and educational support services).
XXX .....	Educational Support Services:			
XXXX ...	Educational Support Services .....	N	*8299	Schools and Educational Services Not Elsewhere Classified (except instruction).

TABLE 1—Continued

1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
		*8748	Business Consulting Services, Not Elsewhere Classified (educational test development and evaluation services, educational testing services, and educational consultants).

The definitions of status codes are as follows: E—existing industry; N—new industry R—revised industry; and \*means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
7231@	Beauty Shops: Beauty Shops ..... Beauty and Cosmetology Schools .....	Beauty Shops (Included in Consumer Services subsector). Cosmetology and Barber Schools (pt.).
7241	Barber Shops: Barber Shops ..... Barber Colleges .....	Barber Shops (Included in Consumer Services subsector). Cosmetology and Barber Schools (pt.).
7911@	Dance Studios, Schools, and Halls: Dance Studios and Halls .....	Miscellaneous Operators of Sports and Recreation Facilities (Included in Recreation, Amusement, and Gambling subsector).
7999	Dance Schools ..... Amusement and Recreation Services, Not Elsewhere Classified.	Fine Arts Schools (pt.). Athletic Instruction.
8211	Elementary and Secondary Schools .....	Elementary and Secondary Schools.
8221	Colleges, Universities, and Professional Schools .....	Colleges, Universities, and Professional Schools.
8222	Junior Colleges and Technical Schools .....	Junior Colleges.
8231	Libraries .....	Libraries and Archives (Included in Information subsector).
8243	Data Processing Schools .....	Computer Training Schools.
8244	Business and Secretarial Schools .....	Business and Secretarial Schools.
8249@	Vocational Schools, Not Elsewhere Classified: Trade Schools ..... Truck Drivers Schools ..... Aviation Schools ..... Vocational Schools ..... Other Technical and Trade Schools .....	Apprenticeship Training. Automobile Driving Schools (pt.). Aviation and Flight Training (pt.). Vocational and Technical Schools. Other Technical and Trade Schools.
8299@	Schools and Educational Services, Not Elsewhere Classified: Flying Instruction ..... Automobile Driving Instruction ..... Curriculum Development, Educational ..... Exam Preparation and Tutoring ..... Art Schools ..... Language Schools ..... Personal Development Schools ..... All Other Schools and Educational Services, Not Elsewhere Classified.	Aviation and Flight Training (pt.). Automobile Driving Schools (pt.). Educational Support Services (pt.). Exam Preparation and Tutoring. Fine Arts Schools (pt.). Language Schools. Professional and Management Development Training (pt.). All Other Miscellaneous Instruction.
8748@	Business Consulting Services, Not Elsewhere Classified.	Educational Support Services (pt.).

The abbreviation “pt” means “part of” @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

*Description of Changes to the U.S. System*

Educational Services—Thirteen new industries are added to the 1997 industry structure for this industry subsector. Most of these new industries have been formed by breaking apart old Not Elsewhere Classified (NEC) industries in the 1987 U.S. SIC. New industries are as follows:

Professional and Management Development Training Schools from part of 1987 SIC 8299, Schools and Educational Services, NEC. This new

industry was created because it had a unique production function.

Cosmetology and Barber Schools from part of 1987 SIC 7231, Beauty Shops, and 1987 SIC 7241, Barber Shops. This was moved to this sector because the primary activity is education, even though these schools give hair cuts.

Vocational and Technical Schools from part of 1987 SIC 8249, Vocational Schools, NEC. This new industry was created because it had a unique production function.

Aviation and Flight Training from parts of 1987 SIC 8249, Vocational

Schools NEC, and 1987 Industry Code 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

Apprenticeship Training from part of 1987 SIC 8249, Vocational Schools, NEC. This new industry was created because it had a unique production function.

Other Technical and Trade Schools from part of 1987 SIC 8249, Vocational Schools, NEC. This is the residual five digit category for the four digit industry Technical and Trade Schools.

Fine Arts Schools from parts of 1987 SIC 8299, Schools and Educational Services, NEC, and 1987 SIC 7911, Dance Studios, Schools, and Halls. This new industry was created because it had a unique production function.

Athletic Instruction from part of 1987 SIC 7999, Amusement and Recreation Services, NEC. This was moved to this sector because the primary activity is education, rather than entertainment.

Language Schools from part of 1987 SIC 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

Exam Preparation and Tutoring from part of 1987 SIC 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

Automobile Driving Schools from parts of 1987 SIC 8249, Vocational Schools, NEC, and SIC 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

All Other Miscellaneous Schools and Instruction from part of 1987 SIC 8299, Schools and Educational Services, NEC. This is the residual category for the subsector.

Educational Support Services from parts of 1987 SIC 8299, Schools and Educational Services, NEC, and 1987 SIC 8748, Business Consulting Services, NEC. This new industry differs from the others in that it provides support to educational industries, rather than providing instruction.

A major change to the 1987 Major Group, Educational Services, is the movement of 1987 SIC 8231, Libraries, to the new Information sector.

The number of Educational Services industries increased from 8 to 18. For time series linkage, six of the eight 1987 industries are comparable within three percent of the 1997 industries.

**Part III—Proposed New Industry Structure for Computer and Electronic Product Manufacturing**

**Section A—NAICS Structure**

**North American Industry Classification System (NAICS)**

**Agreement Number 13**

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector: Computer and Electronic Product Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the

proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

**Attachment 1—NAICS Structure**

- XX Computer and Electronic Product Manufacturing
- XXX Computer and Peripheral Equipment Manufacturing
- XXXX Computer and Peripheral Equipment Manufacturing
- XXX Communications Equipment Manufacturing
- XXXX Telephone Apparatus Manufacturing
- XXXX Broadcast and Studio Equipment for Radio, TV, and Cable Manufacturing
- XXXX Other Communications Equipment Manufacturing
- XXX Audio and Video Equipment Manufacturing
- XXXX Audio and Video Equipment Manufacturing
- XXX Semiconductor and Electronic Component Manufacturing
- XXXX Semiconductor and Electronic Component Manufacturing
- XXX Navigational, Measuring, Medical and Control Instrument Manufacturing
- XXXX Navigational, Measuring, Medical and Control Instrument Manufacturing
- XXX Manufacturing and Reproduction of Magnetic and Optical Media
- XXXX Manufacturing and Reproduction of Magnetic and Optical Media (Includes the manufacturing of blank audio and video tapes, diskettes and CD-ROMs, and reproduction of software, audio, video, and multimedia products)

**Attachment 2—North American Industry Classification System**

Draft Classification for:  
Computer and Electronic Product Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsector, Computer and Electronic

Product Manufacturing. This subsector is further subdivided into six industry groups and eight industries. The subsector will be part of the Manufacturing sector of the classification.

**A General Outline**

The Computer and Electronic Product Manufacturing industries produce computers, computer peripherals, communications equipment, and similar electronic products, together with components for such products. The treatment of this subsector in NAICS differs substantially from past national classifications in all three countries, and also from other international classifications.

First, in NAICS the computer and electronic product manufacturing industries have been elevated to a separate subsector that brings together in the classification the manufacture of electronic products and their components. In previous national classification systems, and in the International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations, these industries are placed in machinery industries or with electrical equipment. Computer and electronic product manufacturing industries have been elevated in the hierarchy of NAICS because of the economic importance they have attained, because their rapid growth suggests that they will become even more important in the economies of all three North American countries in the future, and because their manufacturing processes are fundamentally different from the manufacturing processes of other machinery and electrical components with which they have been grouped in the past, and are grouped in ISIC.

Computers, communications equipment, and other electronic devices can of course be regarded as types of machines, which has been the view embodied in past classification systems. However, in NAICS the application of mechanical principles defines the Machinery subsector, because it describes the production processes (gear cutting and so forth) that must be used to manufacture machinery that functions on mechanical principles. Mechanical principles are not significant in the operation of computers and other electronic devices, and the production of computers, communications equipment and other electronic devices is not characterized by the processes that are used in the Machinery subsector.

Instead, the design and use of integrated circuits and the application

of highly specialized miniaturization technologies are common elements in the production technologies of the Computer and Electronic Product Manufacturing subsector. The production processes are in a constant state of technological development, such that heavy research and development expenditures are necessary to cope with rapid obsolescence of tangible and intangible assets. The manufacture of these products is grouped together because similar production processes are used.

A second substantive difference between NAICS and most other classification systems involves the grouping itself. In NAICS, the manufacture of integrated circuits and related electronic components is placed in the same subsector as the manufacturing of computers, communications equipment and other end products for which these components are an essential part of the end-product technology. Moreover, NAICS combines in the same subsector end products that have different uses—for example, computers, communications equipment, and audio equipment—but have similar and converging technologies.

Convergence of technology motivates the NAICS groupings. Digitalization of sound recording, for example, causes both the medium (the "compact disk") and the equipment to resemble the technologies for recording, storing, transmitting and manipulating data. Communications technology and equipment have been converging with computer technology. Machines already exist that can send fax messages, copy electronically, and print documents. Transmission technology may take the form of a dedicated, separately-housed machine (end product), or the same technology may be incorporated into a board mounted inside a computer (in which case it is technically an electronic component); thus, the component/end product distinction no longer justifies separating electronic components in a separate part of the classification system from electronic end products. Combining in the same subsector the production of equipment designed for different end uses, and also combining in the same subsector the components with the end-use equipment, is justified by rapid convergence in the production technologies and by the expected continued convergence of technology.

When technologically related components are in the same sector, it makes it easier to adjust the classification for future changes, without needing to redefine its basic

structure. The creation of the Computer and Electronic Product Manufacturing subsector will assist in delineating new and emerging industries because the activities that will serve as the probable sources of new industries—such as computer manufacturing and communications equipment manufacturing, or computers and audio equipment—are brought together. As new activities emerge, they are less likely therefore to cross the subsector boundaries of the classification.

In addition, the three countries put a priority in NAICS on the delineation of industries engaged in the production of advanced technologies. The creation of this subsector is a response to that priority. It groups activities that are constantly developing and applying new scientific and engineering knowledge.

Though the three countries' statistical agencies agree that the growth of computer and electronic components in all three countries is likely to be significant in the future, and that accordingly it merits treatment as a subsector in NAICS, many differences currently exist in the degrees of specialization and differentiation in the three countries. The United States has more diversification and more specialization in these high technology sectors than does either Canada or Mexico. For this reason, it was necessary to specify NAICS 4-digit industries in this sector at a relatively broad level of detail. By setting up a forward-looking classification, it will be easier to subdivide NAICS 4-digit industries in the future, as the sector expands in all three countries, without requiring major shifts in the classification system. This is especially important in view of the fact that the technologies that are common across all of the industries in this subsector may converge in the future as well as differentiate.

The Computer and Electronic Product Manufacturing subsector is subdivided into six industry groups. Computer and Peripheral Equipment Manufacturing comprises the production of computers and associated products such as storage devices and monitors. Communication Equipment Manufacturing includes the manufacture of telephone apparatus and radio and television studio and broadcast equipment. Audio and Video Equipment Manufacturing covers household and commercial radios, televisions, video equipment and similar articles. Semiconductor and Electronic Component Manufacturing includes the manufacture of a broad range of components used as parts in this subsector. The loading of circuit

boards is classified here. Navigational, Measuring, Medical and Control Instrument Manufacturing includes the manufacture of such products as radar and sonar equipment and industrial process control equipment.

The sixth industry group, Manufacturing and Reproduction of Magnetic and Optical Media, includes the production of media such as video tapes and CD-ROMs, and the mass duplication of these media. It should be noted that the manufacture of packaged software is placed in this sector; however, the publishing of software, and its distribution electronically, is placed in the new NAICS Information sector, to be published separately, while traditional custom applications of software to client specification are in the Professional, Scientific and Technical Services subsector. These changes were made to represent better the different ways that software is produced and distributed. Sources within the industry and without have noted that the attempt, in past classification systems, to locate all software in a single portion of the classification system (the Services sector, or the Manufacturing sector) obliterates useful distinctions in software production and distribution, and tends, whatever the decision, to become rapidly obsolete as the nature and use of software changes. The NAICS structure is intended to facilitate the production of data on such changes, rather than obliterating them.

Consideration was given to subdividing this industry. Two possibilities were considered. Establishments could be distinguished based on the type of media, for example, CD-ROMs and diskettes or on the type of application, for example software and entertainment. This was not done for two reasons. First, the production process is often the same for a particular medium regardless of the application. For example, a blank CD-ROM can be used for recording music or for recording software. The format used for recording music CD-ROMs is also commonly used in multimedia software applications. Secondly, some establishments combine the production of the possible subdivisions. Establishments exist that produce both diskettes and CD-ROMs. These technological and establishment organization issues precluded a subdivision of the industry for NAICS. It is also the case that any subdivisions would be very small in Canada and Mexico.

### *Limitations and Constraints of the Classification*

In the Computer and Electronic Product Manufacturing subsector, most activities that were identified in one country exist in the others. However, as noted above, often an activity is not economically significant to the same degree in all countries. For example, a broad NAICS Computer and Peripheral Equipment Manufacturing industry was created because in Canada and Mexico establishments that primarily manufacture computers also produce peripherals to a significant degree. In Canada, a computer manufacturing industry would have a specialization ratio of only 70%. In addition, there is evidence that the lines between computer and peripheral equipment manufacturing are becoming less precise even in the U.S. The U.S. specialization ratio for computer manufacturing declined from 87% to 82% between 1987 and 1992. As another example, a relatively broad NAICS industry was created for Semiconductor and Electronic Component Manufacturing, partly because any possible subdivisions are small or confidential in Canada and Mexico.

Each country may publish additional national industries that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant. Though these national industries are also constrained by the desire to preserve time series comparability within each country's statistics, so far as possible, the three countries are committed to increased international comparability of industrial statistics in these high technology sectors, as development in the three economies makes it feasible.

Bringing electronic components and end products together in the classification has inevitably produced some anomalies at the boundary of the sector. For example, most of the traditional instrument industries have been located in this subsector because electronic measuring devices and instruments have rapidly displaced mechanical and electrical types that served similar functions. It was, however, not practical to split off all of the traditional forms of instruments, partly for the sake of preserving time series, partly because the establishments themselves have shifted from the old to the new technology, and partly because the rapid eclipse of some traditional instrument types may mean that an industry or industries for mechanical instrument manufacturing (in Miscellaneous Manufacturing) would soon become obsolete, even if it were

established in NAICS. As a consequence, however, some activities that are neither electronic nor "high tech" (watch springs, for example) appear anomalously in this subsector.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

### *Relationship to ISIC*

The Computer and Electronic Product Manufacturing subsector does not closely match any existing Division of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Computers and peripherals are classified in ISIC Division 30, Manufacture of Office, Accounting and Computing Machinery. Communications equipment, audio and video equipment and most electronic components are in ISIC Division 32, Manufacture of Radio, Television and Communication Equipment and Apparatus. Navigational, measuring and controlling equipment are included in ISIC Division 33, Manufacture of Medical, Precision and Optical Instruments, Watches and Clocks. Other activities in this subsector are classified in three additional ISIC Divisions.

However, of the eight NAICS 4-digit industries in this subsector, six of them are each contained entirely within a single ISIC Division. The other two NAICS industries cross two ISIC Divisions: Semiconductor and Electronic Component Manufacturing is largely included in ISIC Division 32, but includes the manufacture of electronic coils, transformers, connectors and switches that are classified in ISIC Division 31, Manufacture of Electrical Machinery and Apparatus, NEC. Manufacturing and Reproduction of Magnetic and Optical Media is split between ISIC Division 24, Manufacture of Chemicals and Chemical Products (the manufacture of media) and ISIC Division 22, Publishing, Printing and Reproduction of Recorded Media (mass duplication); in North America, these activities take place in the same establishments, so they are combined in NAICS.

Most of ISIC Division 32 is included in this subsector. However, the other ISIC Divisions (31, 24 and 22) linked to the Computer and Electronic Component Manufacturing subsector all have significant activities that are classified elsewhere in NAICS.

### *Some Changes to the National Classifications*

For all countries, the creation of the Computer and Electronic Product Manufacturing subsector represents a significant change to the structure of the current national classifications.

For Canada, the subsector is largely the sum of three industry groups in Electrical and Electronic Products Industries (CSIC 334, 335 and 336) and instruments now in Other Manufacturing Industries (part of 391). The amount of detail of this NAICS subsector is less than that contained in the Canadian classification.

For Mexico, the Computer and Electronic Product Manufacturing subsector has coverage similar to the Mexican classification's Manufacture and Assembly of Electronic Radio, Television, Communications and Medical Equipment (CMAP 3832), combined with the computers and peripherals activities from Manufacture and Assembly of Office Calculating and Data Processing Machines (3823). The amount of detail of this NAICS subsector is similar to that of these areas of the Mexican classification.

For the United States, this subsector includes activities from three major groups. Computers and peripherals are now in Computer and Office Equipment, 1987 Industry Group 357; instruments are now a large part of 1987 SIC Major Group 38, Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks; and the remaining NAICS activities in this subsector are largely classified in 1987 Major Group 36, Electronic and Other Electric Equipment (especially 365, 366 and 367). NAICS provides much less industry detail than the 1987 U.S. SIC. However, the U.S. national industries will provide similar detail below the NAICS industry level.

### *Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept. For example, computer peripherals and electronic components are both used in the manufacture of computers; however, components are separated from peripherals in the hierarchy because the production process used in the manufacture of peripherals is more like

that of computers, with assembly of parts being important, while the manufacture of electronic components is driven by miniaturization techniques.

The industries have high specialization ratios, and they are economically significant. Some are much larger than others, but this was necessitated by the considerations discussed above under Limitations and Constraints of the Classification. The classification is still suitable for sampling, data-publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they are mostly at the level of the aggregation structure. The statistical agencies can develop statistical "links"

to enable the re-tabulation of time series on the new NAICS classification structure.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part III, Section A—Attachment 1,

contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS subsector covered in Part III of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Computer and Electronic Product Manufacturing:			
XXX .....	Computer and Peripheral Equipment Manufacturing:			
XXXX ...	Computer and Peripheral Equipment Manufacturing:			
XXXXX	Electronic Computer Manufacturing .....	E	3571	Electronic Computers.
XXXXX	Computer Storage Device Manufacturing ...	E	3572	Computer Storage Devices.
XXXXX	Computer Terminal Manufacturing .....	E	3575	Computer Terminals.
XXXXX	Other Computer Peripheral Equipment Manufacturing.	R	3577	Computer Peripheral Equipment, NEC.
			*3578	Calculating and Accounting Machines, Except Electronic Computers (point of sale terminals and fund transfer devices).
			*3699	Electrical Machinery Equipment and Supplies, NEC (bar code scanners).
XXX .....	Communication Equipment Manufacturing:			
XXXX ...	Telephone Apparatus Manufacturing .....	R	*3661	Telephone and Telegraph Apparatus (except telephone transformers and external PC consumer modems).
XXXX ...	Broadcast and Studio Equipment for Radio, TV, and Cable Manufacturing.	R	3663	Radio and Television Broadcasting and Communication Equipment.
XXXX ...	Other Communication Equipment Manufacturing.	E	*3679 3669	Electronic Components, NEC (communication equipment). Communications Equipment, NEC.
XXX .....	Audio and Video Equipment Manufacturing:			
XXXX ...	Audio and Video Equipment Manufacturing ...	E	3651	Household Audio and Video Equipment.
XXX .....	Semiconductor and Electronic Component Manufacturing:			
XXXX ...	Semiconductor and Electronic Component Manufacturing:			
XXXXX	Electron Tube Manufacturing .....	E	3671	Electron Tubes.
XXXXX	Printed Circuit Board Manufacturing .....	E	3672	Printed Circuit Boards.
XXXXX	Semiconductor and Related Device Manufacturing.	E	3674	Semiconductors and Related Devices.
XXXXX	Electronic Capacitor Manufacturing .....	E	3675	Electronic Capacitors.
XXXXX	Electronic Resistor Manufacturing .....	E	3676	Electronic Resistors.
XXXXX	Electronic Coil, Transformer, and Other Inductor. Manufacturing.	R	*3661	Telephone and Telegraph Apparatus (telephone transformers).
			3677	Electronic Coils, Transformers, and Other Inductors.
			*3825	Instruments for Measuring and Testing of Electricity and Electrical Signals (portable instrument transformers).
XXXXX	Electronic Connector Manufacturing .....	E	3678	Electronic Connectors.
XXXXX	Other Electronic Component Manufacturing	R	*3661	Telephone and Telegraph Apparatus (external PC consumer modems).
			*3679	Electronic Components, NEC (other electronic components including loaded printed circuit boards).
XXX .....	Navigational, Measuring, Medical, and Control Instrument Manufacturing:			
XXXX ...	Navigational, Measuring, Medical, and Control Instrument Manufacturing:			

TABLE 1—Continued

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	E	3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.
XXXXX	Automatic Control for Regulating Residential and Commercial Environment and Appliance Manufacturing.	E	3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.
XXXXX	Industrial Instrument for Measurement, Display, and Control of Process Variables, and Related Products.	E	3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products.
XXXXX	Totalizing Fluid Meter and Counting Device Manufacturing.	E	3824	Totalizing Fluid Meters and Counting Devices.
XXXXX	Instruments for Measuring and Testing of Electricity and Electrical Signal Manufacturing.	R	*3825	Instruments for Measuring and Testing of Electricity and Electrical Signals (except portable instrument transformers).
XXXXX	Analytical Instrument Manufacturing .....	E	3826	Laboratory Analytical Instruments.
XXXXX	Other Measuring and Controlling Device Manufacturing.	R	*3829	Measuring and Controlling Devices, NEC (except medical thermometers).
XXXXX	Watch, Clock, and Part Manufacturing .....	R	*3495 *3579	Wire Springs (clock and watch springs). Office Machines, NEC (time clocks and other time recording devices).
XXXXX	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	E	3873 3844	Watches, Clocks, Clockwork Operated Devices, and Parts. X-Ray Apparatus and Tubes and Related Irradiation Apparatus.
XXXXX	Electromedical and Electrotherapeutic Apparatus.	R	*3842 3845	Orthopedic, Prosthetic, and Surgical Appliances and Supplies (electronic hearing aids). Electromedical and Electrotherapeutic Apparatus.
XXX .....	Manufacturing and Reproduction of Magnetic and Optical Media:			
XXXX ...	Manufacturing and Reproduction of Magnetic and Optical Media:			
XXXXX	Reproduction of Software .....	R	*7372	Prepackaged Software (reproduction of software).
XXXXX	Prerecorded Compact Disk, Except Software, Tape, and Record Manufacturing.	N	*3652	Phonograph Records and Prerecorded Audio Tapes and Disks (reproduction of all other media except video).
			*7819	Services Allied to Motion Picture Production (Reproduction of video).
XXXXX	Magnetic and Optical Recording Media Manufacturing.	E	3695	Magnetic and Optical Recording Media.

The definitions of status codes are as follows: E—existing; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
3495 .....	Wire Springs: Clock and Watch Springs .....	Watch, Clock and Part Manufacturing (pt).
	Wire Springs, Except Clock and Watch Springs	Wire Spring Manufacturing (Included in Fabricated Metal Product Manufacturing subsector).
3571 .....	Electronic Computers .....	Electronic Computer Manufacturing.
3572 .....	Computer Storage Devices .....	Computer Storage Device Manufacturing.
3575 .....	Computer Terminals .....	Computer Terminal Manufacturing.
3577 .....	Computer Peripheral Equipment, NEC .....	Other Computer Peripheral Equipment Manufacturing (pt).
3578@ .....	Calculating and Accounting Machines, Except Electronic Computers: Point of Sales Terminals and Fund Transfer Devices.	Other Computer Peripheral Equipment Manufacturing (pt).
	Calculating and Accounting Machines, Except Point of Sales Terminals and Fund Transfer Devices.	Office Machinery Manufacturing (pt) (Included in Machinery Manufacturing subsector).
3579@ .....	Office Machines, NEC: Pencil Sharpeners and Staplers .....	Lead Pencils, Crayons and Artists' Supplies (pt) (Included in Miscellaneous Manufacturing subsector).
	Timeclocks and Other Time Recording Devices	Watch, Clock, and Part Manufacturing (pt).
	Other .....	Office Machinery Manufacturing (pt) (Included in Machinery Manufacturing subsector).
3651 .....	Household Audio and Video Equipment .....	Audio and Video Equipment Manufacturing.
3652@ .....	Phonograph Records and Prerecorded Audio Tapes and Disks: Record Publishing .....	(Included in Information subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Reproduction of All Other Media Except Video	Prerecorded Compact Disk, Tape and Record Manufacturing (pt).
	External PC Consumer Modems .....	Other Electronic Component Manufacturing (pt).
	Telephone Transformers .....	Electronic Coil, Transformer, and Other Inductor Manufacturing (pt) (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Telephone and Telegraph Apparatus, Except Telephone Transformers and Consumer External Modems.	Telephone Apparatus Manufacturing.
3663 .....	Radio and Television Broadcasting and Communication Equipment.	Broadcast and Studio Equipment for Radio, TV, and Cable (pt) Manufacturing.
3669 .....	Communications Equipment, NEC .....	Other Communication Equipment Manufacturing.
3671 .....	Electron Tubes .....	Electron Tube Manufacturing.
3672 .....	Printed Circuit Boards .....	Printed Circuit Board Manufacturing.
3674 .....	Semiconductors and Related Devices .....	Semiconductor and Related Device Manufacturing.
3675 .....	Electronic Capacitors .....	Electronic Capacitor Manufacturing.
3676 .....	Electronic Resistors .....	Electronic Resistor Manufacturing.
3677 .....	Electronic Coils, Transformers, and Other Inductors.	Electronic Coil, Transformer, and Other Inductor Manufacturing (pt).
3678 .....	Electronic Connectors .....	Electronic Connector Manufacturing.
3679 .....	Electronic Components, NEC: Communication Equipment .....	Broadcast and Studio Equipment for Radio, TV and Cable Manufacturing (pt).
	Electronic Control Modular Chips for Motor Vehicles.	Electrical Equipment for Internal Combustion Engine Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Other Electronic Components Including Loaded PC Boards.	Other Electronic Component Manufacturing (pt).
3695 .....	Magnetic and Optical Recording Media .....	Magnetic and Optical Recording Media Manufacturing.
3699@ .....	Electrical Machinery, Equipment, and Supplies, NEC: Bar Code Scanners .....	Other Computer Peripheral Equipment Manufacturing (pt).
	Christmas Tree Lighting Sets and Electric Insect Lamps.	Other Lighting Equipment Manufacturing (pt) (To Be Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Electric Outboard Motor; .....	Other Engine Manufacturing (pt) (Included in Machinery Manufacturing subsector).
	Lasers .....	Classified according to function.
	Other Electrical Machinery, Equipment, and Supplies.	Other Electrical Industrial Apparatus Manufacturing (pt) (Included in Electrical Equipment, Appliance, and Component Manufacturing subsector).
3812 .....	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.
3822 .....	Automatic Controls for Regulating Residential and Commercial Environment and Appliances.	Automatic Control for Regulating Residential and Commercial Environment and Appliance Manufacturing.
3823 .....	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products.	Industrial Instrument for Measurement, Display, and Control of Process Variables; and Related Product Manufacturing.
3824 .....	Totalizing Fluid Meters and Counting Devices .....	Totalizing Fluid Meter and Counting Device Manufacturing.
3825 .....	Instruments for Measuring and Testing of Electricity and Electrical Signals: Portable Instrument Transformers .....	Electronic Coil, Transformer, and Other Inductor Manufacturing (pt).
	Except Portable Instrument Transformers .....	Instruments for Measuring and Testing of Electricity and Electrical Signal Manufacturing.
3826 .....	Laboratory Analytical Instruments .....	Analytical Instrument Manufacturing.
3829 .....	Measuring and Controlling Devices, NEC: Medical Thermometers .....	Surgical Appliance and Supply Manufacturing (pt) (Included in Miscellaneous Manufacturing Subsector).
	Except Medical Thermometers .....	Other Measuring and Controlling Device Manufacturing.
3842@ .....	Orthopedic, Prosthetic, and Surgical Appliances and Supplies: Electronic Hearing Aids .....	Electromedical and Electrotherapeutic Apparatus (pt.).
	Other .....	Surgical Appliance and Supply Manufacturing (pt.) (To be Included in Miscellaneous Manufacturing subsector).
3844 .....	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.
3845 .....	Electromedical and Electrotherapeutic Apparatus	Electromedical and Electrotherapeutic Apparatus (pt.).
3873 .....	Watches, Clocks, Clockwork Operated Devices and Parts.	Watch, Clock, and Part Manufacturing (pt).
7372@ .....	Prepackaged Software: Reproduction of Software .....	Reproduction of Software.

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
7819@ .....	Other ..... Services Allied to Motion Picture Production Reproduction of Video ..... Other .....	(Included in Information subsector). Prerecorded Compact Disk, Tape and Record Manufacturing (pt). (Included in Services subsector).

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

A number of the changes listed in this section were made for reasons of international comparability. Where one or more of the three North American countries had different definitions of an industry classification, adjustments to the definitions in one or more countries were required. In constructing NAICS, the three countries agreed to move, where change was required to attain international comparability, in the direction of the country or countries whose existing classification definitions most closely corresponded to the production-oriented concept adopted for NAICS. Cases where the U.S. changed are listed below; other cases where Canada Mexico moved toward the U.S. classification are not, of course, listed in this section.

This is a new subsector for 1997. Computer and Electronic Product Manufacturing is composed of industries from 1987 Major Group 35, Industrial Commercial Machinery and Computer Equipment; 1987 Major Group 36, Electronic and Other Electrical Equipment and Components, Except Computer Equipment; and 1987 Major Group 38, Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks.

The following four complete industries were transferred into this subsector from 1987 Major Group 35, Industrial Commercial Machinery and Computer Equipment:

- SIC 3571, Electronic Computers
- SIC 3572, Computer Storage Devices
- SIC 3575, Computer Terminals
- SIC 3577, Computer Peripheral Equipment, NEC

The following twelve complete industries were transferred into this subsector from 1987 Major Group 36, Electronic and Other Electrical Equipment and Components, Except Computer Equipment:

- SIC 3651, Household Audio and Video Equipment
- SIC 3661, Telephone and Telegraph Apparatus

- SIC 3663, Radio and Television Broadcasting and Communication Equipment
- SIC 3669, Communications Equipment, NEC
- SIC 3671, Electron Tubes
- SIC 3672, Printed Circuit Boards
- SIC 3674, Semiconductors and Related Devices
- SIC 3675, Electronic Capacitors
- SIC 3676, Electronic Resistors
- SIC 3677, Electronic Coils, Transformers, and Other Inductors
- SIC 3678, Electronic Connectors
- SIC 3695, Magnetic and Optical Recording Media

Eight complete industries were transferred into this subsector from 1987 Major Group 38, Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks. Those industries are:

- SIC 3812, Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments
- SIC 3822, Automatic Controls for Regulating Residential and Commercial Environments and Appliances
- SIC 3823, Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products
- SIC 3824, Totalizing Fluid Meters and Counting Devices
- SIC 3826, Laboratory Analytical Instruments
- SIC 3844, X-Ray Apparatus and Tubes and Related Irradiation Apparatus
- SIC 3845, Electromedical and Electrotherapeutic Apparatus
- SIC 3873, Watches, Clocks, Clockwork Operated Devices, and Parts

These 34 complete industries were transferred into this new subsector for one or more of the following reasons: (1) the changes were in response to public requests; (2) the changes were supported by similar processes; and (3) the changes produced international comparability.

One industry, SIC 3825, Instruments for Measuring and Testing of Electricity and Electrical Signals, moved in its entirety to this subsector, but was split;

portable instrument transformers to NAICS industry, Electronic Coil, Transformer, and other Inductor Manufacturing, and the rest going to NAICS industry, Instruments for Measuring and Testing of Electricity and Electrical Signal Manufacturing.

Two new industries were formed from very similar activities that were formerly partly included in manufacturing and partly in services.

Prerecorded Compact Disk, Except Software, Tape, and Record Manufacturing was formed from part of 1987 SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks, and from part of 1987 SIC 7819, Services Allied to Motion Picture Production.

Reproduction of Software was created from part of 1987 SIC 7372, Prepackaged Software. The ECPC recognizes that some establishments combine the production of prepackaged software and the production of other prerecorded compact disks, tapes, and records and that the production process is often the same. Therefore, it may be necessary to combine these activities into one industry. The ECPC requests specific comments on this proposal. (The publishing portions of these three 1987 SIC industries have been moved to the new NAICS Information sector.) These changes are made in response to an industry proposal, to improve international comparability, and to recognize that the production of prepackaged software is a manufacturing, not a services, activity.

Eleven activities were transferred into 1997 Computer and Electronic Product Manufacturing.

Point of sales terminals and fund transfer devices were transferred from 1987 SIC 3578, Calculating and Accounting Machines, Except Electronic Computers, into Other Computer Peripheral Equipment Manufacturing, in response to a proposal from the industry and to create a better production-oriented industry.

Time clocks and other time recording devices were transferred from 1987 SIC 3579, Office Machines, NEC, into Watch, Clock and Part Manufacturing.

This improves international comparability and is supported by similarity in production processes.

Phonograph records and prerecorded audio tapes and disks, except record publishing, were transferred from 1987 SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks, into Prerecorded Compact Disk, Tape, and Record Manufacturing. This improves international comparability and is supported by similarity in production processes.

Telephone and telegraph apparatus, except telephone transformers and consumer external PC modems, were transferred from 1987 SIC 3661, Telephone and Telegraph Apparatus, into Telephone Apparatus Manufacturing. This improves international comparability and is supported by similarity in production processes.

The communication equipment formerly in 1987 SIC 3679, Electronic Components, NEC, was transferred into Broadcast and Studio Equipment Manufacturing for Radio, TV, and Cable. This improves international comparability and is supported by similarity in production processes.

Other electronic components, including loaded printed circuit boards, were transferred from 1987 SIC 3679, Electronic Components, NEC, into Other Electronic Component Manufacturing. This improves international comparability and is supported by similarity in production processes.

Other measuring and controlling devices, except medical thermometers, were transferred from 1987 SIC 3829, Measuring and Controlling Devices, NEC, into Other Measuring and Controlling Device Manufacturing. This improves international comparability and is supported by similarity in production processes.

Bar code scanners were transferred from 1987 SIC 3699, Electrical Machinery, Equipment and Supplies, NEC, into Other Computer Peripheral Equipment Manufacturing. This improves international comparability and is supported by similarity in production processes.

Reproduction of software was transferred from 1987 SIC 7372, Prepackaged Software, into Reproduction of Software. This improves international comparability and is supported by similarity in production processes.

Reproduction of video was transferred from 1987 SIC 7819, Services Allied to Motion Picture Production, into Magnetic and Optical Media Manufacturing. This improves international comparability and is

supported by similarity in production processes.

Clock and watch springs were transferred from 1987 SIC 3495, Wire Springs, into Watch, Clock, and Part Manufacturing. This improves international comparability with Mexico, Canada, and the ISIC.

There are 29 industries in this new subsector. For time series linkage 19 of the 29 1997 industries are comparable within three percent of the old 1987 industries.

#### Part IV—Proposed New Industry Structure for Furniture Manufacturing

##### Section A—NAICS Structure

##### North American Industry Classification System (NAICS)

##### Agreement Number 14

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector:

##### Furniture Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995 -September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

##### Attachment 1—NAICS Structure

XX Furniture Manufacturing  
 XXX Furniture Manufacturing  
 XXXX Mattress Manufacturing  
 XXXX Blind and Shade Manufacturing  
 XXXX Wood Furniture Manufacturing  
 XXXX Metal Furniture Manufacturing  
 XXXX Other Furniture Manufacturing

##### Attachment 2—North American Industry Classification System

Draft Classification for:

##### Furniture Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification applies to the subsector, Furniture Manufacturing. This subsector contains one industry group and five industries. The subsector will be part of the Manufacturing sector of the classification.

##### A General Outline

Furniture Manufacturing includes establishments that produce articles such as chairs, beds, mattresses, dressers, tables and desks for human comfort, convenience and utility. Processes used in the manufacture of furniture include the cutting, bending, molding, laminating and assembly of such materials as wood, metal, glass, plastics, and rattan. In addition, design and fashion trends play an important part in the production of furniture. The production process for furniture is not solely bending metal, cutting and shaping wood, or extruding and molding plastic. The integrated design of the article for esthetic qualities, and to carry out its function efficiently, is also a major part of the process of manufacturing furniture, though design services are also sometimes purchased by furniture manufacturers from industrial designers.

Furniture manufacturing establishments tend to specialize in making articles primarily from one material, such as wood or metal, because the production processes required to make a wooden table, for example, are quite different from the production processes for metal tables. However, it is unusual to make furniture exclusively from a single input. A wooden table might have metal brackets and a wooden chair a fabric or plastic seat.

Some of the processes used in furniture manufacturing are similar to processes that are used in other segments of manufacturing. For example, cutting and assembly occurs in the production of wood trusses that are classified in the Wood Product Manufacturing, Except Furniture subsector. However, the multiple processes that distinguish wood furniture manufacturing from wood product manufacturing warrant inclusion of wooden furniture manufacturing in the Furniture Manufacturing subsector. Metal furniture manufacturing uses techniques that are also employed in the manufacturing of roll formed products in the Fabricated Metal Product Manufacturing sector. The molding

process for plastic furniture is similar to the molding of other plastic products. However, plastic furniture producing establishments tend to specialize in furniture.

Though the production processes, products, and industry practices in furniture manufacturing are relatively mature ones, the existing classification structures in the three North American countries differed so extensively that substantial restructuring in all three countries was required in order to achieve international comparability. Even so, international comparability could be achieved only at a relatively high level of aggregation (for example, wood furniture manufacturing). Barriers to further expansion in NAICS detail are discussed in the following section, and additional information may be provided by countries in discussions of their own national industries.

#### *Limitations and Constraints of the Classification*

In the Furniture Manufacturing industries, most activities that were identified in one country exist in the others. However, often an activity is not economically significant to the same degree in all countries. For example, wood office furniture manufacturing in Canada is too small to publish, and wood store furniture manufacturing is too small to publish in both Canada and Mexico.

It is not always possible to separately identify production process industries for end use categories. For example, United States manufacturers tend to specialize in household furniture or office furniture because differences in uses require differences in production. However, in Mexico household and office furniture are often produced in the same establishment, and some blurring of the household/office distinction is apparent even in the U.S.

For these reasons, only broad categories for wood and metal furniture and furniture made from other materials were created for NAICS. Each country will publish additional categories that comprise subdivisions of NAICS industries to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

#### *Relationship to ISIC*

Most 4-digit NAICS industries in this subsector are contained within Class 3610, Manufacture of Furniture, of the

current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. A notable exception is the manufacture of blinds and shades that ISIC classifies into different ISIC divisions by type of input material. In North America, production of blinds and shades of multiple materials occurs in a single establishment, so it is neither possible nor desirable to separate them by type of material in the classification system. For this reason, both Mexico and the United States currently classify all blind and shade manufacturing in a single industry. Other differences between NAICS and ISIC include the classification of wood and metal partitions and serving carts, which are placed in the respective wood or metal products divisions of ISIC. In NAICS, these manufacturing activities are placed in Furniture Manufacturing since the manufacturing processes are essentially identical to those used for furniture.

In spite of these differences, this NAICS subsector is substantially the same as ISIC Class 3610, because most of the production in this subsector occurs in the industries that are compatible with this ISIC class.

#### *Some Changes to the National Classifications*

For Canada, the NAICS Furniture Manufacturing subsector restructures the existing classification from an end use classification to a production process and input form, i.e., into wood, metal, and other furniture industries. In the case of wood furniture, the Canadian classification was structured both by input raw material (wood) and by end use, i.e., wooden household and upholstered household furniture. For furniture of metal and other materials, Canadian industries were restructured to the NAICS pattern. Other Canadian changes include the movement of wooden kitchen cabinets and bathroom vanities from the Wood Industries major group to this subsector, and the grouping of all kinds of shades, blinds and window hardware into a single NAICS industry.

For Mexico, the significant change is one of concept. Formerly, Mexico had no separately identified furniture subsector. Thus, this subsector will be entirely new. Changes at the industry level are relatively small, as the current structure in Mexico classifies wood furniture in the wood product manufacturing industries, metal furniture in the fabricated metal manufacturing industries, etc.

For the United States, changes parallel those in Canada. The existing

U.S. structure classifies furniture by both inputs and end use in some detail. Like Canada, the U.S. structure has considerable detail for wood furniture, but unlike Canada, the U.S. also has substantial detail for metal furniture. A considerable amount of internal restructuring was required to achieve the NAICS design. However, the U.S. will retain substantial national industry detail below the level of the NAICS Furniture Manufacturing industries, e.g., wood household furniture is distinguished from wood office furniture at the 5-digit national detail level.

Another important change for the United States is the inclusion of custom furniture in this sector. The manufacture of custom furniture was formerly classified in the retail sector. The change was made to agree with the Canadian and Mexican classification of the activity because the Canadian and Mexican treatment meets the production-oriented criterion for NAICS. Other changes include the movement of wood kitchen cabinets and wooden chair frames from the 1987 SIC Lumber and Wood Products, Except Furniture major group because the production processes are essentially identical to those for furniture.

#### *Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods and has employed relatively stable technology. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The detail (4-

digit) level and structures of the classification are balanced in size. This enhances the classification's suitability for sampling and other aspects of survey operations. Finally, though disruptions to time series exist, the major changes are well identified and can be taken into account in linking time series.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number

of reasons 4-digit industries in the NAICS industry subsector presented in Part IV, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS

classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part IV of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Furniture Manufacturing:			
XXX .....	Furniture Manufacturing:			
XXXX ...	Mattress Manufacturing .....	E	2515	Mattresses and Bedspings.
XXXX ...	Blind and Shade Manufacturing	E	2591	Drapery Hardware and Blinds and Shades.
XXXX ...	Wood Furniture Manufacturing:			
XXXXX	Wood Household Furniture Manufacturing, Except Upholstered.	R	*2426	Hardwood Dimension and Flooring Mills (wooden chair frames and chair seats).
			*2499	Wood Products, NEC (wood laundry hampers).
			2511	Wood Household Furniture, Except Upholstered.
			2517	Wood TV and, Radio Cabinets.
			*5712	Furniture Stores (custom made furniture except cabinets).
XXXXX	Wood Kitchen Cabinet Manufacturing	R	2434	Wood Kitchen Cabinets.
			*5712	Furniture Stores (custom wood cabinets).
XXXXX	Upholstered Wood Household Furniture Manufacturing	E	2512	Wood Household Furniture, Upholstered.
XXXXX	Wood Office and Public Building Furniture Manufacturing.	R	*2426	Hardwood Dimension and Flooring Mills (office chair frames and chair seats).
			*2521	Wood Office Furniture.
			*2531	Public Building and Related Furniture (wood furniture for public buildings).
			*2599	Furniture and Fixtures, NEC (wood industrial work benches and stools, and other wood furniture such as ship furniture).
			*3952	Lead Pencils, Crayons, and Artists' Materials (wood drafting tables and boards).
XXXXX	Wood Office and Store Fixture, Partition, Shelving, and Locker Manufacturing.	R	*2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers (except custom architectural woodwork, millwork, and fixtures).
XXXXX	Custom Architectural Woodwork, Millwork, and Fixtures.	N	*2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers (architectural woodwork, millwork, and fixtures).
XXXX ...	Metal Furniture Manufacturing:			
XXXXX	Metal Household Furniture Manufacturing	R	2514	Metal Household Furniture.
			*3499	Fabricated Metal Products, NEC (metal household frames and furniture parts).
XXXXX	Metal Office and Public Building Furniture Manufacturing.	R	*2522	Office Furniture, Except Wood (metal office furniture).
			*2531	Public Building and Related Furniture (metal furniture for public buildings).
			*2599	Furniture and Fixtures, NEC (metal industrial work benches and stools, and other metal furniture such as ship furniture).
			*3499	Fabricated Metal Products, NEC (metal frames and furniture parts).
			*3952	Lead Pencils, Crayons, and Artists' Materials (metal drafting tables and boards).
			*3999	Manufacturing Industries, NEC (barber and beauty chairs).
XXXXX	Metal Office and Store Fixture, Partition, Shelving and Locker Manufacturing.	R	*2542	Office and Store Fixtures, Partitions, Shelving and Lockers, Except Wood (metal office and store fixtures, partitions, shelving, and lockers).
XXXX ...	Other Furniture Manufacturing .....	R	*2499	Wood Products, NEC (laundry hampers made from rattan, reed or willow)
			2519	Household Furniture, NEC.
			*2522	Office Furniture, Except Wood (office furniture not made of wood or metal).
			*2531	Public Building and Related Furniture (other furniture not made of wood or metal for public buildings).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*2542	Office and Store Fixtures, Partitions, Shelving and Lockers, Except Wood (office and store fixtures, partitions, shelving, and lockers not made of metal).
			*2599	Furniture and Fixtures, NEC (other furniture or fixtures).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2426 .....	Hardwood Dimension and Flooring Mills: Hardwood Flooring .....	Millwork Manufacturing, Including Flooring (pt) (Included in the Wood Product Manufacturing, Except Furniture subsector).
	Stock and Turnings .....	Other Wood Product Manufacturing (pt) (Included in the Wood Product Manufacturing, Except Furniture subsector).
	Office Chair Frames and Chair Seats .....	Wood Office and Public Building Furniture Manufacturing (pt).
	Chair Frames for Nonupholstered Furniture (Household).	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Chair Frames for Upholstered Furniture (Household).	Upholstered Wood Household Furniture Manufacturing (pt).
	Hardwood Dimension Except Flooring .....	Hardwood Dimension Mills (Included in the Wood Product Manufacturing, Except Furniture subsector).
2434 .....	Wood Kitchen Cabinets .....	Wood Kitchen Cabinet Manufacturing (pt).
2499 .....	Wood Products, NEC: Wood Tubs and Vats, Jewelry and Cigar Boxes	Other Wood Container Manufacturing (pt) (Included in the Wood Product Manufacturing, Except Furniture subsector).
	Wood Laundry Hampers .....	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Laundry Hampers Made from Rattan, Reed or Willow.	Other Furniture Manufacturing (pt).
2511@ .....	Wood Household Furniture, Except Upholstered ...	Wood Household Furniture Manufacturing, Except Upholstered (pt).
2512 .....	Wood Household Furniture, Upholstered .....	Upholstered Wood Household Furniture Manufacturing.
2514 .....	Metal Household Furniture .....	Metal Household Furniture Manufacturing (pt).
2515 .....	Mattresses and Bedsprings .....	Mattress Manufacturing.
2517@ .....	Wood TV and, Radio Cabinets .....	Wood Household Furniture Manufacturing, Except Upholstered (pt).
2519@ .....	Household Furniture, NEC .....	Other Furniture Manufacturing (pt).
2521 .....	Wood Office Furniture .....	Wood Office and Public Building Furniture Manufacturing (pt).
2522@ .....	Office Furniture, Except Wood: Metal Office Furniture .....	Metal Office Furniture Manufacturing (pt).
	Office Furniture Not Made of Wood or Metal .....	Other Furniture Manufacturing (pt).
2531@ .....	Public Building and Related Furniture: Blackboards .....	All Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).
	Seats for Motor Vehicles .....	Motor Vehicle Fabric Accessory and Seat Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Metal Furniture for Public Building .....	Metal Office and Public Building Furniture Manufacturing (pt).
	Wood Furniture for Public Building .....	Wood Office and Public Building Furniture Manufacturing (pt).
	Other Furniture Not Made of Wood or Metal for Public Buildings.	Other Furniture Manufacturing (pt).
2541@ .....	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers: Except Architectural Woodwork, Millwork and Fixtures. Custom Architectural Woodwork, Millwork and Fixtures.	Wood Office and Store Fixture, Partition, Shelving and Locker Manufacturing (pt.). Custom Architectural Woodwork, Millwork, and Fixtures.
2542@ .....	Partitions and Fixtures, Except Wood: Metal Office and Store Fixtures, Partitions, Shelving, and Lockers. Office and Store Fixtures, Partitions, Shelving, and Lockers Not Made of Metal.	Metal Office and Store Fixture, Partition, Shelving and Locker Manufacturing (pt). Other Furniture Manufacturing (pt).
2591 .....	Drapery Hardware and Blinds and Shades .....	Blind and Shade Manufacturing.
2599@ .....	Furniture and Fixtures, NEC: Hospital Beds .....	Orthopedic, Prosthetic and Surgical Appliance and Supply Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description	
3499 .....	Metal Industrial Work Benches and Stools, and Other Metal Furniture Such As Ship Furniture. Wood Industrial Work Benches and Stools, and Other Wood Furniture Such As Ship Furniture. Other Furniture and Fixtures .....	Metal Office and Public Building Furniture Manufacturing (pt). Wood Office and Public Building Furniture Manufacturing (pt). Other Furniture Manufacturing (pt).	
	Fabricated Metal Products, NEC: Metal Frames and Furniture Parts, Household ... Metal Frames and Furniture Parts, Office .....	Metal Household Furniture Manufacturing (pt). Metal Office and Public Building Furniture Manufacturing (pt). Metal Stamping and Powder Metallurgy Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).	
	Powder Metallurgy .....	Metal Shipping Container, Barrel, Drum, Keg, Pail, Bin, Box, etc. Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).	
	Metal Boxes .....		
	Safe and Vault Locks	Hardware Manufacturing, Including Locks (pt) (Included in Fabricated Metal Product Manufacturing subsector).. Metal Aerosol Valves .....	Other Valve and Pipe Fitting Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector). All Other Miscellaneous Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Other Metal Products .....		
	3952@ .....	Lead Pencils, Crayons, and Artist's Materials: Metal Drafting Tables and Boards .....	Metal Office and Public Building Furniture Manufacturing (pt). Wood Office and Public Building Furniture Manufacturing (pt). Printing Ink Manufacturing (pt) (Included in Chemical Manufacturing subsector).
	Wood Drafting Tables and Boards .....		
	Drawing and India Ink .....	Lead Pencil and Art Goods Manufacturing (pt) (To be included in Miscellaneous Manufacturing subsector).	
	Other .....		
3999 .....	Manufacturing Industries, NEC.: Beauty and Barber Chairs .....	Metal Office and Public Building Furniture Manufacturing (pt). Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, Except Furniture subsector).	
	Burnt Wood Articles .....	Leather and Hide Tanning and Finishing Manufacturing (pt) (Included in Leather and Allied Product Manufacturing subsector)	
	Fur Bleaching, Currying, Scraping, Tanning and Dyeing.	Other Lighting Equipment Manufacturing (pt) (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).	
	Lamp Shades of Paper and Textile .....	Other Miscellaneous Chemical Product Manufacturing (pt) (Included in Chemical Manufacturing subsector).	
	Matches .....	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).	
	Metal Products, Such As Combs, Hair Curlers, Etc..	All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).	
	Plastics Products, Such As Combs, Hair Curlers, Etc..	Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector).	
	Flexographic Printing Eyeglass Frames for the Trade.	Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector).	
	Gravure Printing Eyeglass Frames for the Trade	Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector).	
	Lithographic Printing Eyeglass Frames for the Trade.	Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector).	
	Screen Printing Eyeglass Frames for the Trade	Other Commercial Printing (pt) ( Included in Printing and Related Support Activities subsector).	
	Other Printing Eyeglass Frames for the Trade ...	Hand and Edge Tool Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).	
	Tape Measures .....	All Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).	
	Other .....		
5712 .....	Furniture Stores: Custom Made Furniture, Except Cabinets .....	Wood Household Furniture Manufacturing, Except Upholstered (pt). Wood Kitchen Cabinet Manufacturing (pt). To Be Included in the Retail sector.	
	Custom Wood Cabinets .....		
	Other Than Custom Made Furniture .....		

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

A number of the changes listed in this section were made for reasons of international comparability. Where one or more of the three North American countries had different definitions of an industry classification, adjustments to the definitions in one or more countries were required. In constructing NAICS, the three countries agreed to move, where change was required to attain international comparability, in the direction of the country or countries whose existing classification definitions most closely corresponded to the production-oriented concept adopted for NAICS. Cases where the U.S. changed are listed below; other cases where Canada or Mexico moved toward the U.S. classification are not, of course, listed in this section.

Three activities were transferred out of 1987 SIC Furniture major group.

Motor vehicle seats were transferred from part of 1987 SIC 2531, Public Building and Related Furniture, into Motor Vehicle Fabric Accessory and Seat Manufacturing in the 1997 NAICS subsector for Transportation Equipment Manufacturing. This change was made for international comparability and because there is very little production similarity between the manufacture of automobile seats and the production of church pews and like products that are in 1987 SIC 2531.

Hospital beds were transferred from part of 1987 SIC 2599, Furniture and Fixtures, NEC, into Orthopedic, Prosthetic, and Surgical Appliance and Supply Manufacturing in the 1997 NAICS subsector for Miscellaneous Manufacturing. This change was necessary to align the U.S. classification to that of Canada and Mexico.

Blackboards were transferred from part of 1987 SIC 2531, Public Building and Related Furniture, into All Other Miscellaneous Manufacturing in the 1997 NAICS subsector for Miscellaneous Manufacturing. This change was necessary to align the U.S. classification system with that of Mexico.

Eight activities were transferred into the 1997 NAICS Furniture Manufacturing subsector. Three of the eight were transferred from 1987 SIC NEC industries.

Wooden chair frames and seats were transferred from part of 1987 SIC 2426, Hardwood Dimension and Flooring Mills, and classified in this subsector. This change was necessary to align the U.S. classification with that of Mexico and Canada, and because the production processes are similar.

Wood laundry hampers were transferred from part of 1987 SIC 2499, Wood Products, NEC, and placed by component material in their respective NAICS industries. This change was necessary to align the U.S. classification with that of Canada.

Custom wood household furniture was transferred from part of 1987 Retail Industry SIC 5712, Furniture Stores, into Wood Household Furniture. This change was necessary to align the U.S. classification with that of Mexico and Canada, and because the production process is essentially that of furniture manufacturing and the retailing activity is subsidiary.

Wood kitchen cabinets were transferred from 1987 SIC Major Group 24, Lumber and Wood Products, Except Furniture. This change reflects production processes that are essentially identical with those for furniture. The change also facilitated and increased the international comparability with Canada and Mexico.

Custom wood kitchen cabinets were transferred from part of 1987 Retail SIC 5712, Furniture Stores, into Wood Kitchen Cabinet Manufacturing, for international comparability, as noted above.

Drafting tables and boards were transferred from 1987 SIC 3952, Lead Pencils, Crayons, and Artists' Materials, and classified in the Furniture Manufacturing subsector. This change was necessary to align the U.S. classification with that of Canada and Mexico, and because the production process is similar to other furniture manufacturing.

Metal frames and furniture parts were transferred from 1987 SIC 3499, Fabricated Metal Products, NEC, and classified in the Furniture Manufacturing subsector. This change was necessary to align the U.S. classification with that of Canada.

Barber and beauty chairs were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Metal Office Furniture Manufacturing. This change was necessary to reflect the common production processes and similarities between beauty and barber shop chair manufacturers and other furniture manufacturers.

A new industry was created for Custom Architectural Woodwork, Millwork, and Fixtures from part of SIC 2541, Wood Office and Store Fixtures, Partitions, Shelving and Lockers.

Also several activities were transferred within the Furniture Manufacturing subsector.

In addition, 1987 SIC 2517, Wood TV and Radio Cabinets, was combined with Wood Household Furniture

Manufacturing because production in 1987 SIC 2517 has declined in the U.S. and the production processes are similar in both industries.

The number of Furniture Manufacturing industries declined from 13 in 1987 to 12 in 1997. For time series linkage, seven of the 13 1987 industries are comparable within three percent of the 1997 industries.

Part V—Proposed New Industry Structure for Printing and Related Support Activities.

*Section A—NAICS Structure*

North American Industry Classification System (NAICS) Agreement Number 15

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector:

Printing and Related Support Activities

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

- XX Printing and Related Support Activities
- XXX Printing and Related Support Activities
- XXXX Printing
- XXXX Support Activities for Printing

Attachment 2—North American Industry Classification System

Draft Classification for: Printing and Related Support Activities  
 Representatives of the statistical agencies of Canada, Mexico, and the

United States agree to a draft industrial classification for these industries.

The draft classification applies to the subsector, Printing and Related Support Activities. The subsector is subdivided into a single industry group and two industries. The subsector will be part of the Manufacturing sector of the classification.

#### *A General Outline*

Printing and Related Support Activities industries print products such as newspapers, books, periodicals, business forms, greeting cards, and other material. Support activities, such as bookbinding, plate making, and data imaging are also included in this subsector. These activities are an integral part of the printing industry, and a product (a printing plate, a bound book, or a computer disk or file) that is an integral part of the printing industry is almost always provided by these operations.

Processes used in printing include a variety of methods used to transfer an image from a plate, screen, or computer file to some medium, such as paper, plastic, metal, textile articles or wood. The most prominent of these methods is to transfer the image from a plate or screen to the medium (lithographic, gravure, screen and flexographic printing). A rapidly growing new technology uses a computer file to "drive" the printing mechanism directly to create the image (non-impact printing). A number of important boundary issues involving printing and other sectors are noted in the *Some Changes to National Classifications* section.

In contrast to many other classification systems that locate publishing of printed materials in manufacturing, NAICS locates the publishing of printed products in a separate subsector, Publishing, which is part of the new NAICS Information sector, to be published separately. Though printing and publishing are often carried out by the same enterprise (a newspaper, for example), it is less and less the case that these distinct activities are carried out in the same establishment. More information on this change is contained in the text to the proposed NAICS Information sector.

#### *Limitations and Constraints of the Classification*

Most of the printing activities that take place in one country exist in the others. It is not possible in all countries to identify separately production process industries or specialized end use production categories. For example, in Canada and the United States, unique

production establishments exist for the printing of books and business forms, and these processes can be recognized in the U.S. classification. In Mexico, however, book or business forms printers also print other types of products. Similarly, printing in Canada and the United States occurs largely in establishments that use a single printing process, such as lithographic or screen printing; in Mexico, diverse types of printing equipment are used in the same establishment.

For these reasons, only broad categories for printing (of all types) and support activities for printing were created for NAICS. Each country will publish additional categories that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

#### *Relationship to ISIC*

Both 4-digit industries in this subsector are contained within Division 22, Publishing Printing, and Reproduction of Recorded Media, of the current Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. However, two activities that are included in the NAICS Printing and Related Support Activities subsector are classified elsewhere in ISIC. Printing on textile articles is included in ISIC 1729, Manufacture of Other Textiles, NEC. Lithographic and gravure commercial printing of labels and tags is included in ISIC 2109, Manufacture of Other Articles of Paper and Paperboard.

#### *Some Changes to the National Classifications*

For all three countries, publishing, including integrated publishing and printing establishments, has been moved out of the Printing and Related Support Activities subsector into the new NAICS Information sector.

For Canada, a major change to the Printing and Related Support Activities subsector is to move printing on purchased fabric articles (mostly "T" shirts) from the Clothing Industries major group to this subsector. The production process involved here is printing, and not the manufacture of clothing. Another change is the redefinition of certain types of printing, sometimes referred to as "quick printing." This printing is done in relatively small, often "store front"

establishments; these establishments use small printers, and usually bundle printing with other services, such as mailing, fax and similar types of activities. Because printing is only one of a number of services performed in the same establishment, "quick printers" have been located in the NAICS Management, Employment, Administrative and Support Services subsector. This redefinition must be carefully constructed to ensure that commercial printing is not misclassified in the Management, Employment, Administrative and Support Services subsector.

For Mexico, changes to this subsector are minor.

For the United States, changes parallel those made for Canada. Printing on purchased fabric articles and the redefinition of quick printing were made for the United States, as they were in Canada. Printing on signs and advertising specialties was also moved here from its current U.S. classification in Miscellaneous Manufacturing in order to attain comparability with Canada and Mexico, and because the production process is primarily printing. A similar change, made for the identical reasons, involves printing on tags and labels.

#### *Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods and has employed relatively stable technology. An evolving new technology in the printing industry involves the creation of a computer file that directly drives printing equipment. Thus, no printing plate is needed. This technology, however, does not yet account for a significant share of production in any of the three countries, and therefore has not been separated in the classification.

The industries have high specialization ratios, and they are economically significant. While disruptions to time series exist, they

have been minimized. The statistical agencies can develop statistical "links," to enable the re-tabulation of time series on the new NAICS classification structure.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part V, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national

detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part V of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Printing and Related Support Activities:			
XXX .....	Printing and Related Support Activities:			
XXXX ...	Printing:			
XXXXX	Book Printing .....	E	2732	Book Printing.
XXXXX	Commercial Lithographic Printing .....	R	*2752	Commercial Printing, Lithographic (Except Quick Printing).
			*2771	Greeting Cards (lithographic printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (lithographic printing of checkbooks).
			*3993	Signs and Advertising Specialties (lithographic printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (lithographic printing of eyeglass frames for the trade).
XXXXX	Commercial Gravure Printing .....	R	2754	Commercial Printing, Gravure.
			*2771	Greeting Cards (gravure printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (gravure printing of checkbooks).
			*3993	Signs and Advertising Specialties (gravure printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (gravure printing of eyeglass frames for the trade).
XXXXX	Commercial Screen Printing .....	N	*2759	Commercial Printing, NEC (screen printing).
			*2771	Greeting Cards (screen printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (screen printing of checkbooks).
			*3993	Signs and Advertising Specialties (screen printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (screen printing of eyeglass frames for the trade).
XXXXX	Commercial Flexographic Printing .....	N	*2759	Commercial Printing, NEC (flexographic printing).
			*2771	Greeting Cards (flexographic printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (flexographic printing of checkbooks).
			*3993	Signs and Advertising Specialties (flexographic printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (flexographic printing of eyeglass frames for the trade).
XXXXX	Other Commercial Printing .....	R	*2759	Commercial Printing, NEC (other commercial printing).
			*2771	Greeting Cards (other printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (other printing of checkbooks).
			*3993	Signs and Advertising Specialties (other printing of advertising specialties for the trade).
			*3999	Manufacturing Industries, NEC (other printing of eyeglass frames for the trade).
XXXXX	Manifold Business Form Printing .....	E	2761	Manifold Business Forms.
XXXXX	Bankbook, Loose-leaf Binder and Device ...	R	*2782	Blankbooks, Loose-leaf Binders and Devices (except checkbooks).
XXXXX	Manufacturing:			
XXXXX	Printing on Apparel.. ..	N	*2396	Automotive Trimmings, Apparel Findings, and Related Products (Printing and Embossing on Fabric Articles).
XXXX ...	Support Activities for Printing:			
XXXXX	Tradebinding and Related Work .....	E	2789	Bookbinding and Related Work.
XXXXX	Prepress Services .....	R	2791	Typesetting.

TABLE 1—Continued

1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
		2796	Platemaking and Related Services.

The definitions of status codes are as follows: E—existing industry; L—null industry for the U.S.; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2711 .....	Newspapers: Publishing, or Publishing and Printing.	Included in new Information sector.
2721 .....	Periodicals: Publishing, or Publishing and Printing	Included in new Information sector.
2731 .....	Books: Publishing, or Publishing and Printing .....	Included in new Information sector.
2732 .....	Book Printing .....	Book Printing.
2741 .....	Miscellaneous Publishing .....	Included in new Information sector.
2752 .....	Commercial Printing, Lithographic .....	Commercial Lithographic Printing (pt.).
	Commercial Printing, Lithographic (Except Quick Printing):	
	Quick Printing .....	Included in Other Services sector.
2754 .....	Commercial Printing, Gravure .....	Commercial Gravure Printing (pt).
2759@ .....	Commercial Printing, NEC:	
	Flexographic Printing .....	Commercial Screen Printing (pt).
	Other Commercial Printing (pt)..	
2761 .....	Manifold Business Forms .....	Manifold Business Form Printing (pt).
2771@ .....	Greeting Cards:	
	Lithographic Printing of Greeting Cards .....	Commercial Lithographic Printing (pt).
	Gravure Printing of Greeting Cards .....	Commercial Gravure Printing (pt).
	Flexographic Printing of Greeting Cards .....	Commercial Flexographic Printing (pt).
	Screen Printing of Greeting Cards .....	Commercial Screen Printing (pt).
	Other Printing of Greeting Cards .....	Other Commercial Printing (pt).
	Publishing Greeting Cards .....	Included in new Information Sector.
2782@ .....	Blankbooks, Loose-leaf Binders and Devices:	
	Lithographic Printing of Checkbooks .....	Commercial Lithographic Printing (pt).
	Gravure Printing of Checkbooks .....	Commercial Gravure Printing (pt).
	Flexographic Printing of Checkbooks .....	Commercial Flexographic Printing (pt).
	Screen Printing of Checkbooks .....	Commercial Screen Printing (pt).
	Other Printing of Checkbooks .....	Other Commercial Printing (pt).
	Blankbooks, Loose-leaf Binders and Devices ...	Blankbook, Loose-leaf Binder and Device Manufacturing.
2789 .....	Bookbinding and Related Work .....	Tradebinding and Related Work.
2791@ .....	Typesetting .....	Prepress Services (pt).
2796@ .....	Platemaking and Related Services .....	Prepress Services (pt).
3993@ .....	Signs and Advertising Specialties:	
	Lithographic Printing of Advertising Specialties	Commercial Lithographic Printing (pt).
	Gravure Printing of Advertising Specialties .....	Commercial Gravure Printing (pt).
	Flexographic Printing of Advertising Specialties	Commercial Flexographic Printing (pt).
	Screen Printing of Advertising Specialties .....	Commercial Screen Printing (pt).
	Other Printing of Advertising Specialties .....	Other Commercial Printing (pt).
	Electric Signs .....	Electric Signs (Included in Electrical Equipment, Appliance, and Component Manufacturing subsector).
	Non-Electric Wood Signs .....	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, Except Furniture subsector).
	Non-Electric Metal Signs .....	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Non-Electric Plastics Signs .....	All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
3999@ .....	Manufacturing Industries, NEC:	
	Lithographic Printing of Eyeglass Frames for the Trade.	Commercial Lithographic Printing (pt).
	Gravure Printing of Eyeglass Frames for the Trade.	Commercial Gravure Printing (pt).
	Flexographic Printing of Eyeglass Frames for the Trade.	Commercial Flexographic Printing (pt).
	Screen Printing of Eyeglass Frames for the Trade.	Commercial Screen Printing (pt).
	Other Printing of Eyeglass Frames for the Trade	Other Commercial Printing (pt).
	Other .....	Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).
2396@ .....	Automotive Trimmings, Apparel Findings, and Related Products:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Printing and Embossing on Fabric Articles .....	Printing on Apparel.
	Automotive Trimmings .....	Motor Vehicle Fabric Accessory and Seat Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Apparel Findings and Trimmings .....	Apparel Belts, Apparel Accessories, and Other Apparel Manufacturing (pt) (Included in Apparel Manufacturing subsector).
	Other Apparel Trimmings .....	All Other Miscellaneous Textile Product Mills (pt) (Included in Textile Product Mills subsector).

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

*Description of Changes to the U.S. System*

Three new industries were added to the 1997 industry structure for this industry subsector.

Commercial Screen Printing was created from part of 1987 SIC 2759, Commercial Printing, NEC; part of 1987 SIC 2771, Greeting Cards; part of 1987 SIC 2782, Blankbooks, Loose-leaf Binders, and Devices; part of 1987 SIC 3993, Signs and Advertising Specialties; and part of 1987 SIC 3999, Manufacturing Industries, NEC. This change was made in response to a proposal from the industry and it corresponds to the production-oriented industry concept accepted for NAICS.

Commercial Flexographic Printing was created from part of 1987 SIC 2759, Commercial Printing, NEC; part of 1987 SIC 2771, Greeting Cards; part of 1987 SIC 2782, Blankbooks, Loose-leaf Binders, and Devices; and part of 1987 SIC 3993, Manufacturing Industries, NEC, and part of 1987 SIC 3999, Manufacturing Industries, NEC. This change corresponds to the production-oriented industry concept accepted for NAICS.

Printing on Apparel was created from part of 1987 SIC 2396, Automotive Trimmings, Apparel Findings, and Related Products. This change was made for international comparability, and because the process involved is printing, not apparel manufacture.

Four industries were removed from this industry group and transferred to the new NAICS Information sector. They are:

- 1987 SIC 2711, Newspapers: Publishing, or Publishing and Printing.
- 1987 SIC 2721, Periodicals: Publishing, or Publishing and Printing.
- 1987 SIC 2731, Books: Publishing, or Publishing and Printing.
- 1987 SIC 2741, Miscellaneous Publishing.

These four industries were transferred to the newly created Information sector in response to the increased use of electronic and other means for

information transformation, manipulation, and dissemination, and because the production processes that characterize publishing are neither printing nor manufacturing. Where printing of newspapers, periodicals and books take place in a separate establishment (increasingly the case), these printing activities remain in manufacturing. More information is contained in the text for the NAICS Information sector, published separately.

Two activities were transferred into the 1997 NAICS Printing and Related Support Activities subsector.

Advertising specialty manufacturing transferred from part of 1987 SIC 3993, Signs and Advertising Displays, into Commercial Printing, depending on the printing process.

Printing eyeglasses for the trade transferred from part of 1987 SIC 3999, Manufacturing Industries, NEC, into Commercial Printing, depending on the printing process. Transferring these two activities into the Printing and Related Support Activities subsector was necessary to align the U.S. classification with those of Canada and Mexico, and because the activities are printing processes.

One activity was transferred out of the 1977 NAICS subsector for Printing and Allied Industries.

Quick printing, 1987 industry code 2752 was transferred to the Other Services subsectors. This change was made to better conform with production services.

Also, several activities were transferred within the Printing and Related Support Activities subsector. The number of printing industries decreased from 14 in 1987 to 11 in 1997. For time series linkage, 5 of the 14 1987 industries are comparable within three percent of the 1997 industries.

Part VI—Proposed New Industry Structure for Professional, Scientific and Technical Services

*Section A—NAICS Structure*

North American Industry Classification System (NAICS) Agreement Number 16

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries: Professional, Scientific and Technical Services.

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

- XX Professional, Scientific and Technical Services
- XXX Legal Services
- XXXX Offices of Lawyers
- XXXX Offices of Notaries
- XXXX Other Legal Services
- XXX Accounting, Tax Preparation, Bookkeeping and Payroll Services
- XXXX Offices of Accountants

XXXX Tax Preparation, Bookkeeping and Payroll Services  
 XXX Architectural, Engineering and Related Services  
 XXXX Architectural Services  
 XXXX Engineering Services  
 XXXX Drafting Services  
 XXXX Building Inspection Services  
 XXXX Landscape Architecture Services  
 XXXX Surveying and Mapping Services  
 XXXX Geophysical Surveying Services  
 XXXX Testing Laboratories  
 XXX Specialized Design Services  
 XXXX Interior Design Services  
 XXXX Industrial Design Services  
 XXXX Graphic Design Services  
 XXXX Other Specialized Design Services  
 XXX Computer Systems Design and Related Services  
 XXXX Computer Systems Design and Related Services  
 XXX Management, Scientific and Technical Consulting Services  
 XXXX Management Consulting Services  
 XXXX Environmental Consulting Services  
 XXXX Other Scientific and Technical Consulting Services  
 XXX Scientific Research and Development Services  
 XXXX Research and Development in the Physical and Engineering Sciences  
 XXXX Research and Development in the Life Sciences  
 XXXX Research and Development in the Social Sciences and Humanities  
 XXX Advertising and Related Services  
 XXXX Advertising Agencies  
 XXXX Public Relations Services  
 XXXX Media Buying Agencies  
 XXXX Media Representatives  
 XXXX Display Advertising  
 XXXX Direct Mail Advertising  
 XXXX Advertising Material Distribution  
 XXXX Other Services Related to Advertising  
 XXX Other Professional, Scientific and Technical Services  
 XXXX Market Research and Public Opinion Polling  
 XXXX Photography Services  
 XXXX Translation and Interpretation Services  
 XXXX Veterinary Services  
 XXXX All Other Professional, Scientific and Technical Services

#### Attachment 2—North American Industry Classification System

##### Draft Classification for:

#### Professional, Scientific, and Technical Services

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for the Professional, Scientific, and Technical Service industries.

The subsector is further subdivided into nine industry groups and 37 industries. The placement of this subsector within the NAICS structure is not yet determined.

#### *A General Outline*

The statistical agencies of Canada, Mexico, and the United States have agreed to place major emphasis on improved services classifications in NAICS. In their July 26, 1994 statement of concept for NAICS (FR, Vol. 59, No. 142, p. 38094), they stated: "Statistical agencies of the three countries agree to give special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general \* \* \*."

Past industry classifications have two analytical inadequacies. First, individual services industries are too few in number, which is another way of saying that they have been defined too broadly to be useful—they have combined too many disparate activities into a single industry definition. This criticism has been heard even in the U.S., which had more services industry detail in its 1987 Standard Industrial Classification Manual than was the case for most other classification systems. As indicated later in this outline, the detail problem has been addressed in NAICS by breaking out new services industries from many of the broad and heterogeneous industries in the former systems of all three countries.

A second problem in past services industry classifications is a general lack of a coherent structure. To take the 1987 U.S. SIC system as an example, though it had what in NAICS would be called a "subsector" for "Business Services," it was difficult to discern an organizational principle in this subsector, or the relation that the industries included in it had to each other or to the subsector as a whole. Moreover, engineering and architecture were not defined as business services at all, and were located in a different part of the classification. Again, this lack of coherent structure has been criticized.

In NAICS, organizing principles have been sought that will give coherence to NAICS services sectors and subsectors. The organizing principle of the Professional, Scientific, and Technical Services subsector is human capital, the knowledge and skills of the employees in the subsector.

A services firm is often in the business of selling the skills of its workers. When this is the case, the production process of a services producer depends essentially on the abilities and capabilities of its employees. Of course, human capital is important in other areas of services as well—medicine, for example. A broad interpretation of the principles of human capital could have led to the inclusion of other industries in this

subsector. For example, investment advisors and real estate appraisers also make available the particular knowledge and skills of their human capital.

The distinguishing feature of the Professional, Scientific, and Technical Services subsector is the fact that most of the industries grouped in it have production processes that are almost wholly dependent on worker skills. In most of these industries, equipment and materials are not of major importance, unlike health care, for example, where "high tech" machines and materials are important collaborating inputs to labor skills in the production of health care. Thus, the establishments classified in this subsector are expertise sellers. Much of the expertise requires degrees, though not in every case. Moreover, differences in expertise and in training distinguish the industries that are classified in this subsector.

Because of the importance of services industries, and their rapid growth in North America, the three countries' statistical agencies have created a forward looking classification for this subsector that is intended to provide a framework for measuring services as they expand throughout the entire North American economy. For this reason, many NAICS industries in this subsector have been created even when they cannot at present be supported by all three countries. This is a different rule than the one followed in most of the traditional goods producing sectors. The following paragraphs provide a brief description of the content of each industry group and observations on issues that are of particular interest.

The Legal Services industry group includes Offices of Lawyers, Offices of Notaries and Other Legal Services. Offices of Lawyers are by far the largest industry in this group. Though many law firms specialize in particular forms of law practice, no acceptable way was found to further disaggregate this industry into more detailed industries that would be collectible in all three countries, and would apply to the operations of the industry in all three countries. In Canada and Mexico, Offices of Notaries are empowered to draft, approve, and execute legal documents and contracts. Such establishments do not exist in the United States. The Other Legal Services industry actually groups legal activities that are noncomparable in the three countries. In Canada, this industry includes offices of bailiffs that are involved in a mixture of activities, including enforcing court orders, serving writs and summonses, repossession of property and providing court house security. Bailiffs in Mexico

and the United States are employees of the courts and normally provide security, and serve court documents. For this reason, offices of bailiffs do not exist as establishments in the U.S. and Mexico. The Other Legal Services industry includes offices of paralegals in the United States. Though most paralegals in the U.S. are employees of other legal firms, separate establishments of paralegals are emerging, and are placed in the Other Legal Services industry. The Other Legal Services industry does not exist in Mexico, because neither bailiffs nor paralegals exist as independent establishments.

The Accounting, Tax Preparation, Bookkeeping and Payroll Services industry group includes establishments providing auditing, accounting, tax preparation, bookkeeping and billing, and payroll accounting services. The dominant expertise in this industry group is expertise in accounting. However, other activities that are sometimes done in accounting firms and sometimes in more specialized establishments (tax preparation, for example) are also located here. The United States will subdivide the Offices of Accountants industry to distinguish auditing accountants (Certified Public Accountants (CPAs)) from non-auditing accountants (non-CPAs).

The Architectural, Engineering and Related Services industry group includes establishments providing architectural, engineering, drafting, building inspection and surveying services. All of the proposed industries within this industry group are specialized and economically significant in Canada and the United States. However, three industries (Drafting Services, Surveying and Mapping Services and Geophysical Surveying Services) do not exist in Mexico. The Testing Laboratories industry includes establishments engaged in the provision of laboratory sampling and technical testing services, such as chemical analysis and nondestructive testing. It is located in this subsector because the industries in this industry group are major users of testing laboratory services and because of the processes used in the laboratories.

The Specialized Design Services industry group includes establishments providing interior, industrial, graphic and other specialized design services. It should be noted that the Architectural and Engineering Services industries also include establishments that are engaged in providing design services.

The Computer Systems Design and Related Services industry group includes establishments providing

expertise in the field of information technologies. These establishments provide services such as custom programming services, systems design services, data center management services and technical consulting services. Though custom computer programming is in this sector, the reproduction of packaged software is in the NAICS Manufacturing sector, and software publishing and on-line retrieval services are in the new NAICS Information sector, to be published separately.

The Management, Scientific and Technical Consulting Services industry group includes establishments that advise and counsel clients on virtually all aspects of corporate operations, as well as those offering technical advice and counsel on non-management issues. Many kinds of consulting exist in a modern economy. This industry group brings together those consultants who, while having specific expertise, offer a wide range of services to their prospective clients. It is not the clients' business on which the consultants in this industry group have expertise, but rather, they have specialized knowledge with potential applications in a broad range of industries. Accordingly, those establishments that provide consulting services that are closely tied to a specific industry are classified in the sector or group of industries to which they are related. For example, agricultural consultants are included in the Agriculture sector. In addition, establishments that provide consulting services in conjunction with other services as part of an integrated process, or in conjunction with other sales, are excluded. For example, the provision of advice and counsel on financial matters is often related to or incidental to the sale of financial products, and is therefore included in the Finance and Insurance sector.

The Scientific Research and Development Services industry group includes establishments engaged in original investigation undertaken on a systematic basis to gain new knowledge (research) and/or in the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). The industries within this industry group are defined on the basis of the domain of research; that is, on the scientific expertise of the establishment.

The Advertising and Related Services industry group includes Advertising Agencies, Public Relations Services, Media Buying Agencies, Media Representatives, Display Advertising, Direct Mail Advertising, Advertising

Material Distribution and Other Services Related to Advertising. These establishments are primarily engaged in preparing advertising campaigns, placing advertisements, or the delivery of advertising material to the general public.

The Other Professional, Scientific, and Technical Services industry group represents a residual grouping that includes Market Research and Public Opinion Polling, Photography Services, Translation and Interpretation Services, Veterinary Services and other activities that could not be placed within other industry groups.

#### *Limitations and Constraints of the Classification*

Differences in the organization of activities within establishments, and differences in the economic significance of individual industries from country to country, were the major issues faced in the development of a common classification structure for this subsector. These issues were dealt with by grouping activities in a manner that recognized the different levels of integration and diversification of establishments while allowing each country to add industries where necessary to reflect the greater level of specialization or economic significance of particular industries in its national economy. Still, in some instances, proposed NAICS industries in this subsector do not exist in all countries.

Establishments that offer services to a broad spectrum of industries, and therefore do not require particular expertise in the client's own industry, are classified in this sector. However, the narrower interpretation imposes limits on studies of a more broadly defined "professional or knowledge-based sector." Uses requiring such a broad definition will require regrouping of NAICS industries in other sectors.

The identification of new and emerging industries is one of the principal goals of the NAICS project. Many users have expressed the wish that this goal be achieved while minimizing breaks in time series. However, these two objectives are more often than not conflicting, and the degree to which proposed NAICS industries relate to existing national classification systems varies from country to country.

#### *Relationship to ISIC*

Each of the NAICS industries created in this subsector can be assigned to a division of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The majority of

the NAICS industries are contained within ISIC Division 74, Other Business Activities. Other NAICS industries in this sector relate to ISIC Divisions 72, Computer and Related Activities and ISIC Division 73, Research and Development.

#### *Changes to the National Classification*

For Canada, the identification of a significant number of new industries represents the most important change to the 1980 Canadian Standard Industrial Classification (CSIC). Twenty-seven of the 37 proposed NAICS industries applicable in Canada are new. The industries of this sector are, for the most part, currently classified in CSIC 77, Business Service Industries. The expansion is particularly important for legal services (CSIC 7761), computer services (CSIC 7721), advertising services (CSIC 774), scientific and technical services (CSIC 7759) and other business services (CSIC 7799).

The Legal Services industry group now contains three industries compared to one in the existing Canadian system. The Offices of Notaries and Other Legal Services industries are new.

The current Computer Services industry (CSIC 7721) is split into five industries. The computer systems design and related services component is part of this subsector. The newly created Information sector contains three industries, namely, Software Publishing, On-line Retrieval Services and Data Transaction Processing Services, that were formerly contained in CSIC 7721, but are not placed in the NAICS Professional, Scientific and Technical Services subsector. Computer rental and leasing is now classified in the Rental and Leasing subsector of NAICS.

The Advertising Services industry group (CSIC 774) expands to eight industries from the current four. The new industries are Public Relations Services, Media Buying Agencies, Direct Mail Advertising, and Advertising Material Distribution.

Nine of the proposed NAICS industries are components of the Other Scientific and Technical Services Industry (CSIC 7759). This includes Drafting Services, Landscape Architecture Services, Surveying and Mapping Services, Geophysical Surveying Services, Environmental Consulting Services, Testing Laboratories and the three proposed Scientific Research and Development Services industries.

The proposed industries for Interior Design Services, Translation and Interpretation Services, Document Preparation Services, Telephone Call

Centers and Packaging and Labeling Services are components of CSIC 7799, Other Business Services n.e.c. Various parts of this industry are reassigned to new NAICS industries.

Other significant changes include the creation of two industries from CSIC 7771, Management Consulting Services (Management Consulting and Management Services) and the splitting of a Graphic Design Services industry from CSIC 7749, Other Advertising Services.

The majority of proposed NAICS industries (22) relate to only one existing CSIC industry. In those cases, the task of linking statistics based on the old and new systems is relatively easy. For the remaining classes, this task is much more difficult since they are defined in terms of components of existing industries for which no data are available. However, many of these partial relationships are marginal in terms of economic activity.

For Mexico, 24 CMAP industries are included in this subsector: four industries have one-to-one correspondence with NAICS; four CMAP industries were combined to form one NAICS industry class; two other industries were merged with parts of other industry classes to form two new NAICS industries; and of the remaining fourteen CMAP industry classes, 27 industries were created for this subsector in the NAICS. Some of the new or revised industries reflect an increasing degree of specialization in this subsector in Mexico. Services that were offered in combination within the same establishment, even when one of these services was a secondary activity, are now provided separately by establishments that specialize in only one activity. Therefore, in this new classification system there are industries that were not even mentioned in CMAP, because they were formerly either secondary activities or included with other activities.

The activities that are incorporated into this subsector are currently classified in branch 9510 of the CMAP, Provision of Professional Services, Technical and Specialized. However, to fill out the new subsector some activities were relocated that were found in other CMAP branches or subsectors or even from other activity sectors.

From CMAP Subsector 92, Services of Education, Investigation, Medicine, Welfare and Civil and Religious Associations, the scientific investigation services performed by the private sector and the public sector (CMAP classes 922100 and 922200, respectively) were reclassified into three classes: Research

and Development in the Physical and Engineering Services; Research and Development in the Life Sciences; and Research and Development in the Social Sciences and Humanities.

CMAP Subsector 94, Cultural, Recreational, and Sports Services, included establishments that are devoted to personnel contracting for theatrical and cinematographic works (CMAP classes: 941101, Private Production of Cinematographic Movies; 941106, Private Promotion Services, Assembly and Artistic Spectacles Presentation; and in 941204, Promotion and Assembly Public Service and Artistic Spectacles Presentation). These contracting agencies are joined to the agencies of personnel placement to form a single NAICS class.

CMAP Class 952002, Various Personal Services, Photographic Services is reclassified to NAICS Photography Services.

Two classes of CMAP Branch 9510 are not included in this subsector: CMAP class 951014, News Agency Services, and CMAP 951016, Photograph and Movies Developing Services. The first is reclassified to the sector for Information and the second is included in the Arts, Entertainment and Recreation subsector.

For the rest of the classes of CMAP Branch 9510, the most important changes are the separations of the CMAP classes 951005, Services of Advising and Technical Studies of Engineering and Architecture; 951008, Services of Advertising and Related Activities; 951010, Advising Services in Administration and Organization of Businesses, and 951023, Other Professional Services, Technical and Specialized, not mentioned previously. The creation of new product classes resulting from the separation is based on two fundamental criteria: on the one hand, the specificity concerning production function and, additionally, the perspective of growth in the future.

The CMAP class 951005, Services of Engineering and Architecture Consulting and Mechanical Studies, is split into six parts; the first five are identified by their very specific production functions: Architectural Services, Engineering Services, Surveying and Mapping Services, Geophysical Surveying Services and Testing Laboratories. The sixth part (prototypes design) is combined with the services of urban planners and with the services of mode designers (located within the current CMAP class 951023), to become NAICS industry Other Specialized Design Services.

The current class Advertising and Related Activities (CMAP 951008) is split into eight NAICS industries:

Advertising Agencies, Media Purchasing Agencies, Media Representation Agencies, Advertising Agencies, Direct Mail Agencies, Direct Mail Advertising Agencies, Commercial Event and Convention Organizers, and Other Services Related to Advertising.

The current CMAP class 951010, Administration and Organization Advising Services, is split into five NAICS industries: Administrative Consultants, Public Relations Services, Translation and Interpretation Services, Organizing Services, and Other Scientific and Technical Consultancy Services.

Finally, certain activities in current CMAP class 951023, Other Professional Services, Technical and Specialized Not Mentioned Previously, are now NAICS industries.

For the United States, of the 37 proposed NAICS industries, 23 are new. Of the 23 new industries in this subsector, eight were created from 1987 SIC 7389, Business Services, Not Elsewhere Classified. This former NEC industry had become a "catch-all" category that included some of the fastest growing services in the U.S. economy, in a grouping that had no natural interpretation or usefulness. Its size is significantly reduced by the creation of the new industries in this subsector. Examples of new industries that were created from 1987 SIC 7389 are: Other Legal Services, Drafting Services, Building Inspection Services, Interior Design Services, Industrial Design Services, and Translation and Interpretation Services. In addition, other activities formerly included in SIC 7389 were redistributed among the industries to create homogeneous industries or industry groupings. The redistributions out of 1987 SIC 7389 will reduce its overall size by approximately 40% of the establishments and receipts. In addition, the remainder are redistributed into NAICS industry groups that have more logic and coherence than the 1987 SIC 73 major group.

The NAICS industry group Accounting, Tax Preparation, Bookkeeping and Payroll Services includes the services of accountants, tax preparers, bookkeepers, and payroll services. The inclusion of tax preparation services represents a significant change; these services are currently included in 1987 SIC Major Group 72, Personal Services.

Accounting services were previously grouped with bookkeeping; the NAICS structure separates these two activities.

The NAICS industry group Architectural, Engineering and Related Services groups three previously existing services industries (1987 SICs 8711, 8712, 8713), one previously existing industry from Agriculture (1987 SIC 0781) and includes two new industries.

The NAICS industry group Other Specialized Design Services includes new industries for Interior Design Services, Industrial Design Services and Graphic Design Services.

The NAICS industry group Management, Scientific and Technical Consulting includes one significant change. It includes a separate industry for Environmental Consulting Services. This service is included in 1987 SIC 8999, Services Not Elsewhere Classified.

The NAICS industry group for Scientific Research and Development Services changes the focus from the source of funding (commercial versus non commercial) to the domain of research, that is, physical sciences, life sciences, and social sciences.

The NAICS industry group Other Professional, Scientific and Technical Services includes Photography Services that are in 1987 SIC's 7221, Photographic Studios, Professional, and 7335, Commercial Photography. The U.S. will continue to separate these industries in its 5-digit industry detail.

*Achievement of Objectives*

The proposed classification meets the objectives for the North American Industry Classification System. It is

comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at most industry levels of the NAICS structure, though a number of exceptions exist, as noted in the "Limitations and Constraints of Classification" above. The proposed NAICS structure also introduces a number of new and emerging industries by expanding the current classification systems of each country for business and professional service industries. All countries agree on the detailed definitions of the industries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part VI, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part VI of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC descriptions
XX .....	Professional, Scientific and Technical Services:			
XXX .....	Legal Services:			
XXXX ...	Offices of Lawyers .....	E	8111	Legal Services.
XXXX ...	Offices of Notaries .....	L	.....	Null Set for U.S.
XXXX ...	Other Legal Services .....	N	*7389	Business Services, NEC (process services, patent agents, notaries public, paralegal services).
XXX .....	Accounting, Tax Preparation, Bookkeeping and Payroll Services:			
XXXX ...	Offices of Accountants:			

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC descriptions
XXXXX	Offices of Certified Public Accountants .....	N	*8721	Accounting, Auditing, and Bookkeeping Services (certified public accountants).
XXXXX	Offices of Accountants, Except Certified ....	N	*8721	Accounting, Auditing, and Bookkeeping Services (accountants, except certified public accountants).
XXXX ...	Tax Preparation, Bookkeeping and Payroll Services:			
XXXXX	Tax Preparation Services .....	E	7291	Tax Return Preparation Services.
XXXXX	Bookkeeping and Billing Services .....	N	*8721	Accounting, Auditing, and Bookkeeping Services (bookkeeping and billing).
XXXXX	Payroll Services .....	N	*7819	Services Allied to Motion Picture Production (talent payment services).
			8721	Accounting, Auditing, and Bookkeeping Services (payroll services).
XXX .....	Architectural, Engineering and Related Services:			
XXXX ...	Architectural Services .....	E	8712	Architectural Services.
XXXX ...	Engineering Services .....	E	8711	Engineering Services.
XXXX ...	Drafting Services .....	N	*7389	Business Services, NEC (drafting service).
XXXX ...	Building Inspection Services .....	N	*7389	Business Services, NEC (home and building inspection services).
XXXX ...	Landscape Architecture Services .....	E	0781	Landscape Counseling and Planning.
XXXX ...	Surveying and Mapping Services .....	N	*7389	Business Services, NEC (map making services).
			*8713	Surveying Services (except geophysical surveying).
XXXX ...	Geophysical Surveying Services .....	N	*8713	Surveying Services (geophysical surveying).
XXXX ...	Testing Laboratories .....	R	*8734	Testing Laboratories (except veterinary testing laboratories).
XXX .....	Specialized Design Services:			
XXXX ...	Interior Design Services .....	N	*7389	Business Services, NEC (interior design).
XXXX ...	Industrial Design Services .....	N	*7389	Business Services, NEC (industrial design).
XXXX ...	Graphic Design Services .....	R	7336	Commercial Art and Graphic Design.
			*8099	Health and Allied Services, NEC (medical artists).
XXXX ...	Other Specialized Design Services:			
XXXXX	Land Use Planners Services .....	N	*8748	Business Consulting Services, NEC (planners of land use).
XXXXX	All Other Design Services .....	N	*7389	Business Services, NEC (fashion, furniture, and other design services).
XXX .....	Computer Systems Design and Related Services:			
XXXX ...	Computer Systems Design and Related Services:			
XXXXX	Custom Computer Programming Services .....	E	7371	Computer Programming Services.
XXXXX	Systems Design Services .....	N	7373	Computer Integrated Systems Design.
			*7379	Computer Related Services, NEC (computer systems consultants).
XXXXX	Computer Facilities Management Services .....	E	7376	Computer Facilities Management Services.
XXXXX	Other Computer Systems Design and Related Services.	R	*7379	Computer Related Services, NEC (except computer systems consultants).
XXX .....	Management, Scientific and Technical Consulting Services:			
XXXX ...	Management Consulting Services:			
XXXXX	Administrative and General Management Consulting.	N	*8742	Management Consulting Services (administrative management and general management consulting).
XXXXX	Human Resources Consulting .....	N	*8742	Management Consulting Services (human resources and personnel management consulting).
			*7361	Employment Agencies (executive placement services).
XXXXX	Marketing Consulting .....	N	*8742	Management Consulting Services (marketing consulting).
XXXXX	Process, Physical, Distribution and Logistics Consulting.	N	*8742	Management Consulting Services (manufacturing management, physical distribution, and site location consulting).
XXXXX	Other Management Consulting Services ....	N	*4731	Arrangement of Transportation of Freight and Cargo (tariff consulting).
			*8748	Business Consulting Services, NEC (safety consulting).
XXXX ...	Environmental Consulting Services .....	N	*8999	Services, NEC (environmental consultants).
XXXX ...	Other Scientific and Technical Consulting Services.	N	*8748	Business Consulting Services, NEC (economic, radio, and traffic consultants).
			*8999	Services, NEC (nuclear consultants, geologists, physicists and actuarial consulting).
XXX .....	Scientific Research and Development Services:			
XXXX ...	Research and Development in the Physical and Engineering Sciences.	N	*8731	Commercial Physical and Biological Research (physical and engineering sciences).
			*8733	Noncommercial Research Organizations (physical and engineering services).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC descriptions
XXXX ...	Research and Development in the Life Sciences.	N	*8731	Commercial Physical and Biological Research (life sciences).
XXXX ...	Research and Development in the Social Sciences and Humanities.	N	*8733 *8732 *8733	Noncommercial Research Organizations (life sciences). Commercial Economic, Sociological, and Educational Research (social sciences and humanities). Noncommercial Research Organizations (social sciences and humanities).
XXX .....	Advertising and Related Services: .....			
XXXX ...	Advertising Agencies .....	E	7311	Advertising Agencies.
XXXX ...	Public Relations Services .....	E	8743	Public Relations Services.
XXXX ...	Media Buying Agencies .....	N	*7319	Advertising, NEC (media buying services).
XXXX ...	Media Representatives .....	E	7313	Radio, Television, and Publishers' Advertising Representatives.
XXXX ...	Display Advertising .....	N	7312 *7319	Outdoor Advertising Services. Advertising, NEC (display advertising, except outdoor).
XXXX ...	Direct Mail Advertising .....	E	7331	Direct Mail Advertising Services.
XXXX ...	Advertising Material Distributors .....	N	*7319	Advertising, NEC (advertising materials distributor).
XXXX ...	Other Services Related to Advertising .....	N	*7319	Advertising, NEC (except media buying, display advertising, except outdoor; and advertising material distributors).
XXXX ...			*5199	Nondurable Goods, NEC (advertising specialties goods distributors).
XXX .....	Other Professional, Scientific and Technical Services:			
XXXX ...	Market Research and Public Opinion Polling	N	*8732	Commercial Economic, Sociological, and Educational Research (market research and opinion research).
XXXX ...	Photography Services:			
XXXXX ...	Photography Studios, Portrait .....	E	7221	Photographic Studios, Portrait.
XXXXX ...	Commercial Photography .....	R	7335	Commercial Photography.
XXXX ...	Translation and Interpretation Services .....	N	*8099 *7389	Health and Allied Services, NEC (medical photography). Business Services, NEC (translation and interpretation services).
XXXX ...	Veterinary Services .....	E	0741 *0742	Veterinary Services for Livestock. Veterinary Services for Animal Specialties
XXXX ...	All Other Professional, Scientific and Technical Services..	N	7389	Business Services, NEC (appraisers, except insurance and real estate, and miscellaneous professional, scientific, and technical services).

The definitions of status codes are as follows: E—existing industry; L—null industry for the U.S.; N—new industry; R—revised industry; and \* means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
0741 .....	Veterinary Services for Livestock .....	Veterinary Services (pt.).
0742 .....	Veterinary Services for Animal Specialties .....	Veterinary Services (pt.).
0781 .....	Landscape Counseling and Planning .....	Landscape Architecture Services.
4731 .....	Arrangement of Transportation of Freight and Cargo:	
	Tariff Consulting .....	Other Management Consulting Services (pt.).
5199 .....	Nondurable Goods, NEC:	
	Advertising Specialties Goods Distributors .....	Other Services Related to Advertising (pt.).
7221 .....	Photographic Studios, Portrait .....	Photographic Studios, Portrait.
7291 .....	Tax Return Preparation Services .....	Tax Preparation Services.
7311 .....	Advertising Agencies .....	Advertising Agencies.
7312 .....	Outdoor Advertising Services .....	Display Advertising (pt.).
7313 .....	Radio, Television, and Publishers' Advertising Representatives.	Media Representatives.
7319@ .....	Advertising, NEC:	
	Media Buying Services .....	Media Buying Agencies.
	Display Advertising, Except Outdoor .....	Display Advertising (pt.).
	Advertising Materials Distributor .....	Advertising Material Distributors.
	Other .....	Other Services Related to Advertising (pt.).
7331 .....	Direct Mail Advertising Services .....	Direct Mail Advertising.
7335 .....	Commercial Photography .....	Commercial Photography (pt.).
7336 .....	Commercial Art and Graphic Design .....	Graphic Design Services (pt.).
7361 .....	Employment Agencies:	
	Executive Placement Services .....	Human Resources Consulting (pt.).
7371 .....	Computer Programming Services .....	Custom Computer Programming Services.
7373 .....	Computer Integrated Systems Design .....	Systems Design Services (pt.).
7376 .....	Computer Facilities Management Services .....	Computer Facilities Management Services.

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
7379	Computer Related Services, NEC: Computer Systems Consultants .....	Systems Design Services (pt.).
	Except Computer Systems Consultants .....	Other Computer Systems Design and Related Services.
7389@	Business Services, Not Elsewhere Classified: Process Services, Patent Agents, Notaries Public and Paralegal Services. Mapmaking Services .....	Other Legal Services.
	Interior Design .....	Surveying and Mapping Services (pt.).
	Industrial Design .....	Interior Design Services.
	Drafting Service .....	Industrial Design Services.
	Fashion, Furniture and Other Design Services	Drafting Services.
	Translation and Interpretation Services .....	All Other Design Services.
	Home and Building Inspection Services .....	Translation and Interpretation Services.
	Appraisers, Except Insurance and Real Estate, Miscellaneous Professional, Scientific, and Technical Services.	Building Inspection Services.
		All Other Professional, Scientific and Technical Services.
7819	Services Allied to Motion Picture Production: Talent Payment Services .....	Payroll Services (pt.).
8099	Health and Allied Services, NEC: Medical Artists .....	Graphic Design Services (pt.).
	Medical Photography .....	Commercial Photography (pt.).
8111	Legal Services .....	Offices of Lawyers.
8711	Engineering Services .....	Engineering Services.
8712	Architectural Services .....	Architectural Services.
8713	Surveying Services: Except Geophysical Surveying .....	Surveying and Mapping Services (pt.).
	Geophysical Surveying Services .....	Geophysical Surveying Services.
8721@	Accounting, Auditing, and Bookkeeping Services: Certified Public Accountants .....	Offices of Certified Public Accountants.
	Accountants, Except Certified Public Accountants.	Offices of Accountants, except Certified.
	Payroll Services .....	Payroll Services.
8731@	Commercial Physical and Biological Research: Physical and Engineering Sciences .....	Research and Development in the Physical and Engineering Sciences (pt.).
	Life Sciences .....	Research and Development in the Life Sciences (pt.).
8732@	Commercial Economic, Sociological, and Educational Research: Social Sciences and Humanities .....	Research and Development in the Social Sciences and Humanities (pt.).
	Market Research and Opinion Research .....	Market Research and Public Opinion Polling.
8733@	Noncommercial Research Organizations: Physical and Engineering Services .....	Research and Development in the Physical and Engineering Sciences (pt.).
	Life Sciences .....	Research and Development in the Life Sciences (pt.).
	Social Sciences and Humanities .....	Research and Development in the Social Sciences and Humanities (pt.).
8734	Testing Laboratories .....	Testing Laboratories.
8742@	Management Consulting Services: Administrative Management and General Management Consulting.	Administrative and General Management Consulting.
	Human Resources and Personnel Management Consulting.	Human Resources Consulting (pt.).
	Marketing Consulting .....	Marketing Consulting.
	Manufacturing Management, Physical Distribution, and Site Location Consulting.	Process, Physical, Distribution, and Logistics Consulting.
8743	Public Relations Services .....	Public Relations Services.
8748@	Business Consulting Services, Not Elsewhere Classified: Planners of Land Use .....	Land Use Planners Services.
	Safety Consulting .....	Other Management Consulting Services.
	Economic Consultants, Radio Consultants, Traffic Consultants.	Other Scientific and Technical Consulting Services (pt.).
8999@	Services, NEC: Nuclear Consultants, Consulting Geologists, Consulting Physicists, and Actuarial Consulting.	Other Scientific and Technical Consulting Services (pt.).
	Environmental Consultants .....	Environmental Consulting.

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC Industry. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

Forty-eight U.S. industries are included in the NAICS Professional, Scientific, and Technical Services subsector. Thirty-one of these are new industries (Offices of Notaries, as defined, do not exist in the U.S.); four are revised 1987 SIC industries; and 13 are industries that existed in 1987. The primary focus of this subsector is to group together establishments that make available the particular knowledge, expertise or skills of their employees to a wide range of business and individual clients. The activities included here can be utilized throughout all sectors of the economy. Other activities that do not meet this criteria are generally included in the particular subsector they serve. The industries within this subsector have similar production processes. The changes also help to better achieve comparability with Mexico and Canada. The following new industries were added for 1997:

Other Legal Services from part of 1987 SIC 7389, Business Services, NEC.

Offices of Certified Public

Accountants from part of 1987 SIC 8721, Accounting, Auditing, and Bookkeeping Services.

Offices of Accountants, Except Certified from part of 1987 SIC 8721, Accounting, Auditing, and Bookkeeping Services.

Bookkeeping and Billing Services from part of 1987 SIC 8721, Accounting, Auditing, and Bookkeeping Services.

Payroll Services from part of 1987 SIC 7819, Service Allied to Motion Picture Production, and part of 1987 SIC 8721, Accounting, Auditing, and Bookkeeping Services.

Drafting Services from part of 1987 SIC 7389, Business Services, NEC.

Building Inspection Services from part of 1987 SIC 7389, Business Services, NEC.

Surveying and Mapping Services from part of 1987 SIC 8713, Surveying Services, and part of 1987 SIC 7389, Business Services, NEC.

Geophysical Surveying Services from part of 1987 SIC 8713, Surveying Services.

Interior Design Services from part of 1987 SIC 7389, Business Services, NEC.

Industrial Design Services from part of 1987 SIC 7389, Business Services, NEC.

Land Use Planners Services from part of 1987 SIC 8748, Business Consulting Services, NEC.

All Other Design Services from part of 1987 SIC 7389, Business Services, NEC.

Systems Design Services from 1987 SIC 7373, Computer Integrated Systems

Design, and part of 1987 SIC 7379, Computer Related Services, NEC.

Administrative and General Management Consulting from part of 1987 SIC 8742, Management Consulting Services.

Human Resources Consulting from part of 1987 SIC 8742, Management Consulting Services, and part of 1987 SIC 7361, Employment Agencies.

Marketing Consulting from part of 1987 SIC 8742, Management Consulting Services.

Process, Physical Distribution, and Logistics Consulting from part of 1987 SIC 8742, Management Consulting Services.

Other Management Consulting Services from part of 1987 SIC 4731, Arrangement of Transportation of Freight and Cargo, and part of 1987 SIC 8748, Business Consulting Services, NEC.

Environmental Consulting from part of 1987 SIC 8999, Services NEC.

Other Scientific and Technical Consulting Services from part of 1987 SIC 8748, Business Consulting Services, NEC, and part of 1987 SIC 8999, Services, NEC.

Research and Development in the Physical and Engineering Sciences from part of 1987 SIC 8731, Commercial Physical and Biological Research, and part of 1987 SIC 8733, Noncommercial Research Organizations.

Research and Development in the Life Sciences from part of 1987 SIC 8731, Commercial Physical and Biological Research, and part of 1987 SIC 8733, Noncommercial Research Organizations.

Research and Development in the Social Sciences and Humanities from part of 1987 SIC 8732, Commercial Economic, Sociological, and Educational Research, and part of 1987 SIC 8733, Noncommercial Research Organizations.

Media Buying Agencies from part of 1987 SIC 7319, Advertising, NEC.

Display Advertising from 1987 SIC 7312, Outdoor Advertising Services, and part of 1987 SIC 7319, Advertising, NEC.

Advertising Material Distributors from part of 1987 SIC 7319, Advertising, NEC.

Other Services Related to Advertising from part of 1987 SIC 5199, Nondurable Goods, NEC, and part of 1987 SIC 7319, Advertising, NEC.

Market Research and Public Opinion Polling from part of 1987 SIC 8732, Commercial Economic, Sociological, and Educational Research.

Translation and Interpretation Services from part of 1987 SIC 7389, Business Services, NEC.

All Other Professional, Scientific and Technical Services from part of 1987

SIC 7389, Miscellaneous Business Services.

The following four NAICS industries were modified from their 1987 definitions:

Testing Laboratories from 1987 SIC 8734, Testing Laboratories. This industry was modified by moving veterinary laboratories to the Support Services for Agriculture subsector. This move was made to improve comparability with Canada and Mexico and because the production process of this type of laboratory was so different from the others that are included.

Graphic Design Services from 1987 SIC 7336, Commercial Art and Graphic Design, and part of 1987 SIC 8099, Health and Allied Services, NEC. Medical artists of 1987 SIC 8099 were combined here because of the similarity of the production process with graphic designers and to improve comparability with Mexico and Canada.

Other Computer Systems Design and Related Services from part of 1987 SIC 7379, Computer Related Services, NEC. This industry was modified by moving computer systems consultants to NAICS industry Systems Design Services to improve comparability with Mexico and Canada.

Commercial Photography from 1987 SIC 7335, Commercial Photography, and from part of 1987 SIC 8099, Health and Allied Services, NEC. Medical photography from 1987 SIC 8099 was combined with commercial photography because of the similarity of their production processes.

Part VII—Proposed New Industry Structure for Performing Arts, Spectator Sports and Related Industries; Museums, Historical Sites and Similar Institutions; and Recreation, Amusement and Gambling

*Section A—NAICS Structure*

North American Industry Classification System (NAICS)

Agreement Number 17

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Performing Arts, Spectator Sports and Related Industries  
Museums, Historical Sites and Similar Institutions

Recreation, Amusement and Gambling

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be

shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

#### Attachment 1—NAICS Structure

XX Performing Arts, Spectator Sports and Related Industries  
 XXX Performing Arts Companies  
 XXXX Theater Companies  
 XXXX Dance Companies  
 XXXX Musical Groups and Artists  
 XXXX Other Performing Arts Companies  
 XXX Spectator Sports  
 XXXX Spectator Sports  
 XXX Promoters of Arts, Sports and Similar Events  
 XXXX Promoters of Arts, Sports and Similar Events with Facilities  
 XXXX Promoters of Arts, Sports and Similar Events without Facilities  
 XXX Agents and Managers for Artists, Athletes and Other Entertainers  
 XXXX Agents and Managers for Artists, Athletes and Other Entertainers  
 XXX Independent Artists, Writers and Performers  
 XXXX Independent Artists, Writers and Performers  
 XX Museums, Historical Sites and Similar Institutions  
 XXX Museums, Historical Sites and Similar Institutions  
 XXXX Museums  
 XXXX Historical Sites  
 XXXX Botanical and Zoological Gardens  
 XXXX Nature Parks and Similar Institutions  
 XX Recreation, Amusement and Gambling Industries  
 XXX Sports and Recreation Facilities  
 XXXX Golf Courses  
 XXXX Skiing Facilities  
 XXXX Marinas  
 XXXX Recreational, Sports and Fitness Centers  
 XXXX Bowling Centers  
 XXX Amusement Facilities  
 XXXX Amusement and Theme Parks  
 XXXX Amusement Arcades and Other Coin-operated Amusement Devices  
 XXX Gambling Industries  
 XXXX Casinos, except Hotel Casinos  
 XXXX Other Gambling Industries  
 XXX Other Recreation and Amusement Services

XXXX Other Recreation and Amusement Services

#### Attachment 2—North American Industrial Classification System

Draft Classification for:  
 Performing Arts, Spectator Sports and Related Industries  
 Museums, Historical Sites and Similar Institutions  
 Recreation, Amusement and Gambling Industries

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification contains three subsectors, Performing Arts, Spectator Sports and Related Industries; Museums, Historical Sites and Similar Institutions; and Recreation, Amusement and Gambling Industries. These are further subdivided into ten industry groups and twenty-three industries.

#### A General Outline

The Performing Arts, Spectator Sports and Related Industries subsector includes establishments that produce or organize live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists, athletes and other entertainers. It also includes independent entertainers and the establishments that manage their careers. The classification recognizes four basic processes: producing events; presenting and promoting events; managing and representing entertainers; and finally, providing the artistic, creative and technical skills necessary to the production of these live events. Four industries are proposed for performing arts, each defined on the basis of the particular skills of the entertainers involved in the presentations. Promoters that own and operate their facilities are distinguished from those that do not, thereby emphasizing significant differences in cost structures.

The proposed structure makes a clear distinction between performing arts companies and performing artists (independents). Although not unique to arts and entertainment, freelancing is a particularly important phenomenon in the Performing Arts, Spectator Sports, and Related Industries subsector. Distinguishing this activity from the production activity is a meaningful process differentiation. This approach, however, is difficult to implement in the case of musical groups (companies) and artists, especially pop groups. These establishments tend to be more loosely organized and it can be difficult to

distinguish companies from freelancers. For those reasons, NAICS includes one industry that covers both musical groups and musical artists.

The proposed NAICS structure contains two industries for Promoters of Arts, Sports and Similar Events, one for those that operate facilities and another for those that do not. It is therefore necessary for users interested in information by type of event (e.g. performing arts as opposed to sports) to rely on product data.

The Museums, Historical Sites and Similar Institutions subsector includes establishments engaged in the preservation and exhibition of objects, sites and natural wonders of historical, cultural and educational value. The four industries of this subsector are Museums; Historic Sites; Botanical and Zoological Gardens; and Nature Parks and Similar Institutions.

The Recreation, Amusement and Gambling Industries subsector comprises three industry groups. The Sports and Recreation Facilities industry group includes establishments that operate and provide access to facilities where patrons can actively participate in sports and recreational activities. The six industries of this industry group represent the most important types of facilities found in North America. The Amusement Facilities industry group contains establishments that operate and provide access to sites and facilities primarily used for amusement purposes. Finally, the Gambling Industries industry group includes operators of casinos, lotteries, bingo halls and other establishments primarily engaged in gambling activities.

#### Limitations and Constraints of the Classification

The most important limitation of the proposed structure is the incomplete coverage of recreational activities.

Providers of recreational services are often engaged in processes classified in other sectors of NAICS. For example, operators of resorts and hunting and fishing camps provide both accommodation and recreational facilities and services. It is proposed to classify these establishments in the Accommodation Services subsector, partly to reflect the significant costs associated with the provision of accommodation services and partly to ensure consistency with international standards. Similarly, some night clubs present live entertainment on a regular basis and it can be argued that they could be classified in the Promoters of Arts, Sports and Similar Events With Facilities industry. However, since most

of these establishments function as any other drinking place when they do not stage entertainment and furthermore because most of their revenue is derived from sale of food and beverages, it is proposed to classify them with other drinking places. Finally, establishments using transportation equipment to provide sightseeing and pleasure cruises are classified in the Transportation sector.

The proposed Gambling Industries group does not provide for full coverage of gambling activities. It only includes those establishments specializing in such activities. Casino hotels are classified in the Accommodation Services subsector while horse and dog racing tracks are classified in the Spectator Sports industry group.

#### *Relationship to ISIC*

Each of the NAICS industries created in these subsectors can be assigned to a division of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Nineteen of the twenty-four proposed industries are contained within ISIC Division 92, Recreational, Cultural, and Sporting Activities. The five industries not in ISIC Division 92 are small pieces of ISIC Division 60, Land Transport, Transport Via Pipelines; ISIC Division 63, Supporting and Auxiliary Transport Activities, Activities of Travel Agencies; ISIC Division 70, Real Estate Activities; and ISIC Division 74, Other Business Activities. The discrepancies between these proposed NAICS industries and ISIC are minor and do not have a significant impact on the comparability of the data.

#### *Some Changes to the National Classifications*

For Canada, the proposed NAICS structure constitutes a restructuring and expansion of industries currently found in major group 96, Amusement and Recreational Service Industries, of the 1980 Canadian Standard Industrial Classification (CSIC). A few activities classified in other areas of the classification are now included in this structure and industry groups CSIC 961, Motion Picture, Audio and Video Production and Distribution, and CSIC 962, Motion Picture Exhibition are moved to the proposed Information sector.

The activities included in the Performing Arts Companies industry group are all part of CSIC 9631, Entertainment Production Companies, except for circuses (CSIC 9692) and dinner theaters (CSIC 9211). The remaining components of CSIC 9631,

Promoters of Artistic Events and Independent Artists, are assigned to different NAICS industries.

The NAICS Spectator Sports industry corresponds to CSIC 964, Commercial Spectator Sports, except for promoters of sports events that are now classified in a newly created industry group for Promoters (presenters) of Arts, Sports and Similar Events.

In the CSIC, promoters are closely associated to the type of event they are promoting (arts, sports, fairs, etc.) and are classified in different industries. The approach adopted for NAICS, that of combining all promoters in the same group, therefore represents a significant change to the current practice.

A similar approach is proposed for Agents and Managers for Artists, Athletes and Other Entertainers and for Independent Artists, Writers and Performers. Agents and managers, currently classified in arts, sports or business service depending on the type of client they represent, are grouped in a single NAICS industry. Similarly, independent artists, writers and performers, currently found in four industries, are combined in one class.

The Museums, Historical Sites and Similar Institutions industry group includes activities that are classified in Education (Museums, Heritage and Historic Sites) and Amusement and Recreation (botanical gardens, zoological gardens, nature parks, exhibition centers, etc.).

Three of the five industries proposed for the operators of Sports and Recreational Facilities industry group already exist in the CSIC. The most significant change in this area is the adoption of a Recreational, Sports and Fitness Centers industry that includes components of three existing classes, namely, CSIC 9652, Curling clubs; CSIC 9659, Other Sports and Recreation Clubs; and CSIC 9799, Other Personal and Household Services.

Finally, the proposed Gambling Industries categories are components of CSIC 9961, Gambling Industries. At the national level, an additional industry will be created for Lotteries.

For Mexico, the contents of these subsectors essentially stem from the CMAP subsector 94, Entertainment, Culture, Recreation and Sports, although an important restructuring has occurred. In addition, some classes of CMAP subsector 94 related to motion pictures, radio and television went into the proposed NAICS Information sector, and those related to the teaching of gymnastics and martial arts moved to the proposed NAICS Education Services subsector.

In order to accommodate this proposed structure of new subsectors, Mexico included some activities from other subsectors such as tour guide services, marinas, and the retail sale of lottery tickets.

For the United States, the proposed NAICS structure represents a significant change from the current Standard Industrial Classification System (SIC) system. The NAICS industries are more clearly defined than those in the current system and ambiguous distinctions such as "membership" criteria have been eliminated in NAICS industries.

New industries are established for various types of performing arts companies, spectator sports, museums, historical sites and similar institutions, gambling services and operators of sports and recreation facilities. Overall, there are nine new industries in the NAICS structure for amusement, recreation, museums and botanical and zoological gardens.

Separate industries are established for promoters of events, agents and managers of artists, athletes, and entertainers, as well as a new industry for artists and entertainers who normally work independently or on a contract basis. These types of establishments are included in many different industries in the SIC system, including some in 1987 SIC 8999, Services, Not Elsewhere Classified (NEC), as well as in other NEC categories, such as 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified.

The "not elsewhere classified (NEC)" industries in the 1987 SIC system are significantly reduced in NAICS, because many types of establishments in this category are assigned to more specific, process-based categories.

#### *Achievement of Objectives*

The proposed classification structure meets the objectives for the North American Industry Classification System (NAICS). It is comprised of industries that group establishments with similar production processes, that is, it applies the production oriented economic concept. The hierarchical structure of the classification generally follows the production concept at each level.

The classification achieves comparability for the three participating countries. Based on existing data, each country expects to be able to publish data regularly or in the near future at the industry (4-digit) level of this structure. All countries agree on the definitions of the industries.

Other objectives of the NAICS project have also been met. The inclusion of

new and emerging services industries are introduced in this proposed structure. These classifications reflect changes in the arts, entertainment, and recreation industries that have occurred in the past but have never been identified in the existing classification systems of the three countries.

The industries in most cases are economically significant in all three countries. Smaller industries are present because comparability is given priority over size.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the three NAICS industry subsectors presented in Part VII, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national

detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the three NAICS industry subsectors covered in Part VII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Performing Arts, Spectator Sports and Related Industries:			
XXX .....	Performing Arts Companies:			
XXXX ...	Theater Companies .....	N	*5812 *7922	Eating Places (dinner theaters). Theatrical Producers (except Motion Pictures) and Miscellaneous Theatrical Services (theater companies, opera companies).
XXXX ...	Dance Companies .....	N	*7922	Theatrical Producers (except Motion Pictures) and Miscellaneous Theatrical Services (ballet and dance companies).
XXXX ...	Musical Groups and Artists .....	N	*7929	Bands, Orchestras, Actors, and Entertainment Groups (musical groups and artists).
XXXX ...	Other Performing Arts Companies .....	N	*7929 *7999	Bands, Orchestras, Actors, and Entertainment Groups (except musical groups and artists). Amusement and Recreation Services, Not Elsewhere Classified (circus companies).
XXX .....	Spectator Sports:			
XXXX ...	Spectator Sports:			
XXXXX	Sports Clubs .....	N	*7941	Professional Sports Clubs and Promoters (professional sports clubs).
XXXXX	Race Tracks .....	N	*7948	Racing, Including Track Operations (track operations).
XXXXX	Other Spectator Sports .....	N	*7941 *7948 *7999	Professional Sports Clubs and Promoters (except sports clubs, stadium operators, sports promoters and agents). Racing, Including Track Operations (except track operators). Amusement and Recreation Services, NEC (professional athletes).
XXX .....	Promoters of Arts, Sports and Similar Events:			
XXXX ...	Promoters of Arts, Sports and Similar Events with Facilities.	N	*6512 *7922 *7941	Operators of Nonresidential Buildings (stadium and arena owners). Theatrical Procedures (except Motion Pictures) and Miscellaneous Theatrical Services (theater operators). Professional Sports Clubs and Promoters (stadium operators).
XXXX ...	Promoters of Arts, Sports and Similar Events without Facilities.	N	*7922 *7941	Theatrical Producers (except Motion Pictures) and Miscellaneous Theatrical Services (theatrical promoters). Professional Sports Clubs and Promoters (sports promoters).
XXX .....	Agents and Managers for Artists, Athletes and Other Entertainers:			
XXXX ...	Agents and Managers for Artists, Athletes, and Other Entertainers.	N	*7389 *7922 *7941	Business Services, NEC (agents and brokers for authors and artists). Theatrical Producers (except Motion Pictures) and Miscellaneous Theatrical Services (theatrical agents). Professional Sports Clubs and Promoters (sports agents).
XXX .....	Independent Artists, Writers, and Performers:			
XXXX ...	Independent Artists, Writers, and Performers	N	*7819 *7929 *8999	Services Allied to Motion Picture Production (film directors and related motion picture production services, independent). Bands, Orchestras, Actors, and Other Entertainers and Entertainment Services (actors and actresses). Services, Not Elsewhere Classified (authors, artists, and related technical services independent).
XX .....	Museums, Historical Sites and Similar Institutions:			
XXX .....	Museums, Historical Sites and Similar Institutions:			
XXXX ...	Museums .....	R	*8412	Museums and Art Galleries (except historic and heritage sites).
XXXX ...	Historical Sites .....	N	*8412	Museums and Art Galleries (historic and heritage sites).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Botanical and Zoological Gardens .....	R	*8422	Arboreta and Botanical and Zoological Gardens (except nature parks and reserves).
XXXX ...	Nature Parks and Similar Institutions .....	N	*7999	Amusement and Recreation Services, NEC (caverns and miscellaneous commercial parks).
			*8422	Arboreta and Botanical and Zoological Gardens (nature parks and reserves).
XX .....	Recreation, Amusement and Gambling Industries:			
XXX .....	Operators of Sports and Recreation Facilities:			
XXXX ...	Golf Courses .....	N	7992	Public Golf Courses.
			*7997	Membership Sports and Recreation Clubs (golf clubs).
XXXX ...	Skiing Facilities .....	N	*7999	Amusement and Recreation Services, NEC (skiing facilities).
XXXX ...	Marinas .....	E	4493	Marinas.
XXXX ...	Recreational, Sports and Fitness Centers .....	N	7991	Physical Fitness Facilities.
			*7997	Membership Sports and Recreation Clubs (recreation clubs with facilities).
			*7999	Amusement and Recreation Services, NEC (nonmembership recreation facilities).
XXXX ...	Bowling Centers .....	E	7933	Bowling Centers.
XXX .....	Amusement Facilities:			
XXXX ...	Amusement and Theme Parks .....	E	7996	Amusement Parks.
XXXX ...	Amusement Arcades and Other Coin Operated Amusement Devices.	R	*7993	Coin-Operated Amusement Devices (except slot machine operators).
XXX .....	Gambling Industries:			
XXXX ...	Casinos, except Hotel Casinos .....	N	*7999	Amusement and Recreation Services, NEC (casinos, except hotel casinos).
XXXX ...	Other Gambling Industries .....	N	*7993	Coin-Operated Amusement Devices (slot machine operators).
			*7999	Amusement and Recreation Services, NEC (lottery, bingo, bookie, and other gambling operations).
XXX .....	Other Recreation and Amusement Services:			
XXXX ...	Other Recreation and Amusement Services	N	*7911	Dance Studios, Schools, and Halls (except instruction).
			*7997	Membership Sports and Recreation Clubs (recreation clubs without facilities).
			*7999	Amusement and Recreation Services, NEC (except circuses, professionals, athletes, caverns and other commercial parks, skiing facilities, casinos and other gambling operations, amusement and recreation facilities, sports instruction, sports equipment rental, and amusement or scenic transport operations).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of.” The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
4493 .....	Marinas .....	Marinas.
5812@ .....	Eating Places (Dinner theatres) .....	Theater Companies (pt.).
6512@ .....	Operators of Nonresidential Buildings: Stadium and Arena Owners .....	Promoters of Arts, Sports and Similar Events with Facilities (pt.).
7389@ .....	Business Services, NEC: Agents and Brokers for Authors and Artists .....	Agents and Managers for Artists, Athletes, and Other Entertainers (pt.). (Has been distributed among other service related subsectors).
	Other .....	
7819@ .....	Services Allied to Motion Picture Production: Film Directors and Related Motion Picture Production Services, Independent.	Independent Artists, Writers, and Performers (pt.).
7911@ .....	Dance Studios, Schools and Halls: Ballroom and Dance Hall Operations .....	Other Recreation and Amusement Services (pt.).
	Instruction Studios and Schools, Professional Dancing Schools.	Fine Arts Schools (pt.) (Included in Educational Services subsector).
7922@ .....	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services: Theater and Opera Companies .....	Theater Companies (pt.).
	Theatrical Agents .....	Agents and Managers for Artists, Athletes and Other Entertainers (pt.).
	Ballet and Dance Companies .....	Dance Companies.
	Theater Operators .....	Promoters of Arts, Sports, and Similar Events with Facilities (pt.).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Theatrical Promoters .....	Promoters of Arts, Sports, and Similar Events without Facilities (pt.).
	Theatrical Agents .....	Agents and Managers for Artists, Athletes, and Other Entertainers (pt.).
7929@ .....	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups:	
	Musical Groups and Artists, Orchestras .....	Musical Groups and Artists.
	Actors and Actresses .....	Independent Artists, Writers, and Performers (pt.).
	Except Musical Groups and Artists, Actors and Actresses:	Other Performing Arts Companies (pt.).
7933 .....	Bowling Centers .....	Bowling Centers.
7941@ .....	Professional Sports Clubs and Promoters:	
	Professional Sports Clubs .....	Sports Clubs.
	Sports Agents .....	Agents and Managers of Artists, Athletes, and other Entertainers (pt.).
	Sports Promoters .....	Promoters of Arts, Sports and Similar Events without Facilities (pt.).
	Stadium Operators .....	Promoters of Arts, Sports, and Similar Events with Facilities (pt.).
	Except Sports Clubs, Stadium Operators, Sports Promoters, and Agents.	Other Spectator Sports (pt.).
7948@ .....	Racing, Including Track Operations:	
	Racetracks .....	Race Tracks.
	Racing, except Track Operators .....	Other Spectator Sports (pt.).
7991@ .....	Physical Fitness Facilities .....	Recreational, Sports and Fitness Centers (pt.).
7992@ .....	Public Golf Courses .....	Golf Courses (pt.).
7993@ .....	Coin Operated Amusement Devices:	
	Except Gambling (Slot Machine) Operators .....	Amusement Arcades and Other Coin Operated Amusement Devices.
	Gambling (Slot Machine) Operators .....	Other Gambling Industries (pt.).
7996 .....	Amusement Parks .....	Amusement and Theme Parks.
7997@ .....	Membership Sports and Recreation Clubs:	
	Golf Clubs .....	Golf Courses (pt.).
	Recreation Clubs with Facilities .....	Recreational Sports and Fitness Centers (pt.).
	Recreation Clubs Without Facilities .....	Other Recreation and Amusement Services (pt.).
7999@ .....	Amusement and Recreation Services, NEC:	
	Circus Companies .....	Other Performing Arts Companies (pt.).
	Professional Athletes .....	Other Spectator Sports (pt.).
	Skiing Facilities .....	Skiing Facilities.
	Nonmembership Recreation Facilities .....	Recreation Sports and Fitness Centers (pt.).
	Casinos, except Hotel Casinos .....	Casinos, except Hotel Casinos.
	Lottery, Bingo, Bookie and Other Gaming Operations.	Other Gambling Industries (pt.).
	Caverns and Miscellaneous Commercial Parks	Nature Parks and Similar Institutions (pt.).
	Sports Instruction .....	Athletic Instruction (Included in Educational Services subsector).
	Sports Equipment Rental .....	Rental of Recreation Goods (Included in Rental and Leasing subsector).
	Scenic Transport Operations, Land .....	Scenic and Sightseeing Transportation, Land (Included in Scenic and Sightseeing Transportation subsector).
	Scenic Transport Operations, Water .....	Scenic and Sightseeing Transportation, Water (Included in Scenic and Sightseeing Transportation subsector).
	Amusement and Recreation Services, NEC (except circuses, professional athletes, caverns, and other commercial parks, skiing facilities, casinos and other gambling operations, amusement and recreation facilities).	Other Recreation and Amusement Services (pt.).
8412 .....	Museums and Art Galleries:	
	Museums .....	Museums.
	Historical and Heritage Sites .....	Historical Sites.
8422 .....	Arboreta and Botanical or Zoological Gardens:	
	Botanical and Zoological Gardens .....	Botanical and Zoological Gardens.
	Nature Parks and Reserves .....	Nature Parks and Similar Institutions (pt.).
8999 .....	Services, Not Elsewhere Classified:	
	Authors, Artists, and Related Technical Services, Independent.	Independent Artists, Writers, and Performers (pt.).

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

The industries included in the following subsectors were primarily created from the twelve 1987 SICs of Major Group 79, Amusement and Recreation Services. For time series linkage, a time series break greater than three percent of their 1992 revenue is estimated for ten of these industries.

1. Performing Arts, Spectator Sports and Related Industries—There were eleven new industries added to the 1997 industry structure in this subsector to group those activities with the same production process and to improve overall comparability with Mexico and Canada. The underlying focus of this subsector was to group together those entertainment activities that are more visual and non-participatory. The following new industries were created:

Theater Companies from part of 1987 SIC 5812, Eating Places, and part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services.

Dance Companies from part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services.

Musical Groups and Artists from part of 1987 SIC 7929 Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups.

Other Performing Arts Companies from part of 1987 SIC 7929, Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups, and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Sports Clubs from part of 1987 SIC 7941, Professional Sports Clubs and Promoters.

Race Tracks from part of 1987 SIC 7948, Racing, Including Track Operation.

Other Spectator Sports from part of 1987 SIC 7941, Professional Sports Clubs and Promoters; part of 1987 SIC 7948, Racing, Including Track Operation; and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Promoters of Arts, Sports and Similar Events With Facilities from part of 1987 SIC 6512, Operators of Nonresidential Buildings; part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services; and part of 1987 SIC 7941, Professional Sports Clubs and Promoters.

Promoters of Arts, Sports and Similar Events without Facilities from part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services, and

part of 1987 SIC 7941, Professional Sports Clubs and Promoters.

Agents and Managers for Artists, Athletes and Other Entertainers from part of 1987 SIC 7389, Business Services, NEC; part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services; and part of 1987 SIC 7941, Professional Sports Clubs and Promoters.

Independent Artists, Writers, and Performers from part of 1987 SIC 7819, Services Allied to Motion Picture Production; part of 1987 SIC 7929, Bands, Orchestras, Actors, and other Entertainers and Entertainment Groups; and part of 1987 SIC 8999, Services, NEC.

2. Museums, Historic Sites and Similar Institutions—The NAICS industries within this subsector were essentially created from the two industries of 1987 Major Group 84, Museums, Art Galleries, and Botanical, and Zoological Gardens. Two new industries were added for this 1997 industry subsector and two industries reflect content changes from their 1987 definitions. These changes were made to better represent the production process differences among these activities. The following industries were added for 1997:

Historical Sites from part of 1987 SIC 8412, Museums and Art Galleries.

Nature Parks and Similar Institutions from part of SIC 7999, Amusement and Recreation Services, NEC; and part of 1987 SIC 8422, Arboreta and Botanical or Zoological Gardens.

The following two industries represent content changes from 1987:

Museums from part of 1987 SIC 8412, Museums and Art Galleries.

Botanical and Zoological Gardens from part of 1987 SIC 8422, Arboreta and Botanical Gardens.

3. Recreation, Amusement and Gambling Industries—This subsector consists of 10 industries. Six new industries were added to the 1997 structure for this subsector, one industry represents a 1987 industry with content changes, and three industries from 1987 were included without any changes. The NAICS industries within this subsector represent an effort to group those activities with the same production process and to improve comparability with Mexico and Canada. The basis for developing this subsector was to group together entertainment activities that are participatory in nature and to eliminate industry distinctions based on membership. The following new industries were created:

Golf Courses from 1987 SIC 7992, Public Golf Courses, and part of 1987

SIC 7997, Membership Sports and Recreation Clubs.

Skiing Facilities from part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Recreational, Sports and Fitness Centers from 1987 SIC 7991, Physical Fitness Facilities; part of 1987 SIC 7997, Membership Sports and Recreation Clubs; and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Casinos, Except Hotel Casinos from part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Other Gambling Industries from part of 1987 SIC 7993, Coin-Operated Amusement Devices, and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Other Recreation and Amusement Services from part of 1987 SIC 7911, Dance Studios, Schools, and Halls; part of 1987 SIC 7997, Membership Sports and Recreation Clubs; and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

The following industry represents a change in content from 1987:

Amusement Arcades and Other Coin-Operated Amusement Devices from part of 1987 SIC 7993, Coin-Operated Amusement Devices.

Part VIII—Proposed New Industry Structure for Information

*Section A—NAICS Structure*

North American Industry Classification System (NAICS) Agreement Number 18

This Document represents the proposed agreement for the North American Industry Classification System (NAICS) on the boundaries of the following sector and the 4-digit industries of which it is composed:

Information, to be described as:

Information and Cultural Industries in Canada

Informacion en Medios Masivos in Mexico

Information in the United States

It also displays an aggregation structure that is accepted by all three countries, along with a brief description of the structure and its details (Attachments 1 and 2).

Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so

long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States ..	/S/ Jack E. Triplett.	9/29/95

#### Attachment 1—NAICS Structure

XX Publishing  
 XXX Newspaper, Periodical, Book, and Data Base Publishing  
 XXXX Newspaper Publishing  
 XXXX Periodical Publishing  
 XXXX Book Publishing  
 XXXX Database Publishing  
 XXXX Other Publishing  
 XXX Software Publishing  
 XXXX Software Publishing  
 XX Motion Picture and Sound Recording  
 XXX Motion Picture and Video Industries  
 XXXX Motion Picture and Video Production  
 XXXX Motion Picture and Video Distribution  
 XXXX Teleproduction and Other Post-Production Services  
 XXXX Motion Picture and Video Exhibition  
 XXXX Other Motion Picture and Video Industries  
 XXX Sound Recording Industries  
 XXXX Record Production Companies  
 XXXX Integrated Record Companies  
 XXXX Music Publishing  
 XXXX Sound Recording Studios  
 XXXX Other Sound Recording Industries  
 XX Broadcasting and Telecommunications  
 XXX Radio and Television Broadcasting  
 XXXX Radio Broadcasting  
 XXXX Television Broadcasting  
 XXX Cable Networks and Program Distribution  
 XXXX Cable Networks  
 XXXX Cable and Program Distribution  
 XXX Telecommunications  
 XXXX Wired Telecommunications Carriers  
 XXXX Wireless Telecommunications Carriers, Except Satellite  
 XXXX Telecommunications Resellers  
 XXXX Satellite Telecommunications  
 XXXX Other Telecommunications  
 XX Information Services and Data and Transaction Processing  
 XXX Information Services  
 XXXX News Syndicates  
 XXXX Libraries and Archives  
 XXXX Other Information Services  
 XXX Data and Transaction Processing  
 XXXX Data and Transaction Processing

#### Attachment 2—North American Industry Classification System

Draft Classification For:

Information and Cultural Industries in Canada  
 Information en Medios Masivos in Mexico  
 Information in the United States

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification includes four subsectors, Publishing; Motion Picture and Sound Recording; Broadcasting and Telecommunications; and Information Services and Data and Transaction Processing Services. These are further subdivided into 9 industry groups and 29 industries.

#### A General Outline

The expressions “information age” and “global information economy” are used with considerable frequency today. The general idea of an “information economy” includes both the notion of industries primarily producing, processing, and distributing information, as well as the idea that every industry is using available information and information technology to reorganize and make themselves more productive.

For the purpose of developing NAICS, it is the transformation of information into a commodity that is produced, manipulated and distributed by a number of growing industries that is at issue. The proposed Information sector groups three types of establishments: those engaged in producing, manipulating and distributing information and cultural products; those that provide the means to transmit or distribute these products as well as data or communications; and those that process data or transactions. (Cultural products are those that directly express attitudes, opinions, ideas, values, and artistic creativity; provide entertainment; or offer information and analysis concerning the past and present. Included in this definition are popular, mass-produced, products as well as cultural products that normally have a more limited audience, such as poetry books, literary magazines or classical records.) These activities are currently classified throughout the existing national classifications; traditional publishing is in manufacturing, broadcasting in communications, software production in business services, film production in amusement services, etc.

The unique characteristics of information and cultural products, and of the processes involved in their production and distribution, justify the creation of an Information sector, distinct from the goods-producing and

service-producing sectors. Some of these characteristics are:

1. Unlike traditional goods, an “information or cultural product” such as a newspaper or television program does not necessarily have tangible qualities, nor is it necessarily associated with a particular form. A movie can be shown at a movie theater, on a television broadcast, through video on demand or rented at a local video store. A sound recording can be aired on radio, embedded in multi-media products or sold at a record store.

2. Unlike traditional services, the delivery of these products does not require direct contact between the supplier and the consumer.

3. The value of these products to the consumer does not lie in their tangible qualities but in their information, educational, cultural or entertainment content.

4. Unlike goods or services, information and cultural products can be copied easily. The law has long recognized this; copyright law protects the intangible property of intellectual creations such as books and sound recordings. Copyright applies to all original literary, dramatic, musical, and artistic works, including databases and computer programs.

5. The intangible property aspect of information and cultural products makes the processes involved in their production and distribution very different from goods and services. Only those possessing the rights to these works are authorized to reproduce, alter, improve and distribute them. Acquiring and using these rights often involves significant costs. In addition, technology is revolutionizing the distribution of these products. It is possible to distribute them in a physical form, via broadcast or on line.

6. Distributors of information and cultural products can easily add value to the products they distribute. For instance, broadcasters add advertising not contained in the original product. This capacity means that unlike traditional distributors, they derive revenue not from sale of the distributed product to the final consumer, but from those who pay for the privilege of adding information to the original product. Similarly, a CD-ROM publisher can acquire the rights to thousands of previously published newspaper and periodical articles and add new value by providing search and software and organizing the information in a way that facilitates research and retrieval. These products often command a much higher price than the original information.

The distribution modes for information commodities may either eliminate the necessity for traditional manufacture, or reverse the conventional order of manufacture-distribute: A newspaper distributed on line, for example, can be printed locally or by the final consumer. Similarly, it is anticipated that packaged software, which today is mainly bought through the traditional retail channels, will soon be available mainly on line. The NAICS Information sector is designed to make such economic changes transparent as they occur, or to facilitate designing surveys that will monitor the new phenomena and provide data to analyze the changes. Other classification systems tend to obscure economic changes of this kind.

Many of the industries in the NAICS information sector are engaged in producing and manipulating products protected by copyright law, or in distributing them (other than distribution by traditional wholesale and retail methods). Examples are traditional publishing industries, software and database publishing industries and film and sound industries. Broadcasting and telecommunication industries, and information providers and processors, are also included in the information sector, because their technologies are so closely linked to other industries in the information sector.

Although many new industries have been created for this sector, most of the activities it contains have existed for some time and are distributed throughout the existing classifications. The following paragraphs provide a brief description of the individual components of this sector.

The Publishing subsector groups establishments engaged in the publishing of newspapers, periodicals, and books, as well as database and software publishing. In general, publishers issue copies of works for which they possess copyright for sale to the general public, in one or more formats including traditional print form, CD-ROM or on line. Publishers may publish works originally created by others for which they have obtained the rights, and/or works that they have created in-house.

In most other classification systems, publishing is treated as a subsidiary activity to a manufacturing activity—book and newspaper publishing, for example, are depicted as subsidiary activities to printing, and placed with printing in the classification. In NAICS, publishing—the reporting, writing, editing, and other processes that are required to create an edition of a

newspaper, for example—is treated as a major economic activity in its own right, and classified in the Information sector, whereas printing remains in the NAICS Manufacturing sector. In part, the NAICS classification reflects the fact that publishing increasingly takes place in establishments that are physically separate from the associated printing establishments. More crucially, the NAICS classification of book and newspaper publishing is intended to portray their roles in a modern economy, in which they do not resemble manufacturing activities.

Software publishing is included here because the activity—creation of a copyrighted product and bringing it to market—is equivalent to the creation process for other types of intellectual products. Reproduction of pre-packaged software is treated in NAICS as a manufacturing activity; on-line distribution of software products is in the Information sector, and custom design of software to client specifications remains in business services. These distinctions arise because of the different ways that software is created, reproduced, and distributed.

The Motion Picture and Sound Recording subsector groups establishments involved in the production and distribution of motion pictures and sound recordings (those involved exclusively in the wholesaling of sound recordings are classified in Wholesale Trade). While motion picture and sound recordings are also “published,” the processes involved are sufficiently different from those traditional publishing industries to warrant placing them in the Motion Picture and Sound Recording subsector. The production and distribution of these products involves a complex process and several distinct industries.

The Motion Picture and Video Industries industry group includes separate industries for Motion Picture and Video Production, Motion Picture and Video Distribution, Teleproduction and Other Post-Production Services, Motion Picture and Video Exhibition, and Other Motion Picture and Video Industries. The distribution industry includes establishments primarily engaged in acquiring the distribution rights (major input) for films and programs, and charging such clients as movie theaters and broadcasters to show them; those engaged in wholesaling videos to retail stores and rental outlets are classified in Wholesale Trade.

The Sound Recording Industries industry group contains new classes for Record Production Companies, Integrated Record Companies, Music

Publishing, Sound Recording Studios, and Other Sound Recording Industries. Record production companies are primarily engaged in searching out, identifying and contracting artists for which they arrange and finance the production of master tapes for which they hold the reproduction rights. Establishments in this industry do not own duplication facilities or have distribution capabilities, so they commercialize these rights through leasing/licensing agreements with third parties. Integrated record production companies (major record labels) integrate the production, manufacturing and/or distribution functions, commercializing reproduction rights through these vertically integrated operations. While establishments engaged in record production derive most of their revenues from leasing/licensing the reproduction rights of master recordings and from mechanical royalties, integrated record companies derive most of their revenues from the exploitation of their rights to distribute duplicate sound recordings. The industrial structure proposed for this area is a major revision of existing classifications; the purpose of this restructuring is to reflect the actual activity structure of the sound recording industry, which is not well articulated in current classifications.

The structure of the Broadcasting and Telecommunications subsector was decided upon in a previously signed preliminary agreement (Number 2), but at the time, the sector in which it would be included had not been determined. The three countries have agreed to place it in the Information sector. The following is a summary of the previously signed agreement.

The Broadcasting and Telecommunications subsector includes establishments providing point-to-point communications and the services related to that activity. The industry groups (Radio and Television Broadcasting, Cable Networks and Program Distribution, and Telecommunications) are based on differences in the methods of communication and in the nature of services provided. The Radio and Television Broadcasting industry group includes establishments that operate broadcasting studios and facilities for over the air or satellite delivery of radio and television programs of entertainment, news, talk, and the like. These establishments are often engaged in the production and purchase of programs and generating revenues from the sale of air time to advertisers, and from donations, subsidies, and/or the sale of programs. The Cable Network

and Program Distribution industry group includes two types of establishments. Cable Networks establishments operate studios and facilities for the broadcasting of programs that are typically narrow cast in nature (limited format such as news, sports, education, and youth-oriented programming). The services of these establishments are typically sold on a subscription or fee basis. Delivery of the programs to customers is handled by other establishments, in the Cable and Program Distribution industry, that operate cable systems, direct-to-home satellite systems, or other similar systems. The Telecommunications industry group is primarily engaged in operating, maintaining, and/or providing access to facilities for the transmission of voice, data, text, sound, and full motion picture video between network termination points. A transmission facility may be based on a single technology or a combination of technologies.

The Information Services and Data and Transaction Processing subsector is subdivided into two industry groups. The Information Services industry group includes establishments that provide, store, or provide access to information. The Data and Transaction Processing industry group includes establishments that process data and transactions.

#### *Limitations and Constraints of the Classification*

The concept of an Information sector is new and for that reason its definition could be very broad or very narrow. For instance, it can be argued that establishments engaged in activities such as advertising, marketing research, public opinion polling and credit reporting should be included here since they are, in one way or another, engaged in producing, manipulating and distributing information and/or cultural products. These establishments, however, also share characteristics with establishments found in the Professional, Scientific and Technical Services subsector and it is proposed to classify them in that sector. Similarly, independent artists, writers, and performers could be classified here since they provide the creative input essential to the production of many of the industries found in this sector. However, it has been decided to classify all such establishments in a single industry in the Performing Arts, Spectator Sports, and Related Industries subsector.

The Information sector is largely a restructuring of existing classifications. For example, many of the activities that

are classified in Publishing and in Sound Recording Industries are currently classified in the Manufacturing sectors in the existing national classifications. As a result, the definition of existing broad aggregates such as manufacturing or business services have changed.

The identification of new and emerging industries is one of the principle goals of the NAICS project, and in this case many such industries are introduced in the classification (the extent varies by country.) However, many users have expressed the wish that this goal be achieved while minimizing breaks in time series. These two objectives are often conflicting and the degree to which proposed NAICS industries relate to existing national classification systems varies from country to country. This issue is elaborated in the Changes to the National Classification section.

#### *Relationship to ISIC*

Twenty-six of the 29 proposed NAICS industries are contained within Divisions 22, Publishing, Printing and Reproduction of Recorded Media; 64, Post and Telecommunications; 72, Computer and Related Activities; and 92, Recreational, Cultural and Sporting Activities of the Current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The following NAICS industries cannot be assigned to an ISIC division without being subdivided: Other Publishing; Radio Broadcasting; and Television Broadcasting. However, the discrepancies between these proposed NAICS industries and ISIC are minor and do not have a significant impact on the comparability of data. Accordingly, most of the NAICS Information sector can be retabulated to reach consistency at the two-digit level of ISIC.

#### *Changes to the National Classification*

For Canada, the most fundamental change to the 1980 Canadian Standard Industrial Classification (CSIC) is the grouping in one sector of industries currently classified in several sectors. Publishing has been moved from Manufacturing (CSIC 28), broadcasting and telecommunication industries from Communication Industries (CSIC 48), film industries from Amusement and Recreational Service Industries (CSIC 96), record companies from Manufacturing (CSIC 39), libraries from Educational Services Industries (CSIC 85), and software publishing and data processing from Business Service Industries (CSIC 77).

The current classification for traditional publishing separates establishments engaged in publishing only from those engaged in publishing and printing. In the proposed NAICS classification, these establishments are classified to five different 4-digit industries according to the type of publishing (newspaper, book, database, etc.) whether or not they are also engaged in printing activities. Software publishing, currently a component of the Computer Services industry (CSIC 7721), is now classified in this subsector.

The classification of video wholesaling to the existing Motion Picture and Video Distribution class (CSIC 9612) is changed; video wholesaling is now assigned to the Wholesale Trade area. Establishments primarily engaged in videotaping are moving from the Motion Picture and Video Production industry (CSIC 9611) to the NAICS class for Photography in the Management, Employment, Administrative and Support Services subsector. The three existing classes for motion picture and video exhibition (CSIC 9621, 9622, 9629) are collapsed into one NAICS class. Independent motion picture directors, currently classified to the Motion Picture and Video Production industry, are moving to the Performing Arts, Spectator Sports and Related Industries subsector of NAICS.

Sound recording activities are now classified to a separate industry group in five newly created 4-digit industries. This is significantly different from the current practice of assigning these activities in different areas of the CSIC, the most important being wholesale trade and manufacturing.

Other significant changes include the movement of libraries (part of CSIC 8541) and archives (part of CSIC 8551) from Educational Service Industries to this sector and of news syndicates (part of CSIC 7799), on-line information services (part of CSIC 7799) and data processing services (part of CSIC 7721) from the Business Services division to this sector.

For Mexico, economic activities emanating from various CMAP sectors have been reclassified into the new Information sector. Editing and a combination of editing and printing were taken from the Manufacturing Sector, group CMAP 3420, corresponding to printing and editing. From group CMAP 3832, Manufacture and/or Assembly of Electronic Radio, Television, Communications and Medical Equipment, recording, editing and record reproducing studios were

transferred when these studios are integrated in this manner.

The following classes were reclassified from the current Transportation and Communications Sector; CMAP classes 720003, Telephone Services; 720004, Public Telephone Services; 720005, Telegraph Services; and 720006, Other Telecommunications Services, except for facsimile services in the latter category, found under the Organization Services subsector, together with Business Centers.

Services related to cinematography, radio and television were taken from the current Recreation, Cultural and Sports Services (CMAP classes 941101, 941102, 941103, 941104, 941105, 941201, 941202 and 941203), both from the public and private sectors. Library services, currently classified by the CMAP together with museums, botanical gardens and the like, under CMAP branches 9421 and 9422, were also reclassified under this new sector.

Finally, from the current CMAP 9510 branch, Provision of Professional, Technical and Specialized Services, the following CMAP classes were taken: from CMAP 951004, Systems Analysis and Information Processing Services, the corresponding parts to software editing services, on-line consulting services and rented computer time; CMAP 951014, News Agencies' Services; and CMAP 951023, Other Professional, Technical and Specialized Services previously mentioned, pre-recorded telephone information services.

For the United States, the Information sector is a new grouping and includes industries that were included in different divisions of the 1987 SIC. The concepts underlying the creation of this sector and the industry descriptions address the increasing use of electronic means of dissemination that is not considered in the 1987 SIC.

The Newspaper, Periodical, Book and Database Publishing industry group is currently included in the Manufacturing division of the 1987 SIC (Industry Groups 271, 272, 273, 274 and part of 1987 SIC 2771). The industries included in the NAICS Information sector are those involved in publishing, or publishing and printing combined. Establishments engaged in printing only remain in the Manufacturing sector of NAICS.

The Software Publishing industry is part of the 1987 SIC 7372, Prepackaged

Software, in the 1987 SIC in the Business Services major group. The reproduction of prepackaged software only is included in the Computer and Electronic Components subsector in the NAICS Manufacturing sector.

The Motion Picture and Video Industries industry group includes industries classified in the Motion Pictures major group of the 1987 SIC. Parts of 1987 SIC 7819, Services Allied Motion Pictures, were reclassified in other sectors to create more homogeneous, production based categories. A new industry is created for Teleproduction and Other Post-production Services from 1987 SIC 7819, Services Allied to Motion Picture Production, and the remainder of 1987 SIC 7819 was combined with 1987 SIC 7829, Services Allied to Motion Picture Distribution.

Five new industries are created within the Sound Recording Industries industry group. None of these industries exist in the 1987 SIC and, in most instances, there is no indication in the 1987 SIC Manual of the appropriate industry in which they should be included. Because of this, it is difficult to predict the impact of this change, though in most instances it is expected to have a minor effect on existing time series.

Changes to the U.S. SIC system for the Broadcasting and Telecommunications industries subsector were addressed in a previous NAICS agreement (Agreement number 2).

The Information Services and Data and Transaction Processing subsector includes a number of information service-related industries. The News Syndicates and Libraries and Archives industries correspond to 1987 SIC 7383, News Syndicates, and 8231, Libraries. News Syndicates were previously located in the Business Services major group and Libraries were located in the Educational Services major group. The Other Information Services industry primarily includes establishments classified in 1987 SIC 7375, Information Retrieval Services. U.S. national detail preserves this industry and provides a residual class for all other information services. The Data and Transaction Processing industry corresponds to 1987 SIC 7374, Computer Processing and Data Preparation and Processing Services. Both Information Retrieval Services and Computer Processing and Data Preparation and Processing

Services were located in the Business Services major group.

#### *Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System. It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure also follows the production concept.

The classification achieves comparability for the three participating countries. All countries agree on the definitions of the industries. The classification improves comparability with other countries. Based on existing data, each country expects to be able to publish data regularly, or in the near future, at the 4-digit NAICS level of this structure.

Other objectives of the NAICS project have also been met. The classification meets the objectives of an industry classification. In an effort to identify high technology and new emerging industries, new industries in the Sound Recording industry group and the Broadcasting and Telecommunications subsector have been identified. The classifications are homogeneous and account for most of the activities that define them. In addition, they are economically significant.

#### *Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry sector presented in Part VIII, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry sector covered in Part VIII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Publishing			
XXX .....	Newspaper, Periodical, Book and Database Publishing:			
XXXX ..	Newspaper Publishing .....	E	2711	Newspapers: Publishing, or Publishing and Printing.
XXXX ..	Periodical Publishing .....	E	2721	Periodicals: Publishing, or Publishing and Printing.
XXXX ..	Book Publishing .....	E	2731	Books: Publishing, or Publishing and Printing.
XXXX ..	Database Publishing .....	N	*2741	Miscellaneous Publishing (database publishers).
XXXX ..	Other Publishing:			
XXXXX	Greeting Card Publishing .....	R	*2771	Greeting Cards.
XXXXX	All Other Publishing .....	R	*2741	Miscellaneous Publishing (except database publishing).
XXX .....	Software Publishing:			
XXXX ..	Software Publishing .....	R	*7372	Prepackaged Software.
XX .....	Motion Picture and Sound Recording:			
XXX .....	Motion Picture and Video Industries:			
XXXX ..	Motion Picture and Video Production .....	E	7812	Motion Picture and Video Tape Production.
XXXX ..	Motion Picture and Video Distribution .....	E	*7822	Motion Picture and Video Tape Distribution (except video tape and cassette wholesalers).
XXXX ..	Teleproduction and Other Post-Production Services.	N	*7819	Services Allied to Motion Picture Production (teleproduction and post-production services).
XXXX ..	Motion Picture and Video Exhibition:			
XXXXX	Motion Picture Theaters, except Drive-Ins	E	7832	Motion Picture Theaters, Except Drive-In.
XXXXX	Drive-In Motion Picture Theaters .....	E	7833	Drive-In Motion Picture Theaters.
XXXX ..	Other Motion Picture and Video Industries ....	N	*7819	Services Allied to Motion Picture Production (except casting bureaus, wardrobe and equipment rental, talent payment services, teleproduction and other post-production services).
XXX .....	Sound Recording Industries:			
XXXX ..	Record Production Companies .....	N	*6794	Patent Owners and Lessors (music royalties, sheet and record).
XXXX ..	Integrated Record Companies .....	N	*3652	Phonograph Records and Prerecorded Audio Tapes and Disks (integrated record companies, except duplication only).
XXXX ..	Music Publishing .....	N	*6794	Patent Owners and Lessors (music publishing).
XXXX ..	Sound Recording Studios .....	N	*7389	Business Services, NEC (recording studios).
XXXX ..	Other Sound Recording Industries .....	N	*7389	Business Services, NEC (audio taping services).
			*7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services (producers of radio programs).
XX .....	Broadcasting and Telecommunications:			
XXX .....	Radio and Television Broadcasting:			
XXXX ..	Radio Broadcasting:			
XXXXX	Radio Networks .....	N	*4832	Radio Broadcasting Stations (networks).
XXXXX	Radio Stations .....	N	*4832	Radio Broadcasting Stations (except networks).
XXXX ..	Television Broadcasting .....	E	4833	Television Broadcasting Stations.
XXX .....	Cable Networks and Program Distribution:			
XXXX ..	Cable Networks .....	N	*4841	Cable and Other Pay Television Services (cable networks).
XXXX ..	Cable and Program Distribution .....	N	*4841	Cable and Other Pay Television Services (except cable networks).
XXX .....	Telecommunications:			
XXXX ..	Wired Telecommunications Carriers .....	N	*4813	Telephone Communications, Except Radiotelephone (except resellers).
			4822	Telegraph and Other Message Communications.
XXXX ..	Wireless Telecommunications Carriers, Except Satellite:			
XXXXX	Paging .....	N	*4812	Radiotelephone Communications (paging carriers).
XXXXX	Cellular and Other Wireless Telecommunications.	N	*4812	Radiotelephone Communications (cellular carriers).
XXXX ..	Telecommunications Resellers .....	N	*4899	Communications Services, NEC (radio dispatch).
			*4812	Radiotelephone Communications (paging and cellular resellers).
			*4813	Telephone Communications, Except Radiotelephone (resellers).
XXXX ..	Satellite Telecommunications .....	N	*4899	Communications Services, NEC (Satellite communications).
XXXX ..	Other Telecommunications .....	N	*4899	Communications Services, NEC (except radio dispatch, satellite communications).
XX .....	Information Services and Data and Transaction Processing:			
XXX .....	Information Services:			
XXXX ..	News Syndicates .....	E	7383	News Syndicates.
XXXX ..	Libraries and Archives .....	E	8231	Libraries.
XXXX ..	Other Information Services:			
XXXXX	On-Line Information Services .....	E	7375	Information Retrieval Services.

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX XXX .....	All Other Information Services .....	N	*8999	Services, NEC (miscellaneous information providers).
XXXX .....	Data and Transaction Processing: Data and Transaction Processing .....	E	7374	Computer Processing and Data Preparation and Processing Services.

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2711 .....	Newspapers: Publishing, or Publishing and Printing.	Newspaper Publishing.
2721 .....	Periodicals: Publishing, or Publishing and Printing	Periodical Publishing.
2731 .....	Books: Publishing, or Publishing and Printing .....	Book Publishing.
2741@ .....	Miscellaneous Publishing: Database Publishing .....	Database Publishing.
	Miscellaneous Publishing, Except Database .....	All Other Publishing.
2771 .....	Greeting Cards .....	Greeting Card Publishing.
4812@ .....	Radiotelephone Communications: Paging Carriers .....	Paging.
	Cellular Carriers .....	Cellular and Other Wireless Telecommunications
	Paging and Cellular Resellers .....	Telecommunications Resellers (pt.).
4813@ .....	Telephone Communications, Except Radio- telephone: Except Resellers .....	Wired Telecommunications Carriers (pt.).
	Resellers .....	Telecommunications Resellers (pt.).
4822@ .....	Telegraph and Other Message Communications ...	Wired Telecommunications Carriers (pt.).
4832 .....	Radio Broadcasting Stations: Networks .....	Radio Networks.
	Stations .....	Radio Stations.
4833 .....	Television Broadcasting Stations .....	Television Broadcasting.
4841 .....	Cable and Other Pay Television Services: Cable Networks .....	Cable Networks.
	Except Cable Networks .....	Cable and Program Distribution.
4899 .....	Communications Services, Not Elsewhere Classi- fied: Radio Dispatch .....	Cellular and Other Wireless Telecommunications (pt.).
	Satellite Communications .....	Satellite Telecommunications.
	Except Radio Dispatch and Satellite .....	Other Telecommunications.
7372 .....	Prepackaged Software: Software Publishing .....	Software Publishing.
	Reproduction of Software .....	Reproduction of Software.
7374 .....	Computer Processing and Data Preparation and Processing Services.	Data and Transaction Processing.
7375 .....	Information Retrieval Services .....	On-Line Information Services.
7383 .....	News Syndicates .....	New Syndicates.
7389 .....	Business Services, Not Elsewhere Classified: Sound Recording Studios .....	Sound Recording Studios.
	Audio Taping Services .....	Other Sound Recording Industries (pt.).
7812 .....	Motion Picture and Video Tape Production .....	Motion Picture and Video Production.
7819 .....	Services Allied to Motion Picture Production: Teleproduction and Post-Production Services ....	Teleproduction and Other Post-Production Services.
	Casting Bureaus .....	Employment Agencies (pt.) (Included in Management, Employ- ment, Administrative and Support Services subsector).
	Wardrobe Rental (Motion Pictures) .....	Rental and Leasing of Formal Wear and Costumes (pt.) (In- cluded in Rental and Leasing subsector).
	Rental of Motion Picture Equipment .....	Rental and Leasing of Machinery and Equipment (pt.) (In- cluded in Rental and Leasing subsector).
	Talent Payment Services .....	Payroll Services (Included in Professional Scientific and Tech- nical Services subsector).
	Except Casting Bureaus, Wardrobe and Equip- ment Rental, Teleproduction and Other Post- Production Services.	Other Motion Picture and Video Services (pt.).
7822 .....	Motion Picture and Video Tape Distribution: Distribution, Except Video Tape and Cassette Wholesalers.	Motion Picture and Video Distribution.
	Video Tape and Cassette Wholesalers .....	(Included in Wholesale Trade Sector).
7829 .....	Services Allied to Motion Picture Distribution .....	Other Motion Picture and Video Services (pt.).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
7832 .....	Motion Picture Theaters, Except Drive-Ins .....	Motion Picture Theaters, Except Drive-In.
7833 .....	Drive-In Motion Picture Theaters .....	Drive-In Motion Picture Theaters.
7922@ .....	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services: Producers of Radio Programs: .....	Other Sound Recording Industries (pt.). Libraries and Archives.
8231 .....	Libraries .....	
6794@ .....	Patent Owners and Lessors: Record Production Companies .....	Record Production Companies. Music Publishing.
	Music Publishing .....	
3652@ .....	Phonograph Records and Prerecorded Audio Tapes and Disk. Integrated Record Companies, Except Duplica- tion Only.	Integrated Record Companies.
8999@ .....	Services, Not Elsewhere Classified. Miscellaneous Information Providers .....	All Other Information Services.

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

Note: Detail for SIC's 7389, 7922, 6794, 3652 and 8999 only represent those parts applicable to the Information Sector.

### Description of Changes to the U.S. System

1. One new industry was created in the Publishing subsector.

Database Publishing was created from part of 1987 SIC 2741, Miscellaneous Publishing. It was established because of the growth of this type of publishing and is supported by the production process.

All Other Publishing was revised from part of 1987 SIC 2741, Miscellaneous Publishing, by the removal of database publishing.

Software Publishing was created from part of 1987 SIC 7372 Prepackaged Software. Reproduction of software only is included in the Computer and Electronic Component Manufacturing subsector.

Four of the five 1987 publishing industries remained largely unchanged and time series will not be significantly affected.

2. Seven new industries were created in the Motion Picture and Sound Recording subsector. The Teleproduction and Other Post-Production Services industry was created from part of 1987 SIC 7819, Services Allied to Motion Picture Production, based upon a request by the industry and is supported by production based principles.

Other Motion Picture and Video Industries was created from part of 1987 SIC 7819, Services Allied to Motion Picture Production, and 1987 SIC 7829, Services Allied to Motion Picture Distribution, to form a residual industry containing establishments that provide specialized services in support of the motion picture production and distribution industries.

The Record Production Companies industry was created from part of 1987

SIC 6794, Patent Owners and Lessors.

This industry was created to include establishments that perform a specialized role in searching out and contracting musical artists. This industry is supported by the production process.

The Integrated Record Companies industry was created from part of 1987 SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks. This industry was established to include establishments that reproduce and distribute musical recordings. This industry is supported by the production process.

The Music Publishing industry was created from part of 1987 SIC 6794, Patent Owners and Lessors, to recognize the specialized role it has in promoting the use of musical works in recordings, film, television, and other media. Music publishers are primarily engaged in owning the copyright of musical compositions, and administering the exploitation of the bundle of rights that flow from the ownership of this copyright. The industry is supported by production based principles.

The Sound Recording Studios industry was created from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry was established to include establishments that perform a specialized role in providing facilities and expertise in recording performances, and is supported by production based principles.

Other Sound Recording Services was created from part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services, and part of 1987 SIC 7389, Business Services, NEC. This industry was created as a residual to include

establishments that provide specialized audio and sound related services. It is supported by production based principles.

3. There are 11 new industries in the Broadcasting and Telecommunications subsector. These were published in the Federal Register on July 26, 1995. Please refer to page 38448 for details.

4. There is one new industry in the Information Services and Data and Transaction Processing subsector. The All Other Information Services industry was created to include a variety of information service related establishments not included in other industries in this sector. While this class is expected to be very small at the present time, it represents a residual industry that may contain new types of establishments in the future as more advanced information technologies emerge and grow. The U.S. national On-Line Information Services industry (1987 SIC 7375, Information Retrieval Services) includes establishments that provide access to, and distribution of, information that has been stored electronically for retrieval.

Part IX—Proposed New Industry Structure for Wood Product Manufacturing, Except Furniture

#### Section A—NAICS Structure

North American Industry Classification System

(NAICS)

Agreement Number 19

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector:

Wood Product Manufacturing, Except Furniture

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	9/29/95
Mexico .....	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

#### Attachment 1—NAICS Structure

XX Wood Product Manufacturing, Except Furniture  
 XXX Sawmill Product and Wood Preservation Manufacturing  
 XXXX Sawmill Product and Wood Preservation Manufacturing  
 XXX Laminated Wood Product Manufacturing  
 XXXX Laminated Wood Product Manufacturing  
 XXX Other Wood Product Manufacturing  
 XXXX Wood Construction Product Manufacturing  
 XXXX Wood Container and Package Product Manufacturing  
 XXXX All Other Wood Product Manufacturing

#### Attachment 2—North American Industry Classification System

Draft Classification for:  
 Wood Product Manufacturing, Except Furniture

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification provides for the subsector Wood Product Manufacturing, Except Furniture. This subsector is further subdivided into three industry groups and five industries.

#### A General Outline

The Wood Product Manufacturing, Except Furniture industries produce wood products such as lumber, hardwood and softwood plywood and

veneers, wood containers, wood flooring and trusses, mobile homes, and prefabricated wood buildings.

The production processes of the Wood Product Manufacturing, Except Furniture industries include sawing, planing, shaping, laminating and sometimes assembly of wood, starting from logs that are cut into bolts, planks, or boards that then may be further cut, or shaped by lathes or other shaping tools. The boards or other shapes also may be subsequently planed or smoothed, and assembled into finished products such as wooden containers.

The Sawmill Product and Wood Preservation Manufacturing industries include establishments whose production process begins with wooden logs that are then transformed into boards, poles, ties, and beams. Establishments that process wood to prevent rotting by impregnation with creosote or other chemical compounds also are included in this industry group.

The Laminated Wood Product Manufacturing industries include establishments that produce hardwood and softwood plywood, particle board, oriented strand board, and glue laminated wood products, including plywood covered with other materials such as plastic and metals. Plywood and particle board products that are included in this industry group are generally produced by a process involving high-pressure compression and through the use of glues either in combination or separately.

There are three NAICS industries in the Other Wood Product Manufacturing industry group. The Wood Construction Product Manufacturing industry includes establishments that manufacture doors, windows, closets, wall coverings, parquet flooring, staves, partitions, and general products for woodwork. Excluded from this industry is the manufacture of wooden houses and furniture.

Establishments in the Wood Container and Package Product Manufacturing industries manufacture products for packing and packaging, such as pallets, barrels, casks, crates, vats, containers, jewelry boxes, and decorative and ornamental boxes.

Finally, establishments in the All Other Wood Product Manufacturing industries produce cork and cork products, manufactured wooden houses, plaiting materials, such as wicker, reeds, etc., turned items, etc.

#### Limitations and Constraints of the Classification

Developing an industry classification for Wood Product Manufacturing, Except Furniture industries was

difficult for the three countries. First, the wood industry in Mexico is small and relatively unspecialized. Therefore the NAICS industries are quite aggregated to ensure that information can be published in all three countries. For example, in Mexico the treatment and preservation of wood generally takes place at sawmills as part of the production of poles and ties. There are few establishments where it is the primary activity. Therefore, NAICS combines these activities into one industry.

Another factor that limited the formulation of classes in this subsector are differences in climate among the three countries. The climate has led to higher levels of development and specialization in the wood industry in the United States and Canada, particularly with regard to construction and construction materials. Mexico does not grow hardwood trees. Each country may, however, publish additional national industries that comprise subdivisions of NAICS industries to present data for activities that are nationally significant.

#### Relationship to ISIC

Most four-digit NAICS industries in this subsector are contained within Division 20, Manufacture of Wood Products, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The following NAICS industry cannot be assigned to an ISIC Division: All Other Wood Product Manufacturing. This industry includes the manufacture of wooden heels that are classified in ISIC Division 19, Manufacture of Leather, Leather Products, and Footwear. However, this is a very small activity and should not significantly affect the comparability between this NAICS subsector and ISIC Division 20.

#### Changes to the National Classifications

The changes to the current national classifications were varied in nature. In some cases, changes applied to all three countries while in others the changes affected only one or two of the countries.

For Canada, the major structural change entailed moving the production of building board (CSIC 2714) to the Wood Product Manufacturing, Except Furniture subsector both to achieve international comparability and to better meet the production process principle. CSIC 2542, Kitchen Cabinet and Bathroom Vanities, was moved from the Canadian Wood major group to better adhere to the production process, and ultimately to achieve three country

comparability. In addition, sawmills were redefined to exclude wood and wood products made from purchased lumber. Wooden coffins were moved from this subsector to Miscellaneous Manufacturing because establishments tend to make this product from plastic and metal as well as wood. Other structural changes for Canada, such as the movement of the manufacture of wooden cigar cases and jewelry boxes, wooden boot and shoe heels, billboards, and other wooden signs and cork gaskets, etc. are minor.

For Mexico, the major change is the movement of wood furniture from CMAP Subsector, Wood and Wood Products, Including Furniture, to the new NAICS Furniture Manufacturing subsector. In the current Mexican structure, the manufacture of furniture is classified in groups allocated to the type of input material, that is, wood, metal, plastic, etc. Furniture is more and more being made of multiple materials and design is an important component of its production process. Thus, a separate NAICS subsector was created for the manufacture of furniture from all types of material.

For the United States, the major change is the movement of 1987 SIC 2411, Logging, from the Lumber and Wood Products, Except Furniture major group to the Forestry and Logging subsector. The move was made to better meet production principles, and to match Canada's and Mexico's classification of this activity. Another

important structural change was to move the manufacture of 1987 SIC 2434, Wood Kitchen Cabinets, from this group to the NAICS Furniture Manufacturing subsector for production principles. The manufacture of wooden chair frames was also moved from here to the Furniture Manufacturing subsector to reach international comparability. Other structural changes include the movement of cork gaskets, wood heels, wood signs, and burnt wood articles to this group from various other manufacturing subsectors.

*Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept.

The industries have high specialization ratios, and they are economically significant. The NAICS industries are large aggregations, but this was necessitated by the considerations discussed above under Limitations and Constraints of the Classification. The classification is suitable for sampling, data-publishing, and other aspects of survey operations. Finally, while disruptions to time series exist, they are not generally significant. The statistical agencies can develop

statistical "links," to enable the re-tabulation of time series on the NAICS classification structure.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part IX, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part IX of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Wood Product Manufacturing, Except Furniture:			
XXX .....	Sawmill Product and Wood Preservation Manufacturing:			
XXXX ...	Sawmill Product and Wood Preservation Manufacturing:			
XXXXX	Sawmills and Planing Mills .....	R	2421 2429	Sawmills and Planing Mills, General. Special Product Sawmills, NEC.
XXXXX	Wood Preserving .....	E	2491	Wood Preserving.
XXX .....	Laminated Wood Product Manufacturing:			
XXXX ...	Laminated Wood Product Manufacturing:			
XXXXX	Hardwood Veneer and Plywood Manufacturing.	E	2435	Hardwood Veneer and Plywood.
XXXXX	Softwood Veneer and Plywood Manufacturing.	E	2436	Softwood Veneer and Plywood.
XXXXX	Structural Wood Member Manufacturing, Except Trusses.	R	*2439	Structural Wood Members, NEC (except trusses).
XXXXX	Reconstituted Wood Product Manufacturing	E	2493	Reconstituted Wood Products.
XXX .....	Other Wood Product Manufacturing:			
XXXX ...	Wood Construction Product Manufacturing:			
XXXXX	Hardwood Dimension Mills .....	R	*2426	Hardwood Dimension and Flooring Mills (except flooring).
XXXXX	Wood Window and Door Manufacturing .....	N	*2431	Millwork.
XXXXX	Other Millwork Manufacturing, Including Flooring.	R	*2426	Hardwood Dimension and Flooring Mills (hardwood flooring).
XXXXX	Truss Manufacturing .....	N	*2431 *2439	Millwork. Structural Wood Members, NEC (trusses).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description					
XXXX ...	Wood Container and Package Product Manufacturing.	N	2441	Nailed and Lock Corner Wood Boxes and Shook.					
XXXXX				2448	Wood Pallets and Skids.				
				2449	Wood Containers, NEC.				
				*2499	Wood Products, NEC (wood tubs and vats, jewelry and cigar boxes).				
XXXX ...	All Other Wood Product Manufacturing: Manufactured Homes (Mobile) Manufacturing.	E	2451	Mobile Homes.					
XXXXX				2452	Prefabricated Wood Buildings and Components.				
XXXXX						*2426	Hardwood Dimension and Flooring Mills (wood stock and turnings).		
XXXXX								*2499	Wood Products, NEC (other wood products).
								*3053	Gaskets, Packing, and Sealing Devices (cork gaskets, packaging, and sealing devices).
	*3131	Boot and Shoe Cut Stock and Findings (wood heels).							
	*3993	Signs and Advertising Specialties (wood signs).							

The definitions of status are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2411 .....	Logging .....	Logging Operations (Included in Support Activities for Forestry subsector).
2421@ .....	Sawmills and Planing Mills, General .....	Sawmills and Planing Mills (pt).
2426@ .....	Hardwood Dimension and Flooring Mills:	
	Hardwood Flooring .....	Millwork Manufacturing, Including Flooring (pt)
	Wood Stock and Turnings .....	Other Wood Product Manufacturing (pt).
	Office Chair Frames .....	Wood Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Chair Frames for Nonupholstered Furniture (Household).	Wood Household Furniture Manufacturing, Except Upholstered (pt) (Included in Furniture Manufacturing subsector).
	Chair Frames for Upholstered Furniture (Household).	Upholstered Wood Household Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Other Hardwood Dimension Except Flooring ....	Hardwood Dimension Mills.
2429@ .....	Special Product Sawmills NEC .....	Sawmills and Planing Mills (pt).
2431@ .....	Millwork:	
	Wood Window and Door Manufacturing .....	Other Millwork Manufacturing, Including Flooring (pt).
2434 .....	Wood Kitchen Cabinets .....	Wood Kitchen Cabinet Manufacturing (Included in Furniture Manufacturing subsector).
2435 .....	Hardwood Veneer and Plywood .....	Hardwood Veneer and Plywood Manufacturing
2436 .....	Softwood Veneer and Plywood .....	Softwood Veneer and Plywood Manufacturing
2439@ .....	Structural Wood Members, NEC:	
	Except Trusses .....	Structural Wood Member Manufacturing, Except Trusses.
	Trusses .....	Truss Manufacturing.
2441 .....	Nailed and Lock Corner Wood Boxes and Shook	Wood Containers and Package Product Manufacturing (pt).
2448 .....	Wood Pallets and Skids .....	Wood Containers and Package Product Manufacturing (pt).
2449 .....	Wood Containers, NEC .....	Wood Containers and Package Product Manufacturing (pt).
2451 .....	Mobile Homes .....	Manufactured Homes, (Mobile Manufacturing
2452 .....	Prefabricated Wood Buildings and Components ....	Prefabricated Wood Building and Component Manufacturing.
2491 .....	Wood Preserving .....	Wood Preserving.
2493 .....	Reconstituted Wood Products .....	Reconstituted Wood Product Manufacturing.
2499 .....	Wood Products, NEC:	
	Wood Tub and Vats, Jewelry and Cigar Boxes	Other Wood Container Manufacturing (pt).
	Wood Laundry Hampers .....	Household Wood Furniture Manufacturing, Except Upholstered (pt) (Included in Furniture Manufacturing subsector).
	Laundry Hampers Made from Rattan, Reed or Willow Mirror and Picture Frames.	Other Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector) All Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).
	Other Wood Products .....	Other Wood Product Manufacturing (pt).
3053@ .....	Gaskets, Packing, and Sealing Devices:	
	Cork Gaskets, Packing, and Sealing Devices ....	Other Wood Product Manufacturing (pt).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
3131@ .....	Metal Gaskets, Packing, and Sealing Devices ... Plastics Gaskets, Packing, and Sealing Devices Rubber Gaskets, Packing, and Sealing Devices Boot and Shoe Cut Stock and Findings: Wood Heels ..... Metal Buckles ..... Other Footwear Cut Stock .....	Other Miscellaneous Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector). All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector). All Other Rubber Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector). Other Wood Product Manufacturing (pt). Fastener, Button, Needle, and Pin Manufacturing (pt) (To be Included in Miscellaneous Manufacturing subsector). Miscellaneous Leather and Allied Product Manufacturing (pt) (Included in Leather and Allied Product Manufacturing subsector).
3993@ .....	Signs and Advertising Specialties: Wood Signs ..... Electric Signs ..... Metal Signs ..... Flexographic Printing of Advertising Specialties Gravure Printing of Advertising Specialties ..... Lithographic Printing of Advertising Specialties Screen Printing of Advertising Specialties ..... Other Printing of Advertising Specialties .....	Other Wood Product Manufacturing (pt). Electric Sign Manufacturing (Included in Electrical Equipment, Appliance, and Component Manufacturing subsector). All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector). Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector). Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector). Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector). Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector). Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector).
3999 .....	Manufacturing Industries, NEC: Burnt Wood Articles ..... Beauty and Barber Chairs ..... Fur Bleaching, Currying, Scraping, Tanning and Dyeing. Lamp Shades of Paper and Textile ..... Matches ..... Metal Products, Such As Combs, Hair Curlers, Etc.. Plastics Products, Such As Combs, Hair Curlers, Etc.. Flexographic Printing Eyeglass Frames for the Trade. Gravure Printing Eyeglass Frames for the Trade Lithographic Printing Eyeglass Frames for the Trade. Screen Printing Eyeglass Frames for the Trade Other Printing Eyeglass Frames for the Trade ... Tape Measures ..... Other .....	Other Wood Product Manufacturing (pt). Metal Office and Public Building Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector). Leather and Hide Tanning and Finishing Manufacturing (pt) (Included in Leather and Allied Product Manufacturing subsector). Other Lighting Equipment Manufacturing (pt) (Included in Electrical Equipment, Appliance, and Component Manufacturing subsector). Other Miscellaneous Chemical Product Manufacturing (pt) (Included in Chemical Product Manufacturing subsector). All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector). All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector). Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector). Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector). Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector). Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector). Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector). Hand and Edge Tool Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector). All Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).

The abbreviation "pt." means "part of", @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

A number of changes listed in this section were made for reasons of

international comparability. Where one or more of the three North American countries had different definitions of an industry classification, adjustments to

the definitions in one or more countries were required. In constructing NAICS, the three countries agreed to move, where change was required to attain

international comparability, in the direction of the country or countries whose existing classification definitions most closely corresponded to the production-oriented concept adopted for NAICS. Cases where the U.S. changed are listed below; other cases where Canada or Mexico moved toward the U.S. classification are not, of course, listed in this section.

Two new industries were added to the 1997 industry structure for this industry subsector. Truss Manufacturing was created from part of 1987 SIC 2439, Structural Wood Members, NEC. This change was in response to an industry proposal and also groups similar production processes together.

Wood Window and Door Manufacturing was created from part of 1987 SIC 2431, Millwork. The change was in response to an industry proposal, and conforms to production concepts.

Two complete industries were transferred out of 1987 Major Group 24, Lumber and Wood Products.

1987 SIC 2411, Logging, was transferred into the Support Activities for Forestry subsector. This change was necessary to align the U.S. classification with Canada and Mexico, and because logging is not a production process that is similar to the manufacture of wood products from logs.

1987 SIC 2484, Wood Kitchen Cabinets, was transferred into the Furniture Manufacturing subsector. This change reflects production processes that are essentially identical with those for furniture.

Three activities were transferred out of 1987 Major Group Lumber and Wood Products.

Wood chair frames and wood chair seats were transferred from 1987 SIC 2426, Hardwood Dimension and Flooring Mills, to (1) Wood Office Furniture Manufacturing, (2) Wood Household Furniture Manufacturing, and (3) Upholstered Wood Household Furniture Manufacturing. This change was necessary to align the U.S. classification with Canada and Mexico.

Laundry hampers were transferred from 1987 SIC 2499, Wood Products, NEC, and placed by component material in their respective industries within the Furniture Manufacturing subsector. This change was necessary to align the U.S. classification with Canada and Mexico.

Mirror and picture frames were transferred 1987 SIC 2499, Wood Products, NEC, into the All Other Miscellaneous Manufacturing subsector. This change promotes international comparability with Canada and reflects similar production functions regardless of material.

Four activities were transferred into the Wood Product Manufacturing, Except Furniture subsector.

Cork gaskets were transferred 1987 SIC 3053, Gaskets, Packing and Sealing Devices, into Other Wood Product Manufacturing. This change promotes international comparability with Mexico, and reflects similar production functions regardless of material.

Wood heels were transferred from 1987 SIC 3131, Boot and Shoe Cut Stock and Findings, into Other Wood Product Manufacturing. This change promotes international comparability with Mexico, while reflecting similar production functions.

Wood signs were transferred from 1987 SIC 3993, Signs and Advertising Specialities, into Other Wood Product Manufacturing. This change promotes international comparability with Mexico, while reflecting similar production functions.

Burnt wood articles were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Other Wood Product Manufacturing. This change was necessary to align the U.S. classification with Canada and Mexico.

Also several activities were transferred within the Lumber and Wood Products Major Group. The number of industries decreased from 17 in 1987 to 14 in 1997. For time series linkage 11 of the 17 1987 industries are comparable within the three percent of the 1997 industries.

#### Part X—Proposed New Industry Structure for Rental and Leasing

##### Section A—NAICS Structure

##### North American Industry Classification System (NAICS) Agreement Number 20

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:  
Rental and Leasing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three

countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Triplett Jack E..	11/9/95

#### Attachment 1—NAICS Structure

XX Rental and Leasing Services  
 XXX Rental and Leasing of Automotive Equipment Without Drivers  
 XXXX Rental and Leasing of Passenger Cars Without Drivers  
 XXXX Rental and Leasing of Trucks Without Drivers, Utility Trailers, and Recreation Vehicles  
 XXX Rental and Leasing of Consumer Goods  
 XXXX Rental of Consumer Electronics, Appliances and Home and Garden Tools  
 XXXX Rental of Formal Wear and Costumes  
 XXXX Rental of Video Tapes  
 XXXX Other Rental and Leasing of Consumer Goods  
 XXX Rental and Leasing of Machinery and Equipment  
 XXXX Rental and Leasing of Heavy Construction, Transportation, Mining and Forestry Machinery and Equipment  
 XXXX Rental and Leasing of Office Machinery and Equipment  
 XXXX Rental and Leasing of Other Machinery and Equipment

#### Attachment 2—North American Industrial Classification System

##### Draft Classification for: Rental and Leasing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification provides for the subsector Rental and Leasing. This subsector is further subdivided into three industry groups and nine industries. The placement of this subsector within the NAICS structure is not yet decided.

##### A General Outline

The Rental and Leasing subsector includes establishments that acquire and own a wide variety of tangible goods, such as machinery, equipment, computers and consumer goods, and rent or lease these goods to customers, businesses or individuals in return for a periodic rental or lease payment.

The subsector includes two main types of establishments: those that provide rental of various consumer goods and equipment and those that provide longer term leases for

machinery and equipment generally used in business operations. The first type generally provide short-term rentals and operate from a retail-like facility. The latter type typically have direct contact with individual clients, work with the clients to determine their individual needs, and tailor the lease arrangement to those specific ends. They often restructure the lease to provide clients with more appropriate equipment as the clients' needs change and they have expertise in remarketing or disposing of previously leased equipment and typically do not operate a retail-like facility.

Rental and leasing activities are currently dispersed throughout the classification systems of the three countries. This grouping brings together those activities with similar production processes.

Establishments that act as a third party in providing financing or credit to enable the acquisition of the equipment through a lease arrangement, such as banks or credit subsidiaries of manufacturing companies, are excluded from this subsector. They are classified in the Finance and Insurance sector. Also excluded are those establishments primarily engaged in renting or leasing real property (land and buildings). They are classified in the Real Estate subsector. Those establishments that primarily engage in renting or leasing equipment with operators are classified in various subsectors of NAICS depending on the nature of the service provided (for example, Transportation or Construction). These activities are excluded from this subsector since the lessee is paying for the expertise and knowledge of the equipment operator, in addition to the rental of the equipment. In many cases, such as the rental of heavy construction equipment, the operator is essential to operate the equipment. Likewise, because the provision of crop harvesting services includes both the equipment and operator, it is included in the agriculture subsector. The rental or leasing of intangibles or intellectual property is, for the most part, classified in the following proposed subsectors or sectors: Information; Professional, Scientific and Technical Services; and Arts, Entertainment and Recreation. The choice of industry is based on the nature and origin of the intangible property being made available for rental or leasing.

This subsector is subdivided into three industry groups. Establishments primarily engaged in rental and leasing of passenger cars, trucks and utility trailers comprise one industry group. This reflects the increasingly common

practice of leasing these types of equipment, particularly passenger cars. These establishments generally operate a retail-like facility, some offer only short term rental, others only longer term leases, and some provide both type of services.

The second industry group includes establishments primarily engaged in renting and leasing personal and household goods. Establishments classified in this industry group often operate from a retail like or storefront facility and normally offer rental and leasing of goods for relatively short periods of time.

The third industry group includes establishments primarily engaged in renting and leasing machinery and equipment. The types of establishments included in this industry group are generally involved in providing capital or investment type equipment that clients use in their business operations. These operations are typically characterized by a business to business relationship and do not generally involve a retail like facility or operation.

#### *Limitations and Constraints of the Classification*

The proposed classification structure does not provide for complete coverage of all rental and leasing activity. There are a number establishments engaged in rental, leasing and related activities included in other areas of the classification. The most important are establishments renting and leasing transportation equipment with operators, establishments providing financing for lease arrangements (Finance and Insurance sector) and those renting and leasing real estate (Real Estate subsector). In addition, the structure excludes the distribution arm of manufacturers that use leasing as an alternative means of distributing their parent company's products. These establishments' production processes are more like the sector to which they have been assigned than to the production process of establishments included in the Rental and Leasing subsector.

The categories in this subsector are based on production processes. Because of this it does not allow for the analysis of rental and leasing activities by market segment. Some of the industries in the proposed structure cater primarily to businesses and others cater primarily to households; many establishments cater to both businesses and households. Establishments renting passenger cars and those renting home and garden tools are perhaps the best examples.

#### *Relationship to ISIC*

Four of the nine proposed industries are contained within Division 71, Renting of Machinery and Equipment without Operator, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The following NAICS industry cannot be assigned to an ISIC division without being subdivided: Other Rental and Leasing of Consumer Goods industry that includes components of Division 71, Renting of Machinery and Equipment without Operator and of Division 92, Recreational, Cultural and Sporting Activities (rental of recreational equipment). However, these are small activities and should not significantly affect comparability between this NAICS subsector and ISIC Division 71. The remaining five proposed industries are contained within ISIC Division 71 and ISIC Division 65, Financial Intermediation, Except Insurance and Pension Funding (financial leasing). All establishments involved in direct leasing are classified in the Rental and Leasing subsector in NAICS regardless of the type of lease contract.

#### *Changes to National Classifications*

For Canada, the adoption of a Rental and Leasing subsector represents a significant departure from its current practice. Although the 1980 Canadian Standard Industrial Classification (CSIC) contains two industry groups for this type of activity, CSIC 991, Machinery and Equipment Rental and Leasing Services, and CSIC 992, Automobile and Truck Rental and Leasing Services, many rental and leasing activities are distributed throughout the classification. The proposed NAICS structure consolidates most rental and leasing activities here.

The most important structural change is the transfer to this subsector of the following activities: rental and leasing, without operators, of airplanes, ships and railway equipment from the transportation subsector (CSIC's 4522, 4532, 4544); rental and leasing of computer and related equipment from the computer services industry (CSIC 7721); and rental and leasing of a variety of recreational equipment from the Amusement and Recreational Services major group (CSIC 96). Since many of these activities are components of existing industries, there is a significant number of partial relationships between the proposed and existing classifications.

The content of existing rental and leasing industries has also been distributed among the proposed industries. For example, it is proposed to classify the rental and leasing of passenger automobiles and of trucks and recreational vehicles in different industries; these activities are currently classified in the same industry CSIC 9921, Automobile and Truck Rental and Leasing Services. Similarly, the major components of CSIC 9912, Rental and Leasing of Audiovisual Equipment (consumer electronics, home movies and audiovisual equipment for the trade), are assigned to three different NAICS industries.

For Mexico, this subsector includes 13 classes of CMAP: one of these classes is the equivalent of one NAICS industry; five CMAP classes make up four NAICS industries, and seven of the remaining CMAP classes are combined to create six NAICS industries. These final classes are not new but rather represent combinations of existing CMAP classes.

The rental and leasing subsector presents two important changes with respect to CMAP. The first is the reclassification of the services of buses rented without chauffeur that was classified in CMAP 711318, Scholastic Transportation Services and Tourism, and the rental of automobiles without chauffeur that was classified in CMAP 711319, Rental Services of Automobiles.

The second change refers to the separation of the CMAP 831121, Services of Television Rental, Sound Equipment, Videocassettes and Musical Instruments, that is divided into three parts: video rental centers and rental centers for appliances and electronics are in the same industry in NAICS, and

the third part of the CMAP rental class, rental of musical instruments, has been combined with the rental of compact disks to create another NAICS industry.

For the United States, the proposed NAICS structure includes 1987 SIC Industry Group 751, Automotive Rental and Leasing, Without Drivers; 1987 SIC Industry Group 735, Miscellaneous Equipment Rental and Leasing; 1987 SIC 7377, Computer Rental and Leasing; 1987 SIC 7841, Video Tape Rental; 1987 SIC 4741, Rental of Railroad Cars; and components of other transportation, personal, motion picture, amusement service, and miscellaneous business credit institutions industries. These changes are designed to bring together establishments that primarily rent or lease a wide variety of machinery or goods to individuals or businesses. While in most of these cases, the whole 1987 industry group is moving to the new NAICS subsector, selected 1987 4-digit industries are split to better define rental and leasing activities. This is particularly true in the case of 1987 SIC 7359, Equipment Rental and Leasing, NEC, that has been substantially reduced in size by the redistribution of activities formerly classified there.

*Achievement of Objectives*

The proposed classification structure meets the objectives for the North American Industry Classification System (NAICS) in that it comprises industries that group establishments with similar production processes and achieves comparability for the three participating countries. The NAICS structure consolidates rental and leasing of equipment and goods in one subsector and provides a structure, as

well as individual industries, that recognizes specialized segments within the subsector.

The industries are economically significant. Some NAICS industries are larger than others, but this was necessary to ensure comparability among the countries or because it was not possible to subdivide large industries.

Finally, disruptions to time series, while they exist, have been minimized to the extent possible. Most of the changes reflect the regrouping of diverse residual categories to create new industries that better define the activities.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part X, Section A—Attachment I, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part X of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Rental and Leasing Services:			
XXX .....	Rental and Leasing of Automotive Equipment Without Drivers:			
XXXX ...	Rental and Leasing of Passenger Cars Without Drivers:			
XXXXX	Rental of Passenger Cars Without Drivers	E	7514	Passenger Car Rental.
XXXXX	Leasing of Passenger Cars Without Drivers	R	*6159 7515	Miscellaneous Business Credit Institutions (fleet leasing). Passenger Car Leasing.
XXXX ...	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles.	N	*6159	Miscellaneous Business Credit Institutions (truck leasing).
			7513 7519	Truck Rental and Leasing Without Drivers. Utility Trailers and Recreational Vehicle Rental.
XXX .....	Rental and Leasing of Consumer Goods:			
XXXX ...	Rental of Consumer Electronics, Appliances and Home and Garden Tools:			
XXXXX	Rental of Consumer Electronics and Appliances.	N	*7359	Equipment Rental and Leasing, NEC (appliances, TV, VCR, and electronic equipment rental).
XXXXX	Rental and Leasing of Home and Garden Equipment.	N	*7359	Equipment Rental and Leasing, NEC (home and garden tool rental).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Rental of Formal Wear and Costumes .....	N	*7299	Miscellaneous Personal Services, NEC (costume, dress suit, and tuxedo rental).
			*7819	Services Allied to Motion Picture Production (wardrobe rental for motion picture film production).
XXXX ...	Rental of Video Tapes .....	E	7841	Video Tape Rental.
XXXX ...	Other Rental and Leasing of Consumer Goods:			
XXXXX	Rental and Leasing of Home Health Furniture and Equipment.	N	*7352	Medical Equipment Rental and Leasing (home health furniture and equipment rental and leasing).
XXXXX	Rental of Recreational Goods .....	N	*7999	Amusement and Recreation Services, NEC (canoe, pleasure boats, bicycles, motorcycles, moped, go carts, etc. rental).
XXXXX	All Other Rental and Leasing of Consumer Goods.	R	*7299	Miscellaneous Personal Services, NEC (locker rental, except cold storage).
			*7359	Equipment Rental and Leasing, NEC (except transportation equipment, industrial equipment, and consumer electronics, appliances and home and garden equipment).
XXX .....	Rental and Leasing of Machinery and Equipment:			
XXXX ...	Rental and Leasing of Heavy Construction, Transportation, Mining and Forestry Machinery and Equipment:			
XXXXX	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment.	N	*4499	Water Transportation Services, NEC (ship rental, commercial).
			*4741	Rental of Railroad Cars (rental of railroad cars).
			*6159	Miscellaneous Business Credit Institutions (other heavy transportation equipment finance leasing, except automotive).
			*7359	Equipment Rental and Leasing, NEC (airplane rental and leasing).
XXXXX	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment.	R	*6159	Miscellaneous Business Credit Institutions (heavy machinery and equipment finance leasing).
			7353	Heavy Construction Equipment Rental and Leasing.
			*7359	Equipment Rental and Leasing, NEC (oil field and well drilling equipment).
XXXX ...	Rental and Leasing of Office Machinery and Equipment.	N	*6159	Miscellaneous Business Credit Institutions (office equipment).
			*7359	Equipment Rental and Leasing (office machine rental and leasing).
XXXX ...	Rental and Leasing of Other Machinery and Equipment.	N	7377	Computer Rental and Leasing.
			*6159	Miscellaneous Business Credit Institutions (other).
			*7352	Medical Equipment Rental and Leasing (except invalid supplies and home health furniture and equipment).
			*7359	Equipment Rental and Leasing, NEC (industrial truck and equipment rental and leasing).
			*7819	Services Allied to Motion Picture Production (motion picture equipment rental).
			*7922	Theatrical Producers (except motion picture) and Miscellaneous Theatrical Services (theatrical equipment rental).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
4499 .....	Water Transportation Services, NEC Ship Rental, Commercial.	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
4741@ .....	Rental of Railroad Cars .....	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
6159@ .....	Miscellaneous Business Credit Institution: Automobile Fleet Finance Leasing .....	Leasing of Passenger Cars Without Drivers (pt).
	Truck Finance Leasing .....	Rental and Leasing of Trucks Without Drivers, Utility Trailers, and Recreational Vehicles (pt).
	Air, Rail, and Water Equipment Finance Leasing	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
	Heavy Machinery and Equipment Finance Leasing.	Rental and Leasing of Heavy Construction, Mining, and Forestry Machinery and Equipment (pt).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Office Machinery and Equipment Finance Leasing.	Rental and Leasing of Office Machinery and Equipment (pt).
	Other Machinery and Equipment Finance Leasing.	Rental and Leasing of Other Machinery and Equipment (pt).
7299 .....	Miscellaneous Personal Services: Formal Wear and Costume Rental .....	Rental of Formal Wear and Costumes (pt).
	Locker Rental, Except Cold Storage .....	All Other Rental and Leasing of Consumer Goods (pt).
7352@ .....	Medical Equipment Rental and Leasing: Home Health Furniture and Equipment Rental and Leasing.	Rental and Leasing of Home Health Furniture and Equipment.
	Medical Machinery Rental and Leasing .....	Rental and Leasing of Other Machinery and Equipment (pt).
7353 .....	Heavy Construction Equipment Rental and Leasing.	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment (pt).
7359@ .....	Equipment Rental and Leasing, NEC: Consumer Electronics and Appliances Rental and Leasing.	Rental of Consumer Electronics and Appliances.
	Home and Garden Tools and Equipment Rental and Leasing.	Rental and Leasing of Home and Garden Equipment.
	Residential Furniture, Party Supplies, and All Other Miscellaneous.	All Other Rental and Leasing of Consumer Goods (pt).
	Consumer Goods Rental and Leasing: Oilfield and Well Drilling Machinery and Equipment Rental and Leasing.	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment (pt).
	Airplane Rental and Leasing.	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
	Office Machinery and Equipment Rental and Leasing.	Rental and Leasing of Office Machinery and Equipment (pt).
	Industrial Trucks Rental and Leasing .....	Rental and Leasing of Other Machinery and Equipment (pt).
7377 .....	Computer Rental and Leasing .....	Rental and Leasing of Office Machinery and Equipment (pt).
7513 .....	Truck Rental and Leasing, Without Drivers .....	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles (pt).
7514 .....	Passenger Car Rental .....	Rental of Passenger Cars Without Drivers.
7515 .....	Passenger Car Leasing .....	Leasing of Passenger Cars Without Drivers (pt).
7519 .....	Utility Trailer and Recreational Vehicle Rental .....	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles (pt).
7819 .....	Services Allied to Motion Picture Production: Wardrobe Rental for Motion Picture Film Production.	Rental of Formal Wear and Costumes (pt).
	Motion Picture Equipment Rental .....	Rental and Leasing of Other Machinery and Equipment (pt).
	Talent Payment Services .....	Payroll Services (pt) (Included in Professional, Technical, and Scientific Services subsector).
7841 .....	Video Tape Rental .....	Rental of Video Tapes.
7922@ .....	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services. Theatrical Equipment Rental .....	Rental and Leasing of Other Machinery and Equipment (pt).
7999@ .....	Amusement and Recreation, NEC: Recreational Goods Rental Including Pleasure Boats.	Rental and Leasing of Other Machinery and Equipment (pt).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

**Rental and Leasing Services—**  
Fourteen industries are included in this NAICS subsector. Nine of these are new industries; three are revised 1987 SIC industries; and two are industries that existed in 1987. The primary focus of this subsector is to bring together, in one subsector, those establishments that primarily rent or lease a wide variety of machinery or goods to individuals or businesses. This subsector is significantly shaped by the splitting apart and/or regrouping of activities of 1987 SIC Industry Group 735,

Miscellaneous Equipment Rental and Leasing. Additionally, activities from other 1987 major groups are included here because of the similarity of their production processes and to better achieve comparability with Mexico and Canada. The following new industries were added for 1997:

Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles from 1987 SIC 7513, Truck Rental and Leasing Without Drivers; 1987 SIC 7519, Utility Trailers and Recreational Vehicles Rental; and part of 1987 SIC 6159, Miscellaneous Business Credit Institutions.

Rental of Consumer Electronics and Appliances from part of 1987 SIC 7359, Equipment Rental and Leasing, NEC.

Rental and Leasing of Home and Garden Equipment from part of 1987 SIC 7359, Equipment Rental and Leasing, NEC.

Rental of Formal Wear and Costumes from part of 1987 SIC 7299, Miscellaneous Personal Services, NEC, and part of SIC 7819, Services Allied to Motion Picture Production.

Rental and Leasing of Home Health Furniture and Equipment from part of 1987 SIC 7352, Medical Equipment Rental and Leasing.

Rental of Recreational Goods from part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment from part of 1987 SIC 4499, Water Transportation Services, NEC; part of 1987 SIC 4741, Rental of Railroad Cars; part of 1987 SIC 6159, Miscellaneous Business Credit Institutions; and part of 1987 SIC 7359, Equipment Rental and Leasing, NEC.

Rental and Leasing of Office Machinery and Equipment from part of 1987 SIC 6159, Miscellaneous Business Credit Institutions; 1987 SIC 7377, Computer Rental and Leasing; and part of 1987 SIC 7359, Equipment Rental and Leasing, NEC.

Rental and Leasing of Other Machinery and Equipment from part of 1987 SIC 6159, Miscellaneous Business Credit Institutions; part of 1987 SIC 7352, Medical Equipment Rental and Leasing; part of 1987 SIC 7359, Equipment Rental and Leasing, NEC; part of 1987 SIC 7819, Services Allied to Motion Picture Production; and part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services

The following three 1997 industries were modified from their 1987 definitions:

Leasing of Passenger Cars Without Drivers from part of 1987 SIC 6159, Miscellaneous Business Credit Institutions and 1987 SIC 7515, Passenger Car Leasing.

All Other Rental and Leasing of Consumer Goods from part of 1987 SIC 7299, Miscellaneous Personal Services, NEC, and part of 1987 SIC 7359, Equipment Rental and Leasing, NEC. This industry brings together all miscellaneous rental and leasing of equipment and goods not specified in any of the other NAICS industries because of the similarity of production process among all of these activities

Rental and Leasing of Heavy Construction, Mining, and Forestry Machinery and Equipment from part of 1987 SIC 6159, Miscellaneous Business Credit Institutions; 1987 SIC 7353, Heavy Construction Equipment Rental and Leasing; and part of 1987 SIC 7359, Equipment Rental and Leasing, NEC. This industry was modified for comparability with Canada and Mexico.

The number of rental and leasing industries increased from 10 in 1987 to 14 in 1997. For time series linkage, 6 of the 10 1987 industries are comparable within three percent of the 1997 industries. Most of the changes reflect the regrouping of diverse residual categories to create new industries that better define the activities. For example,

new industries have been created from 1987 SIC 7359, Equipment Rental and Leasing, NEC; 1987 SIC 7299, Miscellaneous Personal Services, NEC; and 1987 SIC 7999, Amusement and Recreation Services, NEC. These new industries include, among others, Rental and Leasing of Heavy Construction, Transportation, Mining and Forestry Machinery and Equipment; Rental and Leasing of Office Machinery and Equipment; and Rental of Consumer Electronics and Appliances.

Part XI—Proposed New Industry Structure for Repair and Maintenance

Section A—NAICS Structure

North American Industry Classification System (NAICS) Agreement Number 21

This document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Repair and Maintenance

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

- XX Repair and Maintenance
- XXX Automotive Repair and Maintenance
- XXXX Automotive Mechanical and Electrical Repair and Maintenance
- XXXX Automotive Body, Paint and Interior Repair
- XXXX Other Automotive Repair and Maintenance
- XXX Heavy and Industrial Machinery and Equipment Repair and Maintenance

- XXXX Heavy and Industrial Machinery and Equipment Repair and Maintenance
- XXX Electronic and Precision Equipment Repair and Maintenance
- XXXX Electronic and Precision Equipment Repair and Maintenance
- XXX Personal or Household Goods Repair and Maintenance
- XXXX Home and Garden Equipment and Appliance Repair and Maintenance
- XXXX Reupholstery and Furniture Repair
- XXXX Footwear and Leather Goods Repair
- XXXX Other Personal or Household Goods Repair and Maintenance

Attachment 2—North American Industrial Classification System

Draft Classification for: Repair and Maintenance

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification provides for the subsector Repair and Maintenance. This subsector is further sub-divided into four industry groups and nine industries. The placement of this subsector within the NAICS structure has not yet been decided.

A General Outline

In the current classification systems of the three countries, repair and maintenance establishments are included in many different categories based on the type of item being repaired. Further, repair and maintenance industries are dispersed among many industry categories in ISIC. The NAICS structure brings together most types of repair and maintenance establishments and categorizes them based on production processes, that is, on the type of repair and maintenance activity performed, and the necessary skills, expertise and processes that are found in different repair and maintenance establishments.

Establishments included in the Repair and Maintenance subsector apply skill and knowledge to restoring machinery, equipment and other products to working order for customers. These establishments also typically perform general or routine maintenance on such products to ensure that they work efficiently and to prevent breakdown and unnecessary repairs.

This subsector includes four industry groups, each based on the type of repair and maintenance services provided and on the operating characteristics of the establishments classified in the component industries.

The Automotive Repair and Maintenance industry group includes establishments involved in the repair and maintenance of motor vehicles, both cars and trucks. Establishments

classified in the Automotive Mechanical and Electrical Repair and Maintenance industry employ mechanics with specialized technical skills to diagnose and repair the mechanical and electrical systems of motor vehicles. The Automotive Body, Paint and Interior Repair industry includes establishments with staff skilled in repairing or painting automotive exteriors, or in repairing interiors. The Other Automotive Repair and Maintenance industry includes establishments that provide a variety of automotive care services that help to maintain vehicles but that do not normally require the technical skill levels that establishments in the other industries possess.

The Heavy and Industrial Machinery and Equipment Repair and Maintenance industry group includes establishments that repair and maintain transportation equipment, except motor vehicles, and other heavy and industrial machinery and equipment.

The Electronic and Precision Equipment Repair and Maintenance industry group includes establishments that repair electronic equipment, such as computers and communications equipment, and other highly specialized precision instruments. These establishments typically have staff skilled in repairing items having complex, electronic components.

The last industry group, Personal or Household Goods Repair and Maintenance, includes establishments that repair a wide variety of goods, most of which are personal and household goods such as garden tools and home appliances.

The proposed subsector does not include all establishments that do repair and maintenance. For example, a substantial amount of repair is done by establishments that also manufacture machinery, equipment and other goods. These establishments are included in the Manufacturing sector in NAICS. Rebuilding of machinery and equipment for resale is considered manufacturing in NAICS and therefore not included in this subsector. In addition, repair of transportation equipment is often provided by or based at transportation facilities (airports, seaports) and these activities are included in the Transportation sector.

A particularly unique situation exists with repair of buildings. Plumbing, electrical installation and repair, painting and decorating and other construction-related establishments are often involved in performing installation or other work on new construction as well as providing repair services on existing structures. While some specialize in repair, it is difficult

to distinguish between the two types and all have been included in the Construction sector.

This classification also does not delineate between repair services provided to businesses versus those that serve households. Although some industries primarily serve businesses and other households, separation by class of customer is limited by the fact that many establishments serve both businesses and households. Establishments repairing computers and consumer electronics products are two examples of such overlap.

#### *Limitations and Constraints of the Classification*

In the Repair and Maintenance subsector, most activities identified in one country exist in the others. The way activities are combined in establishments differs to some extent in the different countries. Therefore, the NAICS structure contains somewhat less detail than the existing classification systems of the three countries. The level of specialization for repair services varies significantly among the three countries and the NAICS levels reflect those for which common classes can be established. For example, there are a significant number of establishments in Mexico specializing in rebuilding automotive engines as a repair service, and these are located in this subsector. In the United States and Canada, owners of cars that need rebuilt engines typically buy a factory rebuilt engine that is installed at an automotive repair shop.

#### *Relationship to ISIC*

The approach adopted for NAICS, that of regrouping most repair activities in a single subsector, is significantly different from the approach employed in the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The most important difference is that ISIC classifies establishments primarily engaged in the repair of most types of machinery and equipment in the same industry as those manufacturing the equipment. For example, the repair of printing equipment is included in ISIC, 2929, Manufacture of Other Special Purpose Machinery. Repair activities can be found in twenty-seven manufacturing industries spanning seven 2-digit groups in ISIC. Repair activities also are found in ISIC Division 50, Sale, Maintenance and Repair of Motor Vehicles and Motorcycles, Retail Sales of Automotive Fuel; Division 52, Retail Trade, Except of Motor Vehicles and Motorcycles, Repair of Personal and Household

Goods; and Division 72, Computer and Related Activities.

Largely as a result of the conceptual difference, four of the nine proposed NAICS industries relate to more than one 2-digit ISIC. These are: Heavy and Industrial Machinery & Equipment Repair and Maintenance (three 2-digit ISIC's); Electronic and Precision Equipment Repair and Maintenance (six 2-digit ISIC's); Home and Garden Equipment and Appliance Repair and Maintenance (four 2-digit ISIC's); and Other Personal or Household Goods Repair and Maintenance (seven 2-digit ISIC's).

#### *Changes to National Classification*

For Canada, the adoption of a Repair and Maintenance subsector represents a major departure from its current practice. The 1980 Canadian Standard Industrial Classification (CSIC) assigns repair and maintenance activities to many subsectors including Retail Trade, Wholesale Trade, Business Services and Personal and Household Services. The proposed NAICS structure consolidates most repair and maintenance activities in this subsector.

The most important structural change is the transfer to this subsector of the following activities: the repair and maintenance of automobiles, home appliances, consumer electronics, furniture, recreational vehicles, bicycles, musical instruments and watches and jewelry from retail trade; the repair and maintenance of a wide range of machinery and equipment from wholesale trade; the repair and maintenance of computer and related equipment from business services; and the repair of shoes, leather goods and clothing from personal services. Since many of these activities are components of existing industries, there are a significant number of partial relationships between the proposed and existing classifications, in particular for wholesale trade industries. In practice, however, the number of establishments moving from the Wholesale Trade sector to the Repair and Maintenance subsector is small. The repair and maintenance of machinery and equipment is often a secondary activity of wholesalers of the machinery and equipment and the number of establishments specializing in repairs is relatively small.

More often than not, the repair and maintenance activities currently found in retail trade, business services and personal services are classified in separate industries. As a result, the relationship between the new and old classifications is more straightforward. Furthermore, a number of the existing

industries will be retained in the national classification, thereby facilitating the comparison between statistics compiled on the basis of the two systems.

For Mexico, there were fewer changes since CMAP class 96, Repair and Maintenance Services, was the basis upon which NAICS was established. Changes to CMAP included CMAP classes 951023, Other Professional Technical Specialized Services not previously mentioned; 961203, Automotive Body Repair Services; and part of CMAP 961309, Furniture Upholstery Services. These classes were merged to form a single NAICS industry, Automotive Body, Paint and Interior Repair.

Finally, computer repair, CMAP 961106, Repair and Maintenance of Machinery not previously mentioned, was combined with Electronic and Precision Equipment Repair and Maintenance in NAICS.

For the United States, the proposed NAICS structure consolidates most types of repair establishments into this NAICS subsector. The structure primarily includes those industries covered by 1987 SIC Major Group 76, Miscellaneous Repair Services, and 1987 SIC Industry Group 753, Automotive Repair Services. The new structure also includes establishments classified in 1987 SIC 7542, Car Washes; part of 1987 SIC 7549, Automotive Services, Except Repair and Carwashes (oil change and lubricating services, rustproofing services); 1987 SIC 7378, Computer Maintenance and Repair; 1987 SIC 7251, Shoe Repair Shops and

Shoeshine Parlors; part of 1987 SIC 7219, Laundry and Garment Services, NEC (repair of furs and apparel and reweaving of textiles); and part of 1987 SIC 3732, Boat Building and Repairing (repair services). Tire retreading and electric motor rebuilding on a factory basis are manufacturing activities and are now included in the Manufacturing sector in NAICS.

The NAICS structure and U.S. national industry detail provide new industry classifications for various types of industrial machinery and equipment repair, electronic and precision equipment repair, and other specialized repair and maintenance. Many of the new industries were created by breaking apart 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC, and 1987 SIC 7699, Repair Shops and Related Services, N.E.C.

*Achievement of Objectives*

The proposed classification structure meets the objectives for the North American Industry Classification System (NAICS) in that it comprises industries that group establishments with similar production processes and achieves comparability for the three participating countries. The NAICS structure consolidates repair and maintenance in one subsector and provides a structure that includes specialized segments within the subsector.

Other objectives of the NAICS project have also been met. New industries that recognize new and emerging activities have been established, particularly in the area of electronic and precision equipment repair and maintenance.

The industries are economically significant. Some NAICS industries are much larger than others, but this was necessary to ensure comparability among the countries or because it was not possible to subdivide large industries.

Finally, disruptions to time series, while they exist, have been minimized to the extent possible. Most of the changes reflect the regrouping of diverse residual categories to create new industries that better define the activities.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XI, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XI of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Repair and Maintenance:			
XXX .....	Automotive Repair and Maintenance:			
XXXX ...	Automotive Mechanical and Electrical Repair and Maintenance:			
XXXXX	General Automotive Repair .....	E	7538	General Automotive Repair Shops.
XXXXX	Automotive Exhaust System Repair .....	E	7533	Automotive Exhaust System Repair Shops.
XXXXX	Automotive Transmission Repair .....	E	7537	Automotive Transmission Repair Shops.
XXXXX	Other Automotive Mechanical and Electrical Repair and Maintenance.	E	7539	Automotive Repair Shops, NEC.
XXXX ...	Automotive Body, Paint, and Interior Repair:			
XXXXX	Automotive Body, Paint and Upholstery Repair and Maintenance.	E	7532	Top, Body, and Upholstery Repair Shops and Paint Shops.
XXXXX	Automotive Glass Replacement Shops .....	E	7536	Automotive Glass Replacement Shops.
XXXX ...	Other Automotive Repair and Maintenance:			
XXXXX	Automotive Oil Change and Lubrication Shops.	N	*7549	Automotive Services, Except Repair and Carwashes (lubricating service, automotive).
XXXXX	Car Washes .....	E	7542	Carwashes.
XXXXX	All Other Automotive Repair and Maintenance.	R	*7534	Tire Retreading and Repair Shops (repair).
			*7549	Automotive Services, Except Repair and Carwashes (except lubricating and towing).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXX .....	Heavy and Industrial Machinery and Equipment Repair and Maintenance:			
XXXX ...	Heavy and Industrial Machinery and Equipment Repair and Maintenance:			
XXXXX	Transportation Equipment Repair and Maintenance.	N	*3732	Boat Building and Repairing (boat repair).
			*7699	Repair Shops and Related Services, NEC (other non-automotive transportation equip.).
XXXXX	Other Industrial Machinery and Equipment Repair and Maintenance.	R	*7623	Refrigerator and Air-Conditioning Service and Repair Shops (commercial refrigerator equipment repair).
			*7694	Armature Rewinding Shops (repair).
			*7699	Repair Shops and Related Services, NEC (industrial machines and equipment).
XXX .....	Electronic and Precision Equipment Repair and Maintenance:			
XXXX ...	Electronic and Precision Equipment Repair and Maintenance:			
XXXXX	Consumer Electronics Repair and Maintenance.	N	*7622	Radio and Television Repair Shops (stereo, TV, VCR, and other consumer electronics equipment).
			*7629	Electrical and Electronic Repair Shops, NEC (consumer equipment except computer).
XXXXX	Computer and Office Machine Repair and Maintenance.	N	7378	Computer Maintenance and Repair.
			*7629	Electrical and Electronic Repair Shops, NEC (business and office machine repair, electrical).
XXXXX	Communication Equipment Repair and Maintenance.	N	*7699	Repair Shops and Related Services, NEC (typewriter repair).
			*7622	Radio and Television Repair Shops (telecommunication equipment repair).
			*7629	Electrical and Electronic Repair Shops, NEC (telephone set repair).
XXXXX	Other Electronic and Precision Equipment Repair and Maintenance.	N	*7629	Electrical and Electronic Repair Shops, NEC (electrical measuring instrument repair and calibration, medical equipment repair, electrical).
			*7699	Repair Shops and Related Services, NEC (dental instrument repair, laboratory instrument repair, medical equipment and other electronic and precision equipment repair, except typewriters).
XXX .....	Personal or Household Goods Repair and Maintenance:			
XXXX ...	Home and Garden Equipment and Appliance Repair and Maintenance:			
XXXXX	Home and Garden Equipment Repair and Maintenance.	N	*7699	Repair Shops and Related Services, NEC (lawnmower repair shops, sharpening and repairing knives, saws and tools).
XXXXX	Appliance Repair and Maintenance .....	N	*7623	Refrigeration and Air-Conditioning Service and Repair Shops (except commercial).
			*7629	Electrical and Electronic Repair Shops, NEC (appliance repair, electrical; washing machine repair; Electric razor repair).
			*7699	Repairs Shops and Related Services, NEC (gas appliance repair service, sewing machine repair, stove repair shops, and other non-electrical appliance).
XXXX ...	Reupholstery and Furniture Repair .....	E	7641	Reupholstery and Furniture Repair.
XXXX ...	Footwear and Leather Goods Repair .....	R	7251	Shoe Repair and Shoeshine Parlors.
			*7699	Repair Shops and Related Services (leather goods repair shops, luggage repair shops, pocketbook repair shops).
XXXX ...	Other Personal or Household Goods Repair and Maintenance.	N	*7219	Laundry and Garment Services, NEC (alteration and repair).
			7631	Watch, Clock, and Jewelry Repair.
			7692	Welding Repair.
			*7699	Repair Shops and Related Services, NEC (except industrial, electronic, home and garden, appliance, and leather goods).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
3732@ .....	Boat Building and Repairing (Boat repair) .....	Transportation Equipment Repair and Maintenance (pt).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
7219 .....	Laundry and Garment Services, NEC (Alteration and Repair).	Other Personal or Household Goods Repair and Maintenance (pt).
7251 .....	Shoe Repair Shops and Shoeshine Parlors .....	Footwear and Leather Goods Repair (pt).
7378 .....	Computer Maintenance and Repair .....	Computer and Office Machine Repair and Maintenance (pt).
7532 .....	Top, Body, and Upholstery Repair Shops and Paint Shops.	Automotive Body, Paint, and Upholstery Repair and Maintenance.
7533 .....	Automotive Exhaust System Repair Shops .....	Automotive Exhaust System Repair.
7534@ .....	Tire Retreading and Repair Shops: Remanufacturing .....	Manufacturing Sector.
	Repair .....	All Other Auto Repair and Maintenance (pt).
7536 .....	Automotive Glass Replacement Shops .....	Automotive Glass Replacement Shops.
7537 .....	Automotive Transmission Repair Services .....	Automotive Transmission Repair.
7538 .....	General Automotive Repair Services .....	General Automotive Repair.
7539 .....	Automotive Repair shops, NEC .....	Other Automotive Mechanical and Electrical Repair and Maintenance.
7542 .....	Carwashes .....	Car Washes.
7549@ .....	Automotive Services, Except Repair and Carwashes: Lubricating Services, Automotive .....	Automotive Oil Change and Lubrication Shops.
	Towing .....	Towing Services (Included in Transportation sector).
	Automotive Services, Except Repair and Carwashes (except lubricating and towing).	All Other Automotive Repair and Maintenance (pt).
7622 .....	Radio and Television Repair Shops: Stereo, TV, VCR, and Other Consumer Electronics Equipment.	Consumer Electronics Repair and Maintenance (pt).
	Telecommunication Equipment Repair .....	Communication Equipment Repair and Maintenance (pt).
7623@ .....	Refrigeration and Air-Conditioning Services and Repair Shops: Commercial Refrigerator Equipment Repair .....	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Except Commercial .....	Appliance Repair and Maintenance (pt).
7629@ .....	Electrical and Electronic Repair Shops, NEC: Business and Office Machine Repair, Electrical Telephone Set Repair .....	Computer and Office Machine Repair and Maintenance (pt).
	Electrical Measuring Instrument Repair and Calibration, Medical Equipment Repair, Electrical.	Communication Equipment Repair and Maintenance (pt).
	Appliance Repair, Electrical; Washing Machine Repair; Electric Razor Repair.	Other Electronic and Precision Equipment Repair and Maintenance (pt).
	Consumer Electronic Equipment Repair Except Computer.	Appliance Repair and Maintenance (pt).
7631@ .....	Watch, Clock, and Jewelry Repair .....	Consumer Electronics Repair and Maintenance (pt).
7641 .....	Reupholstery and Furniture Repair .....	Other Personal or Household Goods Repair and Maintenance (pt).
7692@ .....	Welding Repair .....	Reupholstery and Furniture Repair.
7694@ .....	Armature Rewinding Shops: Repair .....	Other Personal or Household Goods Repair and Maintenance (pt).
	Remanufacturing .....	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
7699@ .....	Repair Shops and Related Services, NEC: Other Non-Automotive Transportation Equipment. Industrial Machines and Equipment .....	Included in Manufacturing Sector.
	Typewriter Repair .....	Transportation Equipment Repair and Maintenance (pt).
	Dental Instrument Repair, Laboratory Instrument Repair, Medical Equipment and Other Electronic and Precision.	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Equipment Repair, Except Typewriters: Lawnmower Repair Shops, Sharpening and Repairing Knives, Saws and Tools.	Computer and Office Machine Repair and Maintenance (pt).
	Gas Appliance Repair Service, Sewing Machine Repair, Stove Repair Shops, and Other Non-Electrical Appliances.	Other Electronic and Precision Equipment Repair and Maintenance (pt).
	Leather Goods Repair Shops, Luggage Repair Shops, Pocketbook Repair Shops.	Home and Garden Equipment Repair and Maintenance (pt).
	Lock Parts Made to Order and Locksmith Shops.	Appliance Repair and Maintenance.
		Footwear and Leather Goods Repair (pt).
		(Included in Management and Support Services subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Except Industrial, Electronic, Home and Garden, Appliance, Locksmith, and Leather Goods.	Other Personal or Household Goods Repair and Maintenance.

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

Repair and Maintenance—Nine new NAICS or national industries were created in this new subsector for 1997 to better describe the activities associated with the subsector and to bring together activities with similar production functions. A number of these industries were created from parts of two 1987 Not Elsewhere Classified (NEC) industries. The new industries are:

Automotive Oil Change and Lubrication Shops from part of 1987 SIC 7549, Automotive Services, Except Repair and Carwashes.

Transportation Equipment Repair and Maintenance from part of 1987 SIC 3732, Boat Building and Repairing, and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Consumer Electronics Repair and Maintenance from part of 1987 SIC 7622, Radio and Television Repair Shops, and part of 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC.

Computer and Office Machine Repair and Maintenance from 1987 SIC 7378, Computer Maintenance and Repair; part of 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC; and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Communication Equipment Repair and Maintenance from part of 1987 SIC 7622, Radio and Television Repair Shops, and part of 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC.

Other Electronic and Precision Equipment Repair and Maintenance from part of 1987 SIC 7629, Electrical Electronic Repair Shops, NEC, and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Home and Garden Equipment Repair and Maintenance from part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Appliance Repair and Maintenance from part of 1987 SIC 7623, Refrigeration and Air-Conditioning Service and Repair Shops; part of 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC; and part of 1987 SIC

7699, Repair Shops and Related Services, NEC.

Other Personal or Household Good Repair and Maintenance from part of 1987 SIC 7219, Laundry and Garment Services, NEC; 1987 SIC 7631, Watch, Clock, and Jewelry Repair; 1987 SIC 7692, Welding Repair; and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

The 1987 SIC Major Group 76, Miscellaneous Repair Services, was split into 3 new industry groups: Heavy and Industrial Machinery and Equipment Repair and Maintenance; Electronic and Precision Equipment Repair and Maintenance; and Personal and Household Goods Repair and Maintenance. Of the 8 industries in 1987 Major Group 76 only two, Radio and Television Repair and Reupholstery and Furniture Repair, will not have a time series break. There will be time series breaks for the other six 1987 SIC industries. These changes were made to break up the miscellaneous industries and to more clearly define industries with similar production functions.

There will also be a time series break for 1987 SIC's 7534 and 7549. The time series break for 1987 SIC 7534, Tire Retreading and Repair Shops, is the result of moving the remanufacturing portion of retreading to the manufacturing sector and the repair to All Other Auto Repair and Maintenance. The time series break for 1987 SIC 7549 is the result of splitting oil change and lubrication shops and towing services from all other automotive repair, Automotive Services, Except Repairs and Carwashes, and maintenance.

Part XII—Proposed New Industry Structure for Management and Support Services

*Section A—NAICS Structure*

North American Industry Classification System (NAICS) Agreement Number 22

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries: Management and Support Services.

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

- XX Management and Support Services
- XXX Management and Facilities Support Services
- XXXX Management Services
- XXXX Facilities Support Management Services
- XXX Employment Services
- XXXX Employment Placement Agencies
- XXXX Temporary Help Services
- XXXX Employee Leasing Services
- XXX Administrative Support Services
- XXXX Document Preparation Services
- XXXX Telephone Call Centers
- XXXX Business Service Centers
- XXXX Collection Agencies
- XXXX Credit Bureaus
- XXXX Other Administrative Support Services
- XXX Travel Arrangement and Reservation Services
- XXXX Travel Agencies
- XXXX Tour Operators
- XXXX Other Travel Arrangement and Reservation Services
- XXX Security and Investigation Services
- XXXX Investigation, Guard and Armored Car Services
- XXXX Security Systems Services
- XXX Services to Buildings and Dwellings

XXXX Exterminating and Pest Control Services  
 XXXX Janitorial Services  
 XXXX Carpet and Upholstery Cleaning Services  
 XXXX Landscaping Care and Maintenance Services  
 XXXX Other Services to Buildings and Dwellings  
 XXX Miscellaneous Support Services  
 XXXX Packaging and Labeling Services  
 XXXX Convention and Trade Show Organizers  
 XXXX Other Miscellaneous Support Services

#### Attachment 2—North American Industry Classification System

##### Draft Classification for:

#### Management and Support Services

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification provides for the Management and Support Services subsector. This subsector is further subdivided into seven industry groups and 24 industries. The placement of this subsector within the NAICS structure is not yet determined.

##### *A General Outline*

The statistical agencies of Canada, Mexico, and the United States have agreed to place major emphasis on improved services classifications in NAICS, and to give special attention to developing production-oriented classifications for new and emerging industries and service industries in general.

Most past services classifications, including the International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) have two analytical inadequacies. First, individual services industries have been too aggregated to be useful. They have combined too many disparate activities into a single industry definition. This criticism has been heard even in the U.S., where the 1987 Standard Industrial Classification has more services industries detail than is the case for other classification systems. As indicated later in this outline, the detail problem has been addressed in NAICS by breaking out new services industries from many of the broad and heterogeneous industry definitions in the former systems of all three countries. These new industries reflect the increasing degree of specialization in the economy as businesses and other organizations increasingly contract out for services that have historically been done in house. In order to meet this objective, a number of industries were established that are presently small or

nonexistent in Canada or Mexico. Many of the establishments in these new industries are included in miscellaneous classes in current classification systems and the NAICS structure will substantially reduce the size of such residual classes.

A second problem in past services industry classifications is a general lack of a coherent structure. To take the 1987 U.S. SIC system as an example, though it has a major group (2-digit) for Business Services, it is difficult to discern an organizational principle in this subsector, or the relation the industries included in it had to each other or to the division as a whole. The Canadian classification also includes a grouping for Business Services, but its coverage is different. Again, this lack of a coherent structure has been criticized.

Currently, activities included in the Management and Support Services subsector are scattered throughout the existing classification systems; their grouping into a single area has allowed for the creation of more homogeneous aggregates for these service-producing industries. This, however, has been achieved at the expense of creating a subsector less homogeneous across all industry groups contained in it than in other proposed NAICS subsectors. However, the fundamental objective of NAICS is to define industries and industry aggregates on the basis of similarity in production process. This objective is largely met in the case of the individual industries (4-digit) and industry groups (3-digit) of this subsector, even though the subsector includes industry groups that cover a diverse set of activities.

The Management and Support Services subsector groups establishments that are engaged in activities that support the day-to-day operations of other organizations. The processes employed in this sector are often integral parts of the activities of establishments found in all sectors of the economy (general management, personnel administration, clerical activities, cleaning activities, etc.). The establishments classified in this subsector have specialized in one or more of these administrative and support activities, and can therefore provide services to clients in a variety of industries and, in some cases, to households. The individual industries of this subsector are defined on the basis of the particular process in which they are engaged and the particular service(s) they provide.

This proposed subsector includes a mix of well established and emerging industries. The number of new classes varies from country to country;

approximately half of the proposed industries are new or redefined in the Canadian and U.S. systems while most are new in the Mexican system. The following paragraphs provide a brief description of the content of each industry group and observations on issues that are of particular interest.

The Management and Facilities Support Services industry group includes two industries. The first, Management Services, includes those establishments that provide management services to clients on a day-to-day basis. For example, establishments in this industry may provide management services to oversee and coordinate the office operations of a physician's practice. This might include personnel management, bookkeeping, and other administrative services. The second NAICS industry, Facilities Support Management Services, includes establishments that provide managerial and operating staff to deliver a wide range of services that are essential to support the operations of an establishment or facility. Such establishments provide food service, janitorial service, guard service and so forth to support the operations of facilities such as hospitals or government reservations. If each of the services were provided by different establishments, these different establishments would be included in the appropriate industries. However, these facility management establishments are unique in that they provide a broad mix of services that involve multiple production processes. This industry is significant in the United States with the largest operations being establishments that serve government facilities or reservations. It is not significant in Canada and Mexico.

The Employment Services industry group includes three industries. Employment Placement Agencies are establishments engaged in listing employment vacancies and in selecting, referring and placing applicants in employment on either a permanent or temporary basis. A separate industry, Temporary Help Services, is included for establishments that supply workers to client businesses for limited periods of time to supplement the work force of the client. Another industry, Employee Leasing Services, is included for establishments that acquire all or part of a client's work force and "lease back" the employees to the client organization. Both industries are large and growing in the United States, reflecting the increasing specialization and complexity of the U.S. economy. Employee leasing is not significant in Canada and Mexico.

The Administrative Support Services industry group includes establishments engaged in document preparation, telephone call center operation, copy or quick printing services, and mail center operation, bill collection and similar activities. These activities are those ongoing routine, administrative support functions that all businesses and organizations must do and that they have traditionally done for themselves. Recent trends are to contract or purchase such services from businesses that specialize in such activities and can therefore provide the services more efficiently. While most of the industries in this group are relatively small, some are growing rapidly and are expected to continue to grow.

The Travel Arrangement and Reservation Services industry group includes travel agents, tour operators and providers of other travel arrangement services such as hotel and restaurant reservations, and arranging the purchase of tickets. Establishments in this industry serve many types of clients, including individual consumers, and the industries in this group cannot be viewed as strictly "support." However, this industry group was placed in this subsector because the services are often of the "support" nature (for example, travel arrangement) and businesses and other organizations are increasingly the ones purchasing such services.

The Security and Investigation Services industry group includes establishments engaged in a range of security related activities such as guard and patrol services and alarm monitoring services. The desire to contract out for such services and the impact of new, sophisticated electronic security systems has contributed to the size and growth of the industries in this industry group.

The Services to Buildings and Dwellings industry group includes establishments engaged in a range of general cleaning and upkeep services in and around buildings and dwellings. As in other subgroups, growth in this industry group is primarily from the increasing reliance of businesses and other organizations to contract out for building cleaning services.

Finally, Miscellaneous Support Services includes establishments engaged in such activities as packaging and labeling services, organizing conventions, etc. Establishments in the Packaging and Labeling Services industry are primarily engaged in packaging client owned materials such as food products, pharmaceuticals, household cleaners, toilet preparations and hardware using a variety of

automated or manual packaging techniques, including blister forming and packaging, shrink or skin wrapping, form filling and sealing, pouch filling and aerosol packaging. The packaging service may include the labeling or imprinting of the package. Although the types of establishments in this industry group are not similar in nature, each industry in its own way provides some form of support service to businesses and organizations.

#### *Limitations and Constraints of the Classification*

Differences in the organization of activities within establishments, and differences in the economic significance of individual industries from country to country were the major issues faced in the development of a common classification structure for this sector. These issues were dealt with by grouping activities in a manner that recognized the different levels of integration and diversification of establishments while allowing each country to add industries where necessary to reflect the greater level of specialization or economic significance of particular industries in their national economy. Still, in some instances, proposed NAICS industries do not exist in all countries.

This subsector is not as homogeneous across all industry groups as other proposed subsectors in NAICS.

The identification of new and emerging industries is one of the principle goals of the NAICS project. Many users have expressed the wish that this goal be achieved while minimizing breaks in time series. However, these two objectives are more often than not conflicting, and the degree to which proposed NAICS industries relate to existing national classification systems varies from country to country.

#### *Relationship to ISIC*

Seventeen of the NAICS industries in this subsector can be assigned entirely to ISIC Division 74, Other Business Activities, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Landscaping Care and Maintenance Services are included in ISIC Division 01, Agriculture, Hunting and Related Service Activities; the Travel Arrangement and Reservation Services industries are included in ISIC Division 63, Supporting and Auxiliary Transport Activities; and Carpet and Upholstery Cleaning Services are included in ISIC Division 93, Other Service Activities. The following NAICS industries cannot be assigned to an ISIC

division without being subdivided: Employment Placement Agencies (casting bureaus are in Division 92, Recreational, Cultural and Sporting Activities in ISIC) and Miscellaneous Support Services. However, the discrepancies between NAICS and ISIC are minor and do not have a significant impact on the comparability of data at 2-digit ISIC level.

#### *Changes to the National Classification*

For Canada, the proposed NAICS structure constitutes a restructuring and expansion of industries that are, for the most part, currently found in Major Group 77, Business Service Industries; Industry Group 995, Services to Buildings and Dwellings; and Industry Group 996, Travel Services, of the 1980 Canadian Standard Industrial Classification (CSIC). A few activities classified in other areas of the classification are now included in this subsector. Fifteen of the twenty-two NAICS industries applicable in Canada are new or redefined. The most important new industries are: Management Services; Document Preparation Services; Telephone Call Centers; Business Service Centers; Investigation, Guard and Armored Car Services; Security Systems Services, Landscaping Care and Maintenance Services; Packaging and Labeling Services; and Convention and Trade Show Organizers.

The majority of proposed NAICS industries (15) relate to only one existing CSIC industry. In those cases, the task of linking statistics based on the old and new systems is relatively easy. For the remaining classes, this task is much more difficult since they are defined in terms of components of existing industries for which no data are available. However, many of these partial relationships are marginal in terms of economic activity.

For Mexico, this subsector that includes 24 industries contains 17 of the current CMAP classes. This increase in the number of classes results from the fact that there is now more specialization in Mexico in many service activities. Services that used to be performed in combination with others within a single establishment, including those performed as a secondary activity of the establishment, are now beginning to be carried out as a principal activity in establishments specializing in that particular service. For that reason, this new classification includes classes that were not even mentioned in the CMAP owing to their secondary status, and classes that had been included with other activities.

The activities being incorporated into this subsector are currently classified, for the most part, in CMAP Branch 9510, Provision of Professional, Technical, and Specialized Services, excluding Agricultural Services. Nevertheless, in order to create the new subsector, some activities that had been in other branches or subsectors, and even in a different sector of activity, were relocated.

From CMAP Sector 7, Transportation and Communications, fax services that had been classified under CMAP Class 720006, Other Telecommunications Services, were reclassified. They were combined with Photocopying Services and Business Center Services to form a new NAICS industry.

From CMAP Subsector 94, Entertainment, Cultural, Recreational, and Athletic Services, there was a reclassification of establishments engaged in the hiring of personnel for cinematographic and theatrical production that had been included under CMAP Classes 941101, Private Production of Cinematographic Films; 941106 Private Services for the Promotion, Staging and Presentation of Artistic Productions; and 941204 Public Services of Promotion, Staging, and Presentation of Artistic Productions. These recruitment agencies were combined with personnel placement agencies to form a single NAICS industry.

From CMAP Subsector 97, Services Related to Agriculture, Stockraising, Construction, Transportation, Finance and Commerce, there was a reclassification of telemarketing establishments and establishments engaged in advance sales of tickets, that had been under class 975000, Financial Intermediary Services. Telemarketing services combined with establishments that make and receive telephone calls were placed in a single NAICS industry under the Administrative Support Services industry group. Services of establishments that sell tickets in advance gave rise to a new NAICS industry when these services were combined with hotel reservations that had been classified under CMAP 951023, Professional, Technical, and Specialized Services Not Previously Mentioned.

From CMAP Branch 9530, Drycleaning and Laundering Services, there was a reclassification of carpet cleaning and furniture cleaning services that had previously been in CMAP Class 953002, Cleaning and Dyeing of Carpets and Curtains. This branch was combined with carpet cleaning that had been under CMAP 951021, Building Cleaning Services, to form a new NAICS

class called Carpet and Upholstery Cleaning Services.

The current CMAP Class 951018, Services of Personnel Placement and Selection Agencies, was subdivided into three parts. Two of them resulted in the same number of NAICS industries, those being Temporary Help Services and Employee Leasing Services. The other part was combined with agencies for placement of personnel from television works, cinematography, and theaters, that had been classified under CMAP Subsector 94, Entertainment, Cultural, Recreational, and Athletic Services, to form a new NAICS industry called Employment Placement Agencies.

CMAP Class 951021, Building Cleaning Services, was subdivided into four parts. Three of them resulted in the same number of industries in NAICS, and another part was combined with Carpet and Upholstery Cleaning Services that had been classified in CMAP 953002, Cleaning and Dyeing of Carpets and Curtains, to create a new NAICS industry.

CMAP Class 951023, Other Professional, Technical, and Specialized Services Not Previously Mentioned, that had contained several very different types of services underwent a major realignment. The services of CMAP Class 951023 relating to this subsector were combined with activities that were similar in terms of their forms of production, and each combination produced a new NAICS class.

Telephone answering services were combined with telemarketing services (the latter had been classified in the CMAP under 975000, Financial Intermediary Services); business center services were combined with photocopying establishments (the latter had been classified under CMAP Class 951017, Photocopying and Similar Services); and financial solvency agencies were combined with credit information offices. Finally, a NAICS industry was formed for Packaging and Labeling Services.

For the United States, eleven of the twenty-four proposed NAICS industries are new. Of the eleven new industries in this sector, eight were created from 1987 SIC 7389, Business Services, Not Elsewhere Classified. 1987 SIC 7389 was a "catchall" category that included some of the fastest growing services in the U.S. economy, and that had no natural interpretation or usefulness.

This former NEC industry is significantly reduced by the creation of new industries. Examples of the new industries that were created from 1987 SIC 7389 are: Telephone Call Centers; Packaging and Labeling Services; and Convention and Trade Show Organizers.

In addition, other activities formerly included in 1987 SIC 7389 were redistributed among the industries to create homogeneous industries or industry groupings. The redistributions out of 1987 SIC 7389 will reduce its overall size by approximately 40% of the establishments and receipts. In addition, the remainder are redistributed into NAICS industry groups that have more logic and coherence than the 1987 SIC 73 major group, Business Services.

The NAICS industry group for Management and Facilities Support Services groups activities with similar production processes previously classified in 1987 SIC 8741, Management Services, and 1987 SIC 8744, Facilities Support Management Services. Separate industries are created for each.

The NAICS industry group for Employment Services includes one significant change for the United States by including Temporary Help Services and Employee Leasing Services as new industries. These services are included in 1987 SIC 7363, Help Supply Services.

The NAICS industry group for Administrative Support Services includes Document Preparation Services, Telephone Call Centers, Business Service Centers and Other Administrative Support Services as new industries. These services are included in 1987 SIC 7338, Secretarial and Court Reporting Services, and 1987 SIC 7389, Business Services, Not Elsewhere Classified.

The NAICS industry group for Services to Buildings and Dwellings includes one previously existing industry from 1987 SIC Major Group 72, Personal Services (1987 SIC 7217, Carpet and Upholstery Cleaning) and two industries from 1987 SIC Major Group 07, Agriculture Services (1987 SIC 0782, Lawn and Garden Services; and 1987 SIC 0783, Ornamental Shrub and Tree Services). A new industry for Other Services to Buildings and Dwellings has been created from part of 1987 SIC's 7389, Business Services, Not Elsewhere Classified, and 1987 SIC 7699, Repair Shops and Related Services, Not Elsewhere Classified.

The NAICS industry group for Miscellaneous Support Services includes three new industries formed from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified.

#### *Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It is comprised of industries that group establishments with similar production

processes, that is, it applies the production-oriented economic concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly or in the near future at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Other objectives of the NAICS project have been met. A significant number of new industries are established which is consistent with the goal of recognizing new and emerging industries.

The industries are economically significant. Some NAICS industries are much larger than others, but this was necessary to ensure comparability among the three countries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XII, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical

requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Management and Support Services:		.....	
XXX .....	Management and Facilities Support Services:		.....	
XXXX ...	Management Services .....	R	*8741	Management Services (except construction management).
XXXX ...	Facilities Support Management Services .....	E	8744	Facilities Support Management Services.
XXX .....	Employment Services:		.....	
XXXX ...	Employment Placement Agencies .....	R	*7361 *7819	Employment Agencies (except executive placing services). Services Allied to Motion Pictures Production (casting bureaus).
			*7922	Theatrical Producers and Miscellaneous Theatrical Services (casting agencies).
XXXX ...	Temporary Help Services .....	N	*7363	Help Supply Services (except employee leasing service ).
XXXX ...	Employee Leasing Services .....	N	*7363	Help Supply Services (except temporary help service ).
XXX .....	Administrative Support Services:		.....	
XXXX ...	Document Preparation Services .....	N	*7338	Secretarial and Court Reporting (except court reporting).
XXXX ...	Telephone Call Centers:		.....	
XXXXX	Telephone Answering Services .....	N	*7389	Business Services, Not Elsewhere Classified (telephone answering).
XXXXX	Telemarketing Bureaus .....	N	*7389	Business Services, Not Elsewhere Classified (telemarketing bureaus and telephone soliciting).
XXXX ...	Business Service Centers:		.....	
XXXXX	Photocopying and Duplicating Services .....	R	*2752	Commercial Printing, Lithographic (electrostatic, digital, and nonimpact quick printing).
			7334	Photocopying and Duplicating Services,
XXXXX	Private Mail Centers .....	N	*7389	Business Services, Not Elsewhere Classified (private mail box centers and mail box rental).
XXXX ...	Collection Agencies .....	R	*7322	Adjustment and Collection Services (except adjustment bureaus).
XXXX ...	Credit Bureaus .....	E	7323	Credit Reporting Services.
XXXX ...	Other Administrative Support Services:		.....	
XXXXX	Repossession Services .....	N	*7322 *7389	Adjustment and Collection (adjustment bureaus). Business Services, Not Elsewhere Classified (recovery and repossession services).
XXXXX	Court Reporting and Stenotype Services ...	N	*7338	Secretarial and Court Reporting (except secretarial).
XXXXX	All Other Administrative Support Services	N	*7389	Business Services, Not Elsewhere Classified (administrative support services except telephone answering, telemarketing bureaus, private mail centers and repossession services).
XXX .....	Travel Arrangement and Reservation Services:		.....	
XXXX ...	Travel Agencies .....	E	4724	Travel Agencies.
XXXX ...	Tour Operators .....	E	4725	Tour Operators.
XXXX ...	Other Travel Arrangement and Reservation Services.		4729	Arrangement of Passenger Transportation, Not Elsewhere Classified.
XXXXX	Convention and Visitor Bureaus .....	N	*7389	Business Services, Not Elsewhere Classified (convention and visitor bureaus, tourist information bureaus).
XXXXX	All Other Travel Arrangement and Reservation Services.	N	*7389 *7999	Business Services, Not Elsewhere Classified (reservation systems: hotel & restaurants). Amusement and Recreation Services, Not Elsewhere Classified (ticket agencies).
XXX .....	Security and Investigation Services:		.....	
XXXX ...	Investigation, Guard and Armored Car Services:		.....	

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Investigation Services .....	N	*7381	Detective and Armored Car Services (detective services).
XXXXX	Security Guards and Patrol Services .....	N	*7381	Detective and Armored Car Services (guard services).
XXXXX	Armored Car Services .....	N	*7381	Detective and Armored Car Services (armored car services).
XXXX ..	Security Systems Services:			
XXXXX	Security Systems Services, except Locksmiths.	E	7382	Security Systems Services.
XXXXX	Locksmiths .....	N	*7699	Repair Shops and Related Services, Not Elsewhere Classified (locksmith shops).
XXX .....	Services to Buildings and Dwellings:			
XXXX ..	Exterminating and Pest Control Services .....	R	*7342	Disinfecting and Pest Control Services (exterminating and pest control).
XXXX ..	Janitorial Services .....	R	*7342 7349 *4581	Disinfecting and Pest Control Services (except exterminating). Building Maintenance Services, Not Elsewhere Classified. Airports, Flying Fields, and Airport Terminal Services (airplane cleaning and janitorial services).
XXXX ..	Landscaping Care and Maintenance Services:			
XXXXX	Lawn and Garden Services .....	E	0782	Lawn and Garden Services.
XXXXX	Ornamental Shrub and Tree Services .....	E	0783	Ornamental Shrub and Tree Services.
XXXX ..	Carpet and Upholstery Cleaning Services .....	E	7217	Carpet and Upholstery Cleaning.
XXXX ..	Other Services to Buildings and Dwellings .....	N	*7389  *7699	Business Services, Not Elsewhere Classified (swimming pool cleaning and maintenance). Repair Shops and Related Services, Not Elsewhere Classified (furnace, duct, chimney cleaning and furnace cleaning services).
XXX .....	Miscellaneous Support Services:			
XXXX ..	Packaging and Labeling Services .....	N	*7389	Business Services, Not Elsewhere Classified (packaging and labeling services).
XXXX ..	Convention and Trade Show Organizers .....		*7389	Business Services, Not Elsewhere Classified (convention and trade show services).
XXXX ..	Other Miscellaneous Support Services .....	N	*7389	Business Services, Not Elsewhere Classified (business support services except packaging and labeling, convention and trade shows services, convention and visitor bureaus, tourist information bureaus).

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and \* means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U. S. description
0782 .....	Lawn and Garden Services .....	Lawn and Garden Services.
0783 .....	Ornamental Shrub and Tree Services .....	Ornamental Shrub and Tree Services.
2752@ .....	Commercial Printing, Lithographic: Electrostatic Digital and Nonimpact Quick Printing.	Photocopying and Duplicating Services (pt).
4581 .....	Airport, Flying Fields, and Airport Terminal Services: Aircraft Cleaning and Janitorial Services .....	Janitorial Services (pt).
4724 .....	Travel Agencies .....	Travel Agencies.
4725 .....	Tour Operators .....	Tour Operators.
4729 .....	Arrangement of Passenger Transportation, Not Elsewhere Classified.	Other Travel Arrangement and Reservation Services (pt).
7217 .....	Carpet and Upholstery Cleaning .....	Carpet and Upholstery Cleaning.
7322 .....	Adjustment and Collection Services: Collection Services .....	Collection agencies.
	Adjustment Bureaus .....	Repossession Services (pt).
7323 .....	Credit Reporting Services .....	Credit Bureaus.
7334@ .....	Photocopying and Duplicating Services .....	Photocopying and Duplicating Services (pt).
7338 .....	Secretarial and Court Reporting Services: Secretarial Services .....	Document Preparation Services.
	Court Reporting Services .....	Court Reporting and Stenotype Services.
7342 .....	Disinfecting and Pest Control Services: Disinfecting Services .....	Janitorial Services (pt).
	Exterminating and Pest Control Services .....	Exterminating and Pest Control Services.
7349 .....	Building Cleaning and Maintenance Services, Not Elsewhere Classified.	Janitorial Services (pt).
7361@ .....	Employment Agencies: Executive Placing Services .....	Human Resources Consulting (pt) (Included in Professional, Scientific and Technical Services Subsector)

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U. S. description
7363 .....	Except Executive Placing Services .....	Employment Placement Agencies (pt).
	Help Supply Services:	Temporary Help Services.
	Temporary Help Supply .....	Employee Leasing Services.
7381 .....	Employee Leasing Services .....	
	Detective, Guard, and Armored Car Services:	Investigation Services.
	Detective Services .....	Security Guards and Patrol Services.
	Guard Services .....	Armored Car Services.
7382 .....	Armored Car Services .....	Security Systems Services.
7389@ .....	Security Systems Services .....	
	Business Services, Not Elsewhere Classified:	Telephone Answering Services.
	Telephone Answering Services .....	Telemarketing Bureaus.
	Telemarketing Bureaus and Telephone Solicit- ing Services.	
	Private Mail Centers and Mail Box Rental .....	Private Mail Centers.
	Recovery and Repossess .....	Repossession Services (pt).
	Packaging and Labeling Services .....	Packaging and Labeling Services.
	Swimming Pool Cleaning and Maintenance .....	Other Services to Dwellings and Buildings (pt).
	Hotel and Restaurant Reservation Services .....	Other Travel Arrangement and Reservation Services.
	Convention and Trade Show Services .....	Trade Show and Convention Organizers.
	Convention and Visitors Bureaus and Tourist In- formation Service.	Convention and Visitors Bureaus.
	Administrative Support Services, Except Tele- phone Answering, Telemarketing Bureaus, Private Mail Centers, and Repossession Ser- vices.	All Other Administrative Support Services.
	Business Support Services, Except Packaging and Labeling Services.	Other Miscellaneous Support Services.
	Convention and Trade Show Services .....	Convention and Trade Show Organizers.
7699 .....	Repair Shops and Related Services, Not Else- where Classified:	
	Locksmith Shops .....	Locksmiths.
	Furnace Ducts, Chimney and Gutter Cleaning Services.	Other Services to Dwellings and Buildings (pt).
7819 .....	Services Allied to Motion Pictures:	
	Casting Bureaus .....	Employment Placement Agencies (pt.).
7922 .....	Theatrical Producers and Services:	
	Casting Agencies .....	Employment Placement Agencies (pt.).
7999 .....	Amusement and Recreation Services, Not Else- where Classified:	
	Ticket Agencies .....	Other Travel Arrangement and Reservation Services (pt).
8741@ .....	Management Services:	
	Construction Management .....	Construction Sector.

The abbreviation "pt." means "part of". @ means times series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

Nineteen new industries are included in this subsector. Ten of the new industries were created by breaking apart old U.S. SIC 7389, Business Services, Not Elsewhere Classified. These are new and growing industries. New industries were created for:

Temporary Help Services from part of 1987 SIC 7363, Help Supply Services. This was requested by the industry and is supported by production process principles.

Employee Leasing Services from part of 1987 SIC 7363, Help Supply Services. This was requested by the industry and is supported by production process principles.

Document Preparation Services from part of 1987 SIC 7338, Secretarial and Court Reporting Services. This split

provides for a better production process based industry.

Telephone Answering Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is based on production process principles.

Telemarketing Bureaus from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is based on production process principles.

Private Mail Centers from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is based on production process principles.

Repossession Services from part of 1987 SIC 7322, Adjustment and Collection Services, and part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is based on production process principles.

Court Reporting and Stenotype Services from part of 1987 SIC 7338,

Secretarial and Court Reporting Services. This split provides for a better production process industry.

All Other Administrative Support Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This provides for a residual industry that includes related activities.

Other Travel Arrangement and Reservation Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified; part of 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified; and all of 1987 SIC 4729, Arrangement of Passenger Transportation, Not Elsewhere Classified. This change combines activities having similar production processes.

Investigation Service from part of 1987 7381, Detective and Armored Car

Services. This split provides for a better production process industry.

Security Guard and Patrol Services from part of 1987 SIC 7381, Detective and Armored Car Services. This split provides for a better production process industry.

Armored Car Services from part of 1987 SIC 7381, Detective and Armored Car Services. This split provides for a better production process industry.

Locksmiths from part of 1987 SIC 7699, Repair Ships and Related Services, NEC. This split was requested by the industry and is supported by production process based principles.

Other Services to Buildings and Dwellings from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified, and 1987 SIC 7699, Repair Shops and Related Services, Not Elsewhere Classified. This industry is supported by production process principles and improves international comparability.

Packaging and Labeling Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is supported by production process principles.

Trade Show and Convention Organizers from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is supported by production process principles.

Convention and Visitors Bureaus from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This was requested by the industry and is supported by production process principles.

Other Miscellaneous Support Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This provides for a residual industry that includes related activities.

Six industries included in this subsector were revised:

Construction management services were transferred from 1987 SIC 8741, Management Services, to the Construction Sector. This change was made to achieve international comparability and to combine activities having similar inputs.

Casting services were transferred from 1987 SIC 7819, Services Allied to Motion Picture Production, and from 1987 SIC 7922, Theatrical Producers and Miscellaneous Theatrical Services, to Employment Placement Agencies to form a better production process industry.

Quick printers that primarily use electrostatic, digital and nonimpact technologies were transferred from 1987 SIC 2752, Commercial Printing, Lithographic, based on industry requests. The activity was placed with

Photocopying and Duplicating Services because the technologies were similar.

Adjustment services were transferred from 1987 SIC 7322, Adjustment and Collection Services, to Repossession Services to form a better production process industry.

Exterminating services were transferred from 1987 SIC 7342, Disinfecting and Exterminating Services, to Exterminating and Pest Control Services to form a better production process industry.

Disinfecting services, part of 1987 SIC 7342, Disinfecting and Exterminating Services, was combined with 1987 SIC 7349, Building Cleaning and Maintenance Services, Not Elsewhere Classified, to form a production process industry titled Janitorial Services.

Part XIII—Proposed New Industry Structure for Air Transportation, Rail Transportation, Water Transportation, Truck Transportation, Transit and Ground Passenger Transportation, Pipeline Transportation, Scenic and Sightseeing Transportation, and Support Activities for Transportation

#### Section A—NAICS Structure

North American Industry Classification System (NAICS) Agreement Number 23

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsectors:

Air Transportation  
Rail Transportation  
Water Transportation  
Truck Transportation  
Transit and Ground Passenger Transportation  
Pipeline Transportation  
Scenic and Sightseeing Transportation  
Support Activities for Transportation

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

#### Attachment 1—NAICS Structure

XX Air Transportation  
XXX Scheduled Air Transportation  
XXXX Scheduled Air Transportation  
XXX Nonscheduled Air Transportation  
XXXX Nonscheduled Chartered Air Transportation  
XXXX Nonscheduled Specialty Air Transportation  
XX Rail Transportation  
XXX Rail Transportation  
XXXX Rail Transportation  
XX Water Transportation  
XXX Deep Sea, Coastal and Great Lakes Water Transportation  
XXXX Deep Sea, Coastal and Great Lakes Water Transportation  
XXX Inland Water Transportation  
XXXX Inland Water Transportation  
XX Truck Transportation  
XXX General Freight Trucking  
XXXX General Freight Trucking, Local  
XXXX General Freight Trucking, Long Distance  
XXX Specialized Freight Trucking  
XXXX Used Household and Office Goods Moving  
XXXX Specialized Freight (except Used Goods) Trucking, Local  
XXXX Specialized Freight (except Used Goods) Trucking, Long Distance  
XX Transit and Ground Passenger Transportation  
XXX Urban Transit Systems  
XXXX Urban Transit Systems  
XXX Interurban and Rural Bus Lines  
XXXX Interurban and Rural Bus Lines  
XXX Taxi and Limousine Service  
XXXX Taxi Service  
XXXX Limousine Service  
XXX School and Employee Bus Industry  
XXXX School and Employee Bus Industry  
XXX Charter Bus Industry  
XXXX Charter Bus Industry  
XXX Other Transit and Ground Passenger Transportation  
XXXX Other Transit and Ground Passenger Transportation  
XX Pipeline Transportation  
XXX Pipeline Transportation of Crude Oil  
XXXX Pipeline Transportation of Crude Oil  
XXX Pipeline Transportation of Natural Gas  
XXXX Pipeline Transportation of Natural Gas  
XXX Other Pipeline Transportation  
XXXX Pipeline Transportation of Refined Petroleum Products  
XXXX All Other Pipeline Transport  
XX Scenic and Sightseeing Transportation  
XXX Scenic and Sightseeing Transportation, Land  
XXXX Scenic and Sightseeing Transportation, Land  
XXX Scenic and Sightseeing Transportation, Water  
XXXX Scenic and Sightseeing Transportation, Water

XXX Scenic and Sightseeing  
Transportation, Other  
XXXX Scenic and Sightseeing  
Transportation, Other  
XX Support Activities for Transportation  
XXX Support Activities for Air  
Transportation  
XXXX Airport Operations  
XXXX Other Support Activities for Air  
Transportation  
XXX Support Activities for Rail  
Transportation  
XXXX Support Activities for Rail  
Transportation  
XXX Support Activities for Water  
Transportation  
XXXX Port and Harbor Operations  
XXXX Marine Cargo Handling  
XXXX Navigational Services to Shipping  
XXXX Other Support Activities for Water  
Transportation  
XXX Support Activities for Road  
Transportation  
XXXX Motor Vehicle Towing  
XXXX Other Support Activities for Road  
Transportation  
XXX Freight Transportation Arrangement  
XXXX Freight Transportation Arrangement  
XXX Storage Facilities  
XXXX Refrigerated Storage Facilities  
XXXX Farm Product Storage Facilities  
XXXX Other Storage Facilities  
XXX Other Support Activities for  
Transportation  
XXXX Other Support Activities for  
Transportation  
Attachment 2—North American  
Industry Classification System  
Draft Classification for:

Air Transportation  
Rail Transportation  
Water Transportation  
Truck Transportation  
Transit and Ground Passenger  
Transportation  
Pipeline Transportation  
Scenic and Sightseeing Transportation  
Support Activities for Transportation

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsectors Air Transportation, Rail Transportation, Water Transportation, Truck Transportation, Transit and Ground Passenger Transportation, Pipeline Transportation, Scenic and Sightseeing Transportation and Support Activities for Transportation. These subsectors are further subdivided into twenty-six industry groups and thirty-nine industries.

#### *A General Outline*

Establishments in the Transportation sector transport people and goods, and provide services to these establishments. The structure distinguishes these two basic types of activities, providing a subsector for each mode of transportation and a subsector

for establishments providing support activities for transportation. In addition, there is a subsector for establishments that provide passenger transportation for scenic and sightseeing purposes.

The modes of transportation are air, rail, water, trucking, transit and ground passenger, and pipeline. These are further subdivided according to the way in which businesses in each mode organize their establishments. The structure also reflects the degree of similarity of the industrial structures of the three countries.

An alternative structure was considered that would group services to a mode of transportation in the same subsector as the establishments carrying out the modal transportation activity. For example, support activities for air transportation would be an industry group in the same subsector as scheduled and nonscheduled air transportation. It was decided not to adopt this approach, because, first, many support activities for transportation are inherently multi-modal, such as freight transportation arrangement, or have multi-modal aspects. Secondly, there are production process similarities among the support activities. In any case, the structure allows the re-aggregation of the modal services with the modes of transportation.

In Air Transportation, the classification distinguishes scheduled from nonscheduled air transportation. Establishments included in Scheduled Air Transportation must operate flights even if only partially loaded. Nonscheduled operations also have more freedom to take off and land during non-peak time slots at busy airports. Nonscheduled Air Transportation is subdivided into charter and specialty activities. The former comprises fairly specialized establishments engaged in transporting freight and people, using equipment designed for those purposes. Specialty air transportation establishments use small, general purpose aircraft to provide a variety of specialized flying services, with none predominating (if the establishment is specialized in one activity, it is placed elsewhere in the classification, e.g., a specialist crop dusting establishment is classified in support activities for agriculture). Consideration was given to separating passenger from freight in each of the air transportation industries, but too many establishments provide both services to allow this distinction in a NAICS establishment classification; it is preferable to collect such data using the commodity classification or at the

national detail level as the United States will do.

The classification does not provide for any subdivision of Rail Transportation. In Mexico, most rail services are currently provided by a large national rail company that cannot be subdivided into establishments carrying out various processes. This is likely to change in the future, but the eventual establishment structure cannot be predicted now. This prevents the definition of any detail in Rail Transportation.

In Water Transportation, the underlying industrial structures in the three countries are quite different. In addition, the existing concepts used in national classifications are dissimilar. The only breakdown of water transportation that could be agreed to was inland (other than Great Lakes) and all other. This is a meaningful production process distinction in all countries, but inland shipping is an economically significant activity only in the United States. Each country can use national detail to define additional industrial detail.

The Truck Transportation subsector is first subdivided into general freight trucking and specialized freight trucking. Specialized freight transportation is the transportation of articles that, because of size, weight, shape or other inherent characteristics require specialized equipment for transportation. Each of these industry groups is further subdivided based on distance traveled. Local trucking establishments primarily carry goods within a single metropolitan area and its hinterland. Long distance establishments carry goods between metropolitan areas. This distinction reflects differences in equipment used, type of load carried, and scheduling, terminal and other networking services. Long-distance trucking is of particular interest in the context of North American free trade, since it is this group of establishments that will be able to compete internationally. The Specialized Freight Trucking industry group provides an additional industry for the transportation of used household and office goods, whether local or long distance, because such establishments do not specialize on a distance basis, but on the transport of such goods.

The Transit and Ground Passenger Transportation subsector includes a variety of passenger transportation activities, such as urban transit systems, taxis and so on. These activities are distinguished based on such process factors as whether routes are scheduled, run over fixed routes, and charged on a per-seat or per-vehicle basis.

The Pipeline Transportation subsector is subdivided along product lines because pipelines are designed to carry specific products. Industries have been created to cover the pipeline transportation of crude oil, natural gas, refined petroleum products, and other products.

The Scenic and Sightseeing Transportation subsector activities have a production process distinct from passenger transportation carried out for the purpose of transportation. The process does not emphasize efficient transportation; in fact, such activities often use obsolete vehicles such as steam trains, to provide some extra ambience. The activity is local in nature, usually involving a same-day return to the point of departure. Some examples are steam train excursions, urban horse-drawn tourist excursions and hot air balloons. Activities that are sporting in nature, and involve participation by the customer, such as white-water rafting, are generally excluded unless they impose a significant impact on the transportation infrastructure, such as charter fishing, which is included in the Scenic and Sightseeing Transportation, Water industry.

The Support Activities for Transportation subsector includes an industry group for services specific to each mode of transportation, and for the multi-modal activities of freight transportation arrangement, storage facilities and other support activities for transportation. The rental and leasing of transportation equipment, without operator, is included in a separate sector in NAICS.

#### *Limitations and Constraints of the Classification*

In the transportation industries proposed structure, most activities that were identified in one country exist in the others. However, often an activity is not carried out by specialized establishments in all countries. For example, a broad NAICS industry was created for Rail Transportation, because the various activities included here are carried out by the same establishments in Mexico.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

#### *Relationship to ISIC*

Most of the NAICS 4-digit industries in these subsectors are contained in ISIC Divisions 60, Land Transport; Transport

via Pipelines; Division 61, Water Transport; Division 62, Air Transport; Division 63, Supporting and Auxiliary Transport Activities; Activities of Travel Agencies; and Division 64, Post and Telecommunication Activities, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Thirty-two of the thirty-nine NAICS 4-digit industries in these subsectors are contained entirely within these divisions. There are, however, some differences between the two systems.

NAICS includes the storage of natural gas with the pipeline transportation of natural gas, because the storage is usually done by the pipeline establishments, and because a pipeline is inherently a network in which all the nodes are inter-dependent. ISIC includes the storage of natural gas in Storage and Warehousing. NAICS includes ship repair and maintenance, not done in a shipyard, in Other Support Activities for Water Transportation. An example would be a floating drydock service in a harbour. ISIC includes these in the Building and Repairing of Ships Industry in Manufacturing. The five other NAICS industries that cannot be assigned to an ISIC Division without being sub-divided are Nonscheduled Specialty Air Transportation; Scenic and Sightseeing Transportation, Water; Other Support Activities for Air Transportation; Support Activities for Rail Transportation and Navigational Services to Shipping.

ISIC includes some activities in Supporting and Auxiliary Transport Activities that NAICS classifies in other sectors. These include the operation of parking lots and garages and the operation of travel agencies and tour operators.

#### *Some Changes to the National Classifications*

For Canada, the coverage of the NAICS Transportation sector is largely the same as the current Canadian classification's Division G, Transportation and Storage Industries. Air courier activities, in Air Transport Industries in the Canadian Classification, are in the Postal Service and Couriers subsector of NAICS. Scenic and Sightseeing Transportation includes some activities, such as charter fishing, now found in Services. Other Support Activities for Water Transportation includes non-factory ship repairing, now classified in the Shipbuilding and Repair industry in Manufacturing. The Motor Vehicle Towing Industry, in Transportation in

NAICS, is in Retail Trade in the Canadian classification. Customs Brokers are in Freight Transportation Arrangement in NAICS but in Business Services in the Canadian classification. The contract maintenance of roads, bridges and tunnels is in Other Service Industries Incidental to Transportation in the Canadian classification, but not in NAICS. Rental and leasing, without operator, of transportation equipment other than motor vehicles is in Transportation in the Canadian classification, but is grouped with the rental and leasing of other equipment in NAICS. The structure of this NAICS subsector is similar to that of the Canadian classification, except that services to transportation are arranged modally in the latter. The amount of detail is similar.

For Mexico, the Transportation subsectors are largely the same as the current Mexican classification's Transportation subsector, CMAP 71; which includes Services Related to Land Transport, CMAP 9731; Services Related to Water Transport, CMAP 9732; Services Related to Air Transport, CMAP 9733; and Storage and Refrigeration Services, CMAP 979002. Pipeline Transportation of Crude Oil and Natural Gas is included in CMAP 220000, Extraction of Crude Oil and Natural Gas. Other Pipeline Transportation is included in Manufacturing (parts of CMAP's 351100, Manufacture of Basic Petrochemicals, and 353000, Petroleum Refining). Non-factory repair and maintenance of aircraft is included in Repair and Maintenance in CMAP 961104, Transport Equipment Repair and Maintenance. Customs Brokers are in Freight Transportation Arrangement in NAICS but in subsector 9510, Professional, Technical and Specialized Services, excluding Agricultural Services, in the Mexican classification. The contract maintenance of roads, bridges and tunnels is in Services Related to Land Transport in the Mexican classification, but not in NAICS. Rental and leasing, without operator, of transportation equipment is in Transportation in the CMAP, but is grouped with the rental and leasing of other equipment in NAICS. The structure of NAICS adds pipelines and services to transportation to the Transportation Sector. These activities are in other sectors in CMAP. The amount of detail of these NAICS subsectors is similar to that of the corresponding areas of the Mexican classification.

For the United States, the coverage of the Transportation subsectors is largely contained in Division E, Transportation

and Public Utilities of the 1987 SIC. While NAICS industries are much broader than the 1987 SIC, the U.S. has maintained most of the 1987 SIC industries in its NAICS 5-digit detail. Air transportation has been separated into industries based on the type of operation—scheduled, charter, specialty. This involves adding an industry for Nonscheduled Specialty Air Transportation that is included in 1987 SIC 4522, Air Transportation, Nonscheduled. This is being added by the U.S. to improve the comparability with Canada and Mexico. NAICS also classifies air ambulance activity in the health sector rather than these subsectors.

Marina establishments that are included in 1987 SIC 4493, Marinas, are included in the NAICS Recreation, Amusement, and Gambling subsector. These changes are agreed to by the U.S. to improve international comparability with Mexico and Canada.

Truck Transportation is separated first into general freight and specialized freight. This distinction is principally based on the type of vehicle with general freight being hauled by standard vans and containers. General Freight Trucking is then broken down between local and long-distance. Specialized Freight Trucking is separated into Used Household and Office Goods Moving; Specialized Freight (except Used Goods) Trucking, Local; and Specialized Freight (except Used Goods) Trucking, Long-Distance. The household and office goods movers are separated because of the substantial network of establishments that has developed to deal with local and long-distance moving and the associated storage. In this area, the same establishment provides both local and long-distance services. Other specialized freight establishments generally limit their services to either local or long-distance hauling. This is a change from the existing classifications (1987 SIC 4212, Local Trucking Without Storage; 4213, Trucking, Except Local; and 4214, Local Trucking With Storage) that include storage as a criteria in the classifications. The collection of refuse and garbage is included in 1987 SIC 4212, Local Trucking Without Storage, but this activity will be included in the Utilities subsector.

The activities included in 1987 SIC 4215, Courier Services, Except by Air; 1987 SIC 4311, United States Postal Service; and SIC 4513, Air Courier Services, will be included in the NAICS subsectors, Postal Services and Couriers.

The remaining mode-specific subsector, Transit and Ground Passenger Transportation, includes commuter transportation and highway-based passenger transportation. In this subsector, the principal splits identify scheduled transportation as separate from nonscheduled transportation. The scheduled transportation industry groups are Urban and Suburban Transit Systems, Interurban and Rural Bus Lines, School and Employee Bus Industry. The nonscheduled industry groups are Charter Bus Industry; Taxi and Limousine Service; and Other Transit and Ground Passenger Transportation. The School and Employee Bus Industry was changed from 1987 SIC 4151, School Buses, to introduce the employee transport that is included in 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified. The Charter Bus industry combines the local and long-distance industries of the existing classification system, 1987 SIC 4141, Local Bus Charter Service, and 4142 Bus Charter Service, Except Local, because the production process and the equipment are similar. The change includes classifying ambulance services, included in 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified, as health services in NAICS.

The Scenic and Sightseeing Transportation subsector is separated into three industries based on the mode—land, water, and other.

The Support Activities for Transportation subsector includes all services to transportation but is separated by type of mode serviced. In the 1987 SIC, support activities were included in the same major group as the type of mode serviced.

The Support Activities for Rail Transportation industry is changed to include all of the services to the rail industry. This classification includes rail related activities included in 1987 SIC 4013, Railroad Switching and Terminal Establishments; SIC 4741, Rental of Railroad Cars; and SIC 4789, Transportation Services, Not Elsewhere Classified.

Travel agents and tour operators, currently included in 1987 SIC 4724, Travel Agencies, and SIC 4725, Tour Operators, respectively, will be included in the Management and Support Services subsector in NAICS.

#### *Achievement of Objectives*

The classification meets the objectives for the North American Industry

Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept at each level.

Another objective of the NAICS project is the delineation of service industries. The transportation industries subsectors provide services, so the achievement of a common North American classification, with a reasonable amount of detail, satisfies that objective.

The objective of delineating new and emerging industries is not as relevant in this sector as in others, as it is relatively mature in its industrial structure.

The industries have high specialization ratios, and they are, in most cases, economically significant in all three countries. The detail (4-digit) level and structure of the classification are balanced in size. This enhances the classification's suitability for sampling, data-publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they have been minimized.

The classification achieves comparability for the three participating countries. All countries agree on the detailed definitions of the industries.

#### *Section B—Annex United States National Industry Detail*

As explained in the structure presentation of this notice, for a number of reasons 4-digit industries in the eight NAICS industry subsectors in Part XIII, Section A—Attachment I, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. SIC system. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the eight NAICS subsectors covered in Part XIII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Air Transportation			
XXX .....	Scheduled Air Transportation:			
XXXX ...	Scheduled Air Transportation:			
XXXXX ...	Scheduled Passenger Air Transportation ...	N	*4512	Air Transportation, Scheduled (passenger).
XXXXX ...	Scheduled Freight Air Transportation .....	N	*4512	Air Transportation, Scheduled (freight).
XXX .....	Nonscheduled Air Transportation:			
XXXX ...	Nonscheduled Chartered Air Transportation:			
XXXXX ...	Nonscheduled Chartered Passenger Air Transportation.	N	*4522	Air Transportation, Nonscheduled (passenger).
XXXXX ...	Nonscheduled Chartered Freight Air Transportation.	N	*4522	Air Transportation, Nonscheduled (freight).
XXXX ...	Nonscheduled Specialty Air Transportation ...	N		Establishments that use small, general purpose aircraft to provide a variety of specialized flying services, with none of them predominating, such as the following: *0721 Crop Planting, Cultivating, and Protecting (crop dusting). *0851 Forestry Services (aerial forest fighting). *1382 Oil and Gas Field Exploration Services (aerial geophysical exploration). *4522 Air Transportation, Nonscheduled (mixed operations). *7319 Advertising, Not Elsewhere Classified (aerial advertising). *7335 Commercial Photography (aerial photography). *7997 Membership Sports and Recreation Clubs (membership aviation clubs). *8299 Schools and Educational Services, Not Elsewhere Classified (flight school). *8713 Surveying Services (aerial surveying).
XX .....	Rail Transportation:			
XXX .....	Rail Transportation:			
XXXX ...	Rail Transportation:			
XXXXX ...	Line-Haul Railroads .....	E	4011	Railroads, Line-Haul Operating.
XXXXX ...	Short Line Railroads .....	N	*4013	Railroad Switching and Terminal Establishments (belt line and logging railroads).
XX .....	Water Transportation:			
XXX .....	Deep Sea, Coastal and Great Lakes Water Transportation:			
XXXX ...	Deep Sea, Coastal and Great Lakes Water Transportation:			
XXXXX ...	Deep Sea Freight Transportation	E	4412	Deep Sea Foreign Transportation of Freight.
XXXXX ...	Deep Sea Passenger Transportation	R	*4481	Deep Sea Transportation of Passengers, Except by Ferry (deep sea activities).
XXXXX ...	Coastal and Great Lakes Freight Transportation.	R	4424	Deep Sea Domestic Transportation of Freight.
			4432	Freight Transportation on the Great Lakes—St. Lawrence Seaway.
			*4492	Towing and Tugboat Services (coastal barge operations).
XXXXX ...	Coastal and Great Lakes Passenger Transportation.	R	*4481	Deep Sea Transportation of Passengers, Except by Ferry (coastal activities).
			*4482	Ferries (coastal and Great Lakes).
XXX .....	Inland Water Transportation:			
XXXX ...	Inland Water Transportation:			
XXXXX ...	Inland Water Freight Transportation .....	R	4449	Water Transportation of Freight, Not Elsewhere Classified.
			*4492	Towing and Tugboat Services (inland barge operations).
XXXXX ...	Inland Water Passenger Transportation .....	R	*4482	Ferries (inland).
			*4489	Water Transportation of Passengers, Not Elsewhere Classified (water taxi).
XX .....	Truck Transportation:			
XXX .....	General Freight Trucking:			
XXXX ...	General Freight Trucking, Local .....	N	*4212	Local Trucking without Storage (general freight).
			*4214	Local Trucking with Storage (general freight).
XXXX ...	General Freight Trucking, Long-Distance:			
XXXXX ...	General Freight Trucking, Long-Distance, Truckload.	N	*4213	Trucking, Except Local (general freight, truckload).
XXXXX ...	General Freight Trucking, Long-Distance, Less Than Truckload.	N	*4213	Trucking, Except Local (general freight, less than truckload).
XXX .....	Specialized Freight Trucking:			
XXXX ...	Used Household and Office Goods Moving ...	N	*4212	Local Trucking Without Storage (household goods moving).
			*4213	Trucking, Except Local (household goods moving).
			*4214	Local Trucking With Storage (household goods moving).
XXXX ...	Specialized Freight (except Used Goods) Trucking, Local.	N	*4212	Local Trucking without Storage (specialized freight).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Specialized Freight (except Used Goods) Trucking, Long-Distance.	N	*4214 *4213	Local Trucking with Storage (specialized freight). Trucking, Except Local (specialized freight).
XX .....	Transit and Ground Passenger Transportation:			
XXX .....	Urban Transit Systems:			
XXXX ...	Urban Transit Systems:			
XXXXX	Mixed Mode Transit Systems .....	N	*4111	Local and Suburban Transit (mixed mode).
XXXXX	Commuter Rail Systems .....	N	*4111	Local and Suburban Transit (commuter rail).
XXXXX	Bus and Motor Vehicle Transit Systems .....	N	*4111	Local and Suburban Transit (bus and motor vehicle).
XXXXX	Other Urban Transit Systems .....	N	*4111	Local and Suburban Transit (other than mixed mode, commuter rail, and bus and motor vehicle).
XXX .....	Interurban and Rural Bus Lines:			
XXXX ...	Interurban and Rural Bus Lines .....	E	4131	Intercity and Rural Bus Transportation.
XXX .....	Taxi and Limousine Service:			
XXXX ...	Taxi Service .....	E	4121	Taxicabs.
XXXX ...	Limousine Service .....	N	*4119	Local Passenger Transportation, Not Elsewhere Classified (limousine rental with driver and automobile rental with driver).
XXX .....	School and Employee Bus Industry:			
XXXX ...	School and Employee Bus Industry .....	R	*4151 4119	School Buses. Local Passenger Transportation, Not Elsewhere Classified (employee transportation).
XXX .....	Charter Bus Industry:			
XXXX ...	Charter Bus Industry .....	R	4141 4142	Local Bus Charter Service. Bus Charter Services, Except Local.
XXX .....	Other Transit and Ground Passenger Transportation:			
XXXX ...	Other Transit and Ground Passenger Transportation:			
XXXXX	Special Needs Transportation .....	N	*4119	Local Passenger Transportation, Not Elsewhere Classified (special needs transportation).
XXXXX	All Other Transit and Ground Passenger Transportation.	R	*4111 *4119	Local and Suburban Transit (airport transportation service). Local Passenger Transportation, Not Elsewhere Classified (hearse rental with driver and carpool and vanpool operation).
XX .....	Pipeline Transportation:			
XXX .....	Pipeline Transportation of Crude Oil:			
XXXX ...	Pipeline Transportation of Crude Oil .....	E	4612	Crude Petroleum Pipelines.
XXX .....	Pipeline Transportation of Natural Gas:			
XXXX ...	Pipeline Transportation of Natural Gas .....	E	4922	Natural Gas Transmission.
XXX .....	Other Pipeline Transportation:			
XXXX ...	Pipeline Transportation of Refined Petroleum Products.	E	4613	Refined Petroleum Pipelines.
XXXX ...	All Other Pipeline Transport .....	E	4619	Pipelines, Not Elsewhere Classified.
XX .....	Scenic and Sightseeing Transportation:			
XXX .....	Scenic and Sightseeing Transportation, Land:			
XXXX ...	Scenic and Sightseeing Transportation, Land	N	*4119 *4789 *7999	Local Passenger Transportation, Not Elsewhere Classified (cable cars and cog railways, except scenic and amusement and sightseeing buses). Transportation Services, Not Elsewhere Classified (horse-drawn cabs and carriages). Amusement and Recreation Services, Not Elsewhere Classified (scenic railroads).
XXX .....	Scenic and Sightseeing Transportation, Water:			
XXXX ...	Scenic and Sightseeing Transportation, Water.	N	*4489	Water Transportation of Passengers, Not Elsewhere Classified (airboats, excursion boats, and sightseeing boats).
XXX .....	Scenic and Sightseeing Transportation, Other:			
XXXX ...	Scenic and Sightseeing Transportation, Other	N	*4522 *7999	Air Transportation, Non-Scheduled (sightseeing planes). Amusement and Recreation Services, Not Elsewhere Classified (aerial tramways, scenic and amusement).
XX .....	Support Activities for Transportation:			
XXX .....	Support Activities for Air Transportation:			
XXXX ...	Airport Operations:			
XXXXX	Air Traffic Control .....	N	*4581 *9621	Airports, Flying Fields, and Airport Terminal Services (private air traffic control). Regulation and Administration of Transportation Programs (government air traffic control).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Air Operations, Except Air Traffic Control ...	N	*4581	Airports, Flying Fields, and Airport Terminal Services (air-freight handling at airports, hangar operations, airport terminal services, aircraft storage, airports, and flying fields).
			*4959	Sanitary Services, Not Elsewhere Classified (vacuuming of runways).
XXXX ...	Other Support Activities for Air Transportation	N	*4581	Airports, Flying Fields, and Airport Terminal Services (aircraft servicing and repairing).
XXX .....	Support Activities for Rail Transportation:			
XXXX ...	Support Activities for Rail Transportation .....	R	*4013	Railroad Switching and Terminal Establishments (all but short line railroads).
			*4741	Rental of Railroad Cars (grain leveling in railroad cars, grain trimming for railroad equipment, precooling of fruits and vegetables in connection with transportation, and railroad car cleaning, icing, ventilating, and heating).
			*4789	Transportation Services, Not Elsewhere Classified (car loading and unloading; cleaning of railroad ballasts; dining, parlor, sleeping, and other car operations; and railroad maintenance).
XXX .....	Support Activities for Water Transportation:			
XXXX ...	Port and Harbor Operations .....	N	*4491	Marine Cargo Handling (dock and pier operations).
			*4499	Water Transportation Services, Not Elsewhere Classified (seaway and lighthouse operations).
XXXX ...	Marine Cargo Handling .....	R	*4491	Marine Cargo Handling (all but dock and pier operations).
XXXX ...	Navigational Services to Shipping .....	N	*4492	Towing and Tugboat Services (all but barge operations).
			*4499	Water Transportation Services, Not Elsewhere Classified (piloting vessels in and out of harbors and marine salvage).
XXXX ...	Other Support Activities for Water Transportation	R	*4499	Water Transportation Services, Not Elsewhere Classified (all but seaway and lighthouse operations, piloting vessels in and out of harbors, and marine salvage).
			*4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (marine cargo checkers).
			*7699	Repair Shops and Related Services, Not Elsewhere Classified (ship scaling).
XXX .....	Support Activities for Road Transportation:			
XXXX ...	Motor Vehicle Towing .....	N	*7549	Automotive Services, Except Repair and Carwashes (towing).
XXXX ...	Other Support Activities for Road Transportation.	R	4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation.
			4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.
			*4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (all but marine cargo checkers).
XXX .....	Freight Transportation Arrangement:			
XXXX ...	Freight Transportation Arrangement .....	E	4731	Arrangement of Transportation of Freight and Cargo.
XXX .....	Storage Facilities:			
XXXX ...	Refrigerated Storage Facilities .....	R	4222	Refrigerated Warehousing and Storage.
			*4226	Special Warehousing and Storage, Not Elsewhere Classified (fur storage).
XXXX ...	Farm Product Storage Facilities .....	E	4221	Farm Product Warehousing and Storage.
XXXX ...	Other Storage Facilities:			
XXXXX	General Storage Facilities .....	R	*4225	General Warehousing and Storage (all but self-storage miniwarehouse warehousing).
XXXXX	All Other Storage Facilities .....	R	4226	Special Warehousing and Storage, Not Elsewhere Classified (all but fur storage).
XXX .....	Other Support Activities for Transportation:			
XXXX ...	Other Support Activities for Transportation:			
XXXXX	Packing and Crating .....	E	4783	Packing and Crating.
XXXXX	All Other Support Activities for Transportation.	R	*4729	Arrangement of Passenger Transportation, Not Elsewhere Classified (arrangement of carpools and vanpools).
			*4789	Transportation Services, Not Elsewhere Classified (pipeline terminals and stockyards for transportation).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
0721 .....	Crop Planting, Cultivating and Protecting:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
	Crop dusting when combined with a variety of aircraft-based services.	Nonscheduled Speciality Air Transportation.
0851	Other .....	(Included in the Crop Production subsector).
	Forestry Services:	
	Aerial forest fighting when combined with a variety of aircraft-based services.	Nonscheduled Speciality Air Transportation.
1382	Other .....	(Included in the Forestry subsector).
	Oil and Gas Field Exploration Services:	
	Aerial geophysical exploration combined with a variety of aircraft-based services.	Nonscheduled Speciality Air Transportation.
4011	Other .....	(Included in the Mining subsector).
	Railroads, Line-haul Operating .....	Line-Haul Railroads.
4013@	Railroad Switching and Terminal Establishments:	
	Beltline and logging railroads .....	Short Line Railroads.
	Other .....	Support Activities for Rail Transportation (pt.).
4111@	Local and Suburban Transit:	
	Mixed mode transit systems .....	Mixed Mode Transit Systems.
	Commuter rail systems .....	Commuter Rail Systems.
	Bus and motor vehicle transit systems .....	Bus and Motor Vehicle Transit Systems.
	Other urban transit systems .....	Other Urban Transit Systems.
	Airport limousine transportation .....	All Other Transit and Ground Passenger Transportation (pt.).
4119@	Local Passenger Transportation, Not Elsewhere Classified:	
	Ambulances .....	Ambulance Service (Included in Health and Social Assistance sector).
	Employee transportation .....	School and Employee Bus Industry (pt.).
	Sightseeing buses and cable and cog railways, except scenic.	Scenic and Sightseeing Transportation, Land (pt.).
	Special needs transportation .....	Special Needs Transportation.
	Hearse rental with driver and carpool and van-pool operations.	All Other Transit and Ground Passenger Transportation (pt.).
	Automobile rental with driver and limousine rental with driver.	Limousine Service.
4121	Taxicabs:	
	Taxicabs .....	Taxi Service.
4131	Intercity and Rural Bus Transportation .....	Interurban and Rural Bus Lines.
4141@	Local Charter Bus Service:	
	Local charter bus service .....	Charter Bus Industry (pt.).
4142@	Bus Charter Service, Except Local:	
	Long-distance charter bus service .....	Charter Bus Industry (pt.).
4151	School Buses .....	School and Employee Bus Industry (pt.).
4173@	Terminal and Service Facilities for Motor Vehicle Passenger Transportation:	
	Independent bus terminals .....	Other Support Activities for Road Transportation (pt.).
4212@	Local Trucking Without Storage:	
	Garbage collection .....	Garbage Collection (Included in subsector related to sanitary services).
	Local general freight trucking without storage ....	General Freight Trucking, Local (pt.).
	Household goods moving without storage .....	Used Household and Office Goods Moving (pt.).
	Local specialized freight trucking without storage.	Specialized Freight (except Used Goods) Trucking, Local (pt.).
4213@	Trucking, Except Local:	
	Long-distance truckload general freight trucking	General Freight Trucking, Long-Distance, Truckload.
	Long-distance less than truckload general freight trucking.	General Freight Trucking, Long-Distance, Less Than Truckload.
	Long-distance household goods moving .....	Used Household and Office Goods Moving (pt.).
	Long-distance specialized freight trucking .....	Specialized Freight (except Used Goods) Trucking, Long-Distance.
4214@	Local Trucking with Storage:	
	Local general freight trucking with storage .....	General Freight Trucking, Local (pt.).
	Local household goods moving .....	Used Household and Office Goods Moving (pt.).
	Local specialized freight trucking with storage ...	Specialized Freight (except Used Goods) Trucking, Local.
4215@	Couriers Services Except by Air:	
	Courier services Except by Air .....	Courier Services (Included in Couriers subsector).
4221	Farm Product Warehousing and Storage .....	Farm Product Storage Facilities.
4222	Refrigerated Warehousing and Storage .....	Refrigerated Storage Facilities (pt.).
4225	General Warehousing and Storage:	
	General Warehousing and Storage .....	General Storage Facilities (pt.).
	Self-Storage Miniwarehouse Warehousing .....	Operators of Miniwarehouses (included in Real Estate subsector).
4226	Special Warehousing and Storage, Not Elsewhere Classified:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
	Fur storage .....	Refrigerated Storage Facilities (pt.).
	Other .....	All Other Storage Facilities.
4231@ .....	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation:	
	Independent truck terminals .....	Other Support Activities for Road Transportation (pt.).
4311@ .....	United States Postal Service:	
	United States Postal Service .....	Postal Services (Included in Postal Services subsector).
4412 .....	Deep Sea Foreign Transportation of Freight .....	Deep Sea Freight Transportation.
4424@ .....	Deep Sea Domestic Transportation of Freight:	
	Coastal freight operations .....	Coastal and Great Lakes Freight Transportation (pt.).
4432@ .....	Freight Transportation on the Great Lakes-St. Lawrence Seaway:	
	Great Lakes freight operations .....	Coastal and Great Lakes Freight Transportation (pt.).
4449 .....	Water Transportation of Freight, Not Elsewhere Classified.	Inland Water Freight Transportation (pt.).
4481 .....	Deep Sea Transportation of Passengers, Except by Ferry:	
	Deep sea passenger transportation .....	Deep Sea Passenger Transportation.
	Coastal and Great Lakes passenger transportation.	Coastal and Great Lakes Passenger Transportation (pt.).
4482@ .....	Ferries:	
	Coastal and Great Lakes ferries .....	Coastal and Great Lakes Passenger Transportation (pt.).
	Inland water ferries .....	Inland Water Passenger Transportation (pt.).
4489 .....	Water Transportation of Passengers, Not Elsewhere Classified:	
	Water taxis .....	Inland Water Passenger Transportation (pt.).
	Airboats, excursion boats, and sightseeing boats.	Scenic and Sightseeing Transportation, Water.
4491 .....	Marine Cargo Handling:	
	Dock and pier operations .....	Port and Harbor Operations (pt.).
	Other .....	Marine Cargo Handling.
4492@ .....	Towing and Tugboat Services:	
	Coastal and Great Lakes barge operations .....	Coastal and Great Lakes Freight Transportation (pt.).
	Inland water barge operations .....	Inland Water Freight Transportation (pt.).
	Other .....	Navigational Services to Shipping (pt.).
4493@ .....	Marinas:	
	Marinas .....	Marinas (Included in Recreation, Amusement, and Gambling subsector).
4499@ .....	Water Transportation Services, Not Elsewhere Classified:	
	Boat rental .....	Boat rental (Included in Rental and Leasing subsector)
	Seaway and lighthouse operations .....	Port and Harbor Operations (pt.).
	Marine salvage and piloting vessels in and out of harbors.	Navigational Services to Shipping (pt.).
	Other .....	Other Supporting Activities for Water Transportation (pt.).
4512 .....	Air Transportation, Scheduled:	
	Scheduled passenger air transportation .....	Scheduled freight air transportation.
	Scheduled Passenger Air Transportation .....	Scheduled Freight Air Transportation.
4513@ .....	Air Courier Services:	
	Air courier operations .....	Couriers and Messengers (Included in Couriers subsector).
4522@ .....	Air Transportation, Nonscheduled:	
	Air ambulance .....	Ambulance Services (Included in Health and Social Assistance sector).
	Nonscheduled charter freight air transportation	Nonscheduled Chartered Freight Air Transportation.
	Nonscheduled charter passenger air transportation.	Nonscheduled Chartered Passenger Air Transportation.
	Nonscheduled specialty air transportation .....	Nonscheduled specialty air transportation.
	Sightseeing airplanes .....	Scenic and Sightseeing Transportation, Other (pt.).
4581 .....	Airports, Flying Fields, and Airport Terminal Services:	
	Air traffic control .....	Air Traffic Control.
	Airfreight handling at airports, hangar operations, airport terminal services, aircraft storage, airports, and flying fields.	Airport Operations, Except Air Traffic Control.
	Other .....	Other Support Activities for Air Transportation.
4612 .....	Crude Petroleum Pipelines .....	Pipeline Transportation of Crude Oil.
4613 .....	Refined Petroleum Pipelines .....	Pipeline Transportation of Refined Petroleum Products.
4619 .....	Pipelines, Not Elsewhere Classified .....	All Other Pipeline Transport.
4724@ .....	Travel Agents:	
	Travel agents .....	Travel Agencies (Included in Management and Support Services subsector).
4725@ .....	Tour Operators:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
	Tour operators .....	Tour Operators (Included in Management and Support Services subsector)
4729@ .....	Arrangement of Passenger Transportation, Not Elsewhere Classified:	
	Arrangement of carpools and vanpools .....	All Other Support Activities for Transportation (pt.).
	Other .....	(Included in Management and Support Services subsector).
4731 .....	Arrangement of Transportation of Freight and Cargo:	
	Freight rate auditors and tariff consultants .....	Other Management Consulting Services (Included in Professional, Scientific, and Technical Services subsector).
	Other .....	Freight Transportation Arrangement.
4741@ .....	Rental of Railroad Cars: .....	
	Railcar rental .....	Railroad Car Rental (Included in Rental and Leasing subsector).
	Other .....	Support Activities for Rail Transportation (pt.).
4783 .....	Packing and Crating .....	Packing and Crating.
4785 .....	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation:	
	Marine cargo checkers .....	Other Support Activities for Water Transportation (pt.).
	Other .....	Other Support Activities for Road Transportation (pt.).
4789 .....	Transportation Services, Not Elsewhere Classified	
	Pipeline terminals and stockyards for transportation.	All Other Support Activities for Transportation (pt.)
	Horse-drawn cabs and carriages .....	Scenic and Sightseeing Transportation, Land (pt.).
	Other .....	Support Activities for Rail Transportation (pt.).
4922 .....	Natural Gas Transmission .....	Pipeline Transportation of Natural Gas.
4959 .....	Sanitary Services, Not Elsewhere Classified:	
	Vacuuming of airport runways .....	Airport Operations, Except Air Traffic Control.
	Other .....	(Included in subsector related to sanitary services).
7319 .....	Advertising, Not Elsewhere Classified:	
	Aerial advertising when combined with a variety of aircraft-based services.	Nonscheduled Specialty Air Transportation.
	Other .....	(Included in the Professional, Scientific and Technical Services subsector).
7335 .....	Commercial Photography:	
	Aerial photography when combined with a variety of aircraft-based services.	Nonscheduled Specialty Air Transportation.
	Except when combined with a variety of aircraft-based services.	Commercial Photography (Included in the Professional, Scientific and Technical Services subsector).
7549 .....	Automotive Services, Except Repair and Carwashes:	
	Motor Vehicle Towing .....	Motor Vehicle Towing.
	Except Motor Vehicle Towing .....	(Included in the Repair and Maintenance subsector).
7699 .....	Repair Shops and Related Services, Not Elsewhere Classified:	
	Ship scaling .....	Other Supporting Activities for Water Transportation.
	Other .....	(Included in Repair and Maintenance subsector).
7997 .....	Membership Sports and Recreation Clubs:	
	Membership aviation clubs when combined with a variety of aircraft-based services	Nonscheduled Specialty Air Transportation.
	Other .....	(Included in the Recreation, Amusement, and Gambling subsector).
7999 .....	Amusement and Recreation Services, Not Elsewhere Classified:	
	Aerial tramways, scenic and amusement .....	Scenic and Sightseeing Transportation, Other.
	Scenic railroads .....	Scenic and Sightseeing Transportation, Land.
	Other .....	(Included in the Recreation, Amusement, and Gambling subsector).
8299 .....	Schools and Educational Services, Not Elsewhere Classified:	
	Flight schools when combined with a variety of aircraft-based services.	Nonscheduled Specialty Air Transportation.
	Other .....	(Included in the Education Services subsector).
8713 .....	Surveying Services: Aerial surveying when combined with a variety of aircraft-based services	Nonscheduled Specialty Air Transportation.
	Other .....	(Included in the Professional, Scientific and Technical Services subsector).
9621 .....	Regulation and Administration of Transportation Programs:	
	Government air traffic control .....	Air Traffic Control.

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
	Other .....	(Included in Public Administration subsector).

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 industry. The abbreviation NEC is used for Not Elsewhere Classified.

### *Description of Changes to the U.S. System*

1. Air Transportation—There are five new classifications added to the 1997 industry structure for this subsector.

New industries are the following:

Scheduled Passenger Air Transportation from part of 1987 SIC 4512, Air Transportation, Scheduled.

Scheduled Freight Air Transportation from part of 1987 SIC 4512, Air Transportation, Scheduled.

Nonscheduled Chartered Passenger Air Transportation from part of 1987 SIC 4522, Air Transportation, Nonscheduled.

Nonscheduled Chartered Freight Air Transportation from part of 1987 SIC 4522, Air Transportation, Nonscheduled.

Nonscheduled Specialty Air Transportation establishments that use small, general purpose aircraft to provide a variety of specialized flying services, with none of them predominating, from parts of 1987 SIC 0721, Crop Planting, Cultivating, and Protecting; 1987 SIC 0851, Forestry Services; 1987 SIC 1382, Oil and Gas Field Exploration Services; 1987 SIC 4522, Air Transportation, Nonscheduled; 1987 SIC 7319, Advertising, Not Elsewhere Classified; 1987 SIC 7335, Commercial Photography; 1987 SIC 7997, Membership Sports and Recreation Clubs; 1987 SIC 8299, Schools and Educational Services, Not Elsewhere Classified; and 1987 SIC 8713, Surveying Services. The changes to air transportation to separate passenger transportation from freight transportation were requested by the industry and are supported by production-based principles.

2. One new industry has been added for Rail Transportation. Short Line Railroads was created from part of 1987 SIC 4013, Railroad Switching and Terminal Establishments. This change was made because of the differences in the production process between short line and line-haul railroads.

3. Water Transportation—The Water Transportation subsector now includes six industries, five of which have been revised from 1987.

Deep Sea Passenger Transportation now excludes coastal activities.

Coastal and Great Lakes Freight Transportation includes 1987 SIC 4424, Deep Sea Domestic Transportation of Freight; 1987 SIC 4432, Freight Transportation on the Great Lakes-St. Lawrence Seaway; and part of 1987 SIC 4492, Towing and Tugboat Services.

Coastal and Great Lakes Passenger Transportation now includes part of 1987 SIC 4481, Deep Sea Transportation of Passenger, Except by Ferry, and part of 1987 SIC 4482, Ferries.

Inland water transportation has been split between freight and passenger transportation. These changes were made to achieve international comparability with Canada and Mexico and to also recognize the split between freight and passenger transportation.

3. Truck Transportation—The trucking industry has been redefined in terms of the type of equipment used. This regroups 1987 SIC 4212, Local Trucking Without Storage; 1987 SIC 4213, Trucking, Except Local; and 1987 SIC 4214, Local Trucking with Storage. The new classifications are: General Freight Trucking Local; General Freight Trucking, Long-Distance, Truckload; General Freight Trucking, Long-Distance, Less than Truckload; Used Household and Office Goods Moving; Specialized Freight (except Used Goods) Trucking, Local; and Specialized Freight (except Used Goods) Trucking, Long-Distance. This change was requested by the industry and is supported on production-based principles.

4. Transit and Ground Passenger Transportation—There were four industries created from 1987 SIC 4111, Local and Suburban Transit. They are: Mixed Mode Transit Systems, Commuter Rail Systems, Bus and Motor Vehicle Transit Systems, and Other Urban Transit Systems. These classifications were identified to separate the industry based on the mode of transportation.

Limousine Service was created from part of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified. This industry was created from an NEC industry to recognize its production process and to group it in the same industry group as taxis, an industry that provides similar services, with a similar production process.

Special Needs Transportation was created from part of 1987 SIC 4119,

Local Passenger Transportation, Not Elsewhere Classified. This industry identifies a separate process involving the use of specially equipped vehicles and special services not found in other passenger transportation.

A residual industry, All Other Transit and Ground Passenger Transportation, was created from part of 1987 SIC 4111, Local and Suburban Transit; and part of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified.

5. Pipeline Transportation—There were no changes to these industries for NAICS.

6. Scenic and Sightseeing Transportation—Three new industries were created for this subsector as follows:

Scenic and Sightseeing Transportation, Land from part of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified; part of 1987 SIC 4789, Transportation Services Not Elsewhere Classified; and part of 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified.

Scenic and Sightseeing Transportation, Water from 1987 SIC 4489, Water Transportation of Passengers, Not Elsewhere Classified.

Scenic and Sightseeing Transportation, Other from part of 1987 SIC 4522, Air Transportation, non-scheduled, and part of 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified. These industries were agreed to by the U.S. to improve international comparability with Mexico and Canada, and because scenic and sightseeing involves different activities from other forms of transportation, as noted in Section A.

7. Support Activities for Transportation—Three new industries have been created for Support Activities for Air Transportation. Activities included in 1987 SIC 4581, Airports, Flying Fields and Airport Terminal Services, are now included in three new industries: Air Traffic Control also including government operations included in 1987 SIC 9621, Regulation and Administration of Transportation Programs; Air Operations, Except Air Traffic Control; and Other Support Activities for Air Transportation. Air Operations, Except Air Traffic Control

also includes runway vacuuming included in 1987 SIC 4959, Sanitary Services, Not Elsewhere Classified. These changes improve comparability with Mexico and Canada and are supported based on production principles.

Two new industries are included in Support Activities for Water Transportation. These are Port and Harbor Operations and Navigational Services to Shipping. Port and Harbor Operations is a combination of dock and pier activities formerly included in 1987 SIC 4491, Marine Cargo Handling, and part of 1987 SIC 4499, Water Transportation Services, Not Elsewhere Classified (lighthouse and seaway operations). Navigational Services to Shipping is a combination of the activities from 1987 SIC 4492, Towing and Tugboat Services (all but the barge activities), and 1987 SIC 4499, Water Transportation Services, Not Elsewhere Classified (piloting vessels in and out of harbors and marine salvage). These changes were made to improve international comparability.

In Support Activities for Road Transportation, Motor Vehicle Towing has been created from part of 1987 SIC 7549, Automotive Services, Except Repair and Carwashes. This activity was moved from automotive services because the processes are similar to transportation activities. Other changes include the combination of activities from 1987 SIC 4173, Terminal and Service Facilities for Motor Vehicle Passenger Transportation; other road services from 1987 SIC 4231, Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation; and most of the activities included in 1987 SIC 4785, Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (all but marine cargo checkers). The new industry, Other Support Activities for Road Transportation, was created because the production process of these activities is similar regardless of the input that produces these services.

The number of industries in this sector has increased from forty-five in 1987 to fifty-four in 1997. For time series linkage twelve of the forty-five 1987 industries are directly comparable. Another twelve are comparable within three percent of the 1997 industries. Yet another four 1987 industries have changes that resulted in twelve 1997 NAICS industries that can be summed for comparable classifications.

Part XIV—Proposed New Industry Structure for Retail Trade and Wholesale Trade

Section A—NAICS Structure (NAICS)

Agreement Number 25

This Document represents the proposed agreement on the boundaries of the North American Industry Classification System (NAICS) for the following sectors:

- Retail Trade
- Wholesale Trade

A brief description of the boundaries for Retail Trade and Wholesale Trade is attached. Each country agrees to release a copy of the proposed NAICS boundaries to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the boundaries is made. The structure and detailed definitions of the industries within the boundaries will be determined by each country's national requirements. The NAICS boundaries for these sectors were presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

Attachment 2—North American Industry Classification System

Draft Classification For:

- Retail Trade
- Wholesale Trade

Summary

In most sectors of the North American Industry Classification System (NAICS), the statistical agencies of Canada, Mexico, and the United States have agreed to a detailed structure that includes subsectors, industry groups, and detailed industry definitions. However, in the cases of the Retail Trade sector and the Wholesale Trade sector, the three statistical agencies have agreed that only the boundaries of the sectors will be made comparable internationally at the present time. The structure and detailed definitions of the industries within the boundaries will be determined by national requirements.

For the Retail Trade and Wholesale Trade sectors, determining internationally comparable boundaries

was vital. Internationally comparable boundaries make it possible to compare the relative size of the Retail Trade and Wholesale Trade sectors in the economies of the three countries. Moreover, achieving international comparability on the boundaries of the Retail Trade and Wholesale Trade sectors was necessary to obtain internationally comparable data for the other sectors of NAICS. For example, previously the three countries had different and inconsistent boundaries between retail trade and manufacturing for some activities, between retail trade and services for others, and between retail trade and wholesale trade for still others.

Because resources and time for constructing NAICS were limited, the three countries decided to place priority on determining internationally comparable boundaries for the Retail Trade and Wholesale Trade sectors. This agreement does not preclude further work toward internationally comparable retail trade and wholesale trade industries in the future.

General Outline

The NAICS definitions of Retail Trade and Wholesale Trade differ from the previous definitions in all three countries. The new definitions of Retail Trade and Wholesale Trade follow. They result from a new criterion to separate these sectors.

Retail establishments are primarily engaged in selling merchandise, generally without transformation, for end use. These establishments attract customers using methods such as advertising, point-of-sale location, and display of merchandise for ease of selection.

Two type of retailers are distinguished:

- (1) Store retailers attempt to attract a high volume of walk-in customers through site location and/or advertising. In general, retail stores have extensive merchandise displays to promote product accessibility and sales. Other store retailers include catalog sales showrooms, gasoline service stations, and mobile home dealers.

(2) Non-store retailers—those selling by other means—include:

- Mail order houses
- Vending machine operators
- Telemarketing sales
- Home delivery (e.g., milk, newspapers)
- Door-to-door sales
- Party plans
- Electronic shopping
- Sales through temporary stands or stalls

Sales of capital or durable nonconsumer goods used in the

production of goods and services, such as farm machinery, medium and heavy duty trucks, and industrial machinery, as well as the sale of raw materials used in production, are included in wholesale trade. These goods are virtually never sold through the methods outlined above.

Wholesale establishments are primarily engaged in selling or arranging the purchase or sale of a) goods for resale, b) capital or durable nonconsumer goods, and c) raw and intermediate materials and supplies used in production. Wholesale establishments have most or all of the following characteristics:

Wholesalers normally operate from a warehouse or office. These warehouses and offices are characterized by having little or no display of merchandise. In addition, neither the design nor the location of the premises is intended to solicit walk-in traffic. Wholesalers do not normally use advertising directed to the general public. Customers are generally reached initially via telephone, in-person marketing, or by specialized advertising that may include internet and other electronic means.

While sales are normally in large volumes, durable nonconsumer goods may be sold in single units.

Sales of capital or durable nonconsumer goods used in the production of goods and services, such as farm machinery, medium and heavy duty trucks, and industrial machinery, as well as the sale of raw materials used in production, are always included in wholesale trade.

Two types of wholesalers may be distinguished:

(1) Establishments selling goods, generally without transformation, on their own account are known as "merchant wholesalers" or "distributors." Sales of products may include integral services such as sorting, packaging and labeling, and marketing. Merchant wholesalers typically maintain their own warehouses. Merchant wholesalers also include drop shippers and import/export merchants.

(2) Establishments arranging for the purchase or sale of goods owned by others or purchasing on a commission basis are known as "agents and brokers." Agents and brokers operate from offices and rarely own and handle goods. Commission merchants, auction agents, import/export agents, and manufacturers' representatives are included in agents and brokers.

The redefinition of the criterion to separate retail trade and wholesale trade is a change for all three countries. In the past, the criterion was based on the class of customer (though specific

exceptions were listed). That is, if the business was primarily engaged in selling merchandise for personal or household consumption, the establishment was classified in Retail Trade. If the establishment was primarily selling to business or farm customers for business use, the establishment was included in Wholesale Trade. This led to anomalies, for example, the classification into wholesale trade of businesses perceived to be retail trade, the classification of similar businesses to different sectors, and contrary interpretations of the rule by the various statistical agencies.

The new wholesale-retail definition emphasizes what the establishment does, rather than to whom it sells. A store retailer, for example, has the attributes of a store: A selling place open to the public, merchandise on display or available through sales clerks, facilities for making cash or credit card transactions, and services provided to retail customers. The store provides a place to purchase commodities and is a location where customers may go to obtain information about commodities that are available in retail markets. The new rule is an implementation of the production-oriented criterion for classification adopted for NAICS. But it also agrees with common sense and the normal usage of the word "retailing" among the public and by business within the sector itself. The old class of customer rule did not correspond to the usual meaning of the word "retailing."

#### *Relationship to ISIC*

The International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) does not include separate aggregates for Retail Trade and Wholesale Trade. Rather, it combines these activities into three ISIC divisions as follows: Division 50, Sale, Maintenance and Repair of Motor Vehicles and Motorcycles; Retail Sale of Automotive Fuel; Division 51, Wholesale Trade and Commission Trade, Except of Motor Vehicles and Motorcycles; and Division 52, Retail Trade, Except of Motor Vehicles and Motorcycles; Repair of Personal and Household Goods. The Retail Trade and Wholesale Trade sectors proposed for NAICS are equivalent to those ISIC divisions minus class 5020, Maintenance and Repair of Motor Vehicles; class 5260, Repair of Personal and Household Goods; and part of class 5040, Sale, Maintenance and Repair of Motorcycles and Related Parts and Accessories.

#### *Some Changes to the National Classifications*

For Canada, the agreement on new definitions for retail trade and wholesale trade results in the transfer of a number of establishments from wholesale trade to retail trade, manufacturing, and services, and from retail trade to manufacturing and services. The most important of these changes are outlined below.

Although the main criterion to distinguish Retail Trade establishments from Wholesale Trade in the 1980 Standard Industrial Classification (SIC) is the class of customer, particular types of trade establishments are assigned to wholesale trade irrespective of their main class of customer. The most important of these are building materials dealers, computer and software stores, office supplies stores and home fuel dealers. NAICS assigns many of these establishments in Retail Trade, that is, those establishments that meet the conditions specified in the Retail Trade definition. Establishments that supply these products to retailers will remain in Wholesale Trade.

The Wholesale Trade division currently includes some activities that are moved to the NAICS manufacturing sector. These activities are tire retreading, the rebuilding on a factory basis of some automotive parts and the converting of fabric (piece goods converters). Piece goods converters are establishments primarily engaged in purchasing fabric in the grey and arranging to have a separate establishment dye the fabric on a contract basis. As well, establishments primarily engaged in the repair of various types of machinery and equipment are transferred from Wholesale Trade to a newly created Repair and Maintenance subsector. These changes affect a relatively small number of establishments currently found in sixteen wholesale industries.

A number of activities currently in Retail Trade in the Canadian classification are assigned to other sectors in NAICS, including establishments engaged in the transformation and sale of products on the premises. Therefore, retail bakeries and candy shops that produce most of their products on the premises and tailor shops that produce custom garments are being moved to manufacturing. Also, the repair and maintenance of automobiles, home appliances, consumer electronics, furniture, recreational vehicles, bicycles, musical instruments and watches and jewelry is transferred from Retail Trade to the newly created Repair

and Maintenance subsector. This change implies the relocation of entire industries, CSIC 6213, Furniture Refinishing and Repair Shops; CSIC 6223, Appliance, Television, Radio and Stereo Repair Shops; CSIC 635, Motor Vehicle Repair Shops; most of CSIC 639, Other Motor Vehicle Services; CSIC 6562, Watch and Jewelry Repair Shops; and parts of CSIC 6323, Motorcycle and Snowmobile Dealers; CSIC 6542, Bicycle Shops; and CSIC, 6551, Musical Instrument Stores.

For Mexico, the change from class of customer to production characteristics changes a number of industries. These include such things as office supplies, farm supplies, building materials, paint, and hardware that existed only in wholesale in CMAP. In NAICS these activities, are in both Wholesale Trade and Retail Trade. The biggest change in this area is including the sales of computers and office furniture in Retail Trade. CMAP does not include classifications in Retail Trade for these activities.

There are a number of activities that will be included in Retail Trade and Wholesale Trade for NAICS that are included in other areas of CMAP. These include vending operations and establishments selling on a commission basis. The vending machine operators are included in CMAP 931011, Restaurants and Eateries. Commissionaires are included in CMAP 97500, Business Intermediation.

The sales of lottery tickets that is included in CMAP 623089, Retail Trade in Lottery Tickets, Etc., will be excluded from Retail Trade in NAICS.

For the United States, restaurants and bars, formerly included in retail trade in the U.S., have been moved and combined with hotels and other accommodations (See Agreement No. 3). This affects all of 1987 SIC Major Group 58 and part of the retail food industry, including such establishments as doughnut shops, cookie shops, pretzel shops, etc. that are primarily engaged in the preparation of food and drink for immediate consumption. These establishments were previously classified in 1987 SIC 5461, Retail Bakeries, and 1987 SIC 5499, Miscellaneous Food Stores. It also includes mobile food services that were previously included in 1987 SIC 5963, Direct Selling Establishments.

The handling of the combination of sales and service is also a change. In the past, establishments that were primarily engaged in service activities were included in Services. This resulted in many businesses that engaged in both sales and service changing classification from year to year based on the condition

of the market for the sales of the product. This was particularly evident in the area of bicycle sales and service. In NAICS, establishments that are selling and providing services for the products sold will be included in retail trade even if more of their revenue is in service receipts. An establishment that only has incidental sales or that provides services for products they do not sell such as automobile repair by an independent repair shop are still classified in NAICS as a service establishment.

Another example of change is the print and frame shop. Establishments that frame pictures usually also sell prints and framing materials to their customers. Such an establishment was classified either in Services or Retail based on the share of revenue derived from the framing activity versus the sales activity. NAICS specifies that these establishments are to be classified in Retail Trade.

There is also a change in the classification of some activities involving making and selling goods to the public at the same location. Establishments engaged in producing candy, baked goods, custom clothing, furniture, cabinets, and crafts are included in the Manufacturing sector of NAICS. These activities are included in Division G, Retail Trade, of the 1987 SIC.

The change from class of customer to production characteristics will affect establishments in industries such as computer stores, office furniture dealers, and office suppliers which will move from wholesale to retail.

Another change to Wholesale Trade is the treatment of piece goods converters. In the past, these piece goods converters have been included in Wholesale Trade. But in NAICS, converters will be included in Manufacturing.

*Achievement of Objectives*

The classification meets the objectives for the North American Industrial Classification System (NAICS). It groups establishments with similar production processes, that is, it applies production-oriented economic concepts. It achieves comparability for the three participating countries. Based on the existing data, all three countries expect to be able to publish data regularly at the total level for Retail and Wholesale trade sectors.

Other objectives of the NAICS project were not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, expansion of the service industries, and industries engaged in the production of advanced

technologies. Therefore, the emphasis was on the objectives listed above.

*Section B—Annex: United States National Industry Detail*

The U.S. national detail industries will be shown in the next Federal Register notice.

Part XV—Proposed New Industry Structure for Oil and Gas Extraction; Mining, except Oil and Gas; Support Activities for Mining

*Section A—Structure*

North American Industry Classification System (NAICS) Agreement Number 26

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Oil and Gas Extraction  
Mining, Except Oil and Gas  
Support Activities for Mining

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

- XX Oil and Gas Extraction
- XXX Oil and Gas Extraction
- XXXX Oil and Gas Extraction
- XX Mining, Except Oil and Gas
- XXX Coal Mining
- XXXX Coal Mining
- XXX Metal Ore Mining
- XXXX Iron Mining
- XXXX Gold and Silver Mining
- XXXX Copper, Nickel, Lead, and Zinc Mining
- XXXX Other Metal Ore Mining

XXX Non-Metallic Mineral Mining and Quarrying  
 XXXX Stone Mining and Quarrying  
 XXXX Sand, Gravel, Clay, Ceramic, and Refractory Mineral Mining and Quarrying  
 XXXX Other Non Metallic Mineral Mining and Quarrying  
 XX Support Activities for Mining  
 XXX Support Activities for Mining  
 XXXX Support Activities for Mining

#### Attachment 2—North American Industry Classification System

##### Draft Classification for:

##### Mining

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

This draft classification applies to the sector Mining. This sector is subdivided into three subsectors and five industry groups: Oil and Gas Extraction, Coal Mining, Metal Ore Mining, Non-Metallic Mineral Mining and Quarrying, and Support Activities for Mining. The five industry groups are subdivided into 10 industries.

##### *A General Outline*

The Mining sector includes the extraction of liquids and gases such as petroleum and natural gas by the operation of wells and the extraction of naturally occurring minerals through underground or surface mining. Also included is the beneficiating of the ores by crushing, grinding, washing, drying, leaching, and other means. The sector is divided into three subsectors, two being based on the types of minerals extracted and beneficiated and one being support activities for the extraction.

The existing industry classifications of Canada, Mexico, and the United States were remarkably similar in their overall structure for mining. There were significant differences in the classifications at the detailed level, as the detailed level varied because of the specific mineral deposits that were significant to each country. The existing classifications were for the most part inherently production oriented and satisfactory to data users. The structure maximizes the comparability between the three countries and makes modest enhancements to the production orientation of the classification.

##### *Limitations and Constraints of the Classification*

The extraction of any mineral is conditional on the presence of a suitable mineral deposit. Generally, the extraction method varies according to the type of deposit mined as does the beneficiating process.

An approach that distinguished surface and underground mining as a

basis for defining industry groups was considered but in the case of many metals and non-metals the activity in each was too small to permit separation. On the other hand the difference in the beneficiating processes (agglomerating, crushing, chemical, leaching etc.) required for different ores provided the basis for distinguishing production processes. The type of mineral deposit was therefore considered to be a good proxy for the production process in most cases of metal mining. However, these deposits vary significantly among the three countries. For many types of minerals the number of deposits in any one country may be too small to permit publishing data on that industry for that country. This limited the number of possible industries. The industries are therefore based on the type of minerals that generally occur together in a mineral deposit in all three countries. For example, the occurrence of combinations of copper, lead, zinc and nickel in the same mineral deposit is common among the three countries. In the case of non-metal mining, the quarrying of stone, above ground, requires precision cutting of large blocks of stone which is a process very different from the process of extracting sand, gravel, clay, ceramic and refractory minerals.

##### *Relationship to ISIC*

Most 4-digit industries in this sector are contained within Divisions 10-14, Mining and Quarrying, of the current International Standard Industrial Classification of all Economic Activities (ISIC Revision 3) of the United Nations. Generally, the industries can be reaggregated to the ISIC divisions. However, there are some differences: ISIC includes peat with coal in Division 10, Mining of Coal and Lignite, Extraction of Peat, whereas peat extraction is included in NAICS industry Non Metallic Mineral Mining and Quarrying. Although peat is similar to coal in that it can be used as a fuel, the extraction and beneficiating processes are distinctly different from coal and are similar to the processes involved with non metallic minerals. It should be noted that in North America peat is seldom used as fuel but rather as a soil conditioner. ISIC Division 12, Mining of Uranium and Thorium Ores, is not supportable as a NAICS industry.

##### *Some Changes to the National Classifications*

For Canada, CSIC 0611, Gold Mines, has been combined with the silver part of CSIC 0614, Silver-Lead-Zinc Mines, to form the NAICS four digit industry Gold and Silver Mining. Gold mining

and silver mining are separated at the national five digit level. Silver mining becomes a null set as it does not exist in Canada. Silver is mined only as a by product of lead and zinc mining in Canada.

CSIC 0612, Copper and Copper-Zinc Mines, has been combined with CSIC 0613, Nickel-Copper Mines, plus the lead and zinc part of CSIC 0614 to form NAICS industry Copper, Nickel, Lead, and Zinc Mining.

CSIC 0615, Molybdenum Mines, was combined with CSIC 0616, Uranium Mines, and CSIC 0619, Other Metal Mines, to form NAICS Other Metal Mining.

CSIC 0811, Granite Quarries; CSIC 0812, Limestone Quarries; CSIC 0813, Marble Quarries; and CSIC 0814, Sandstone Quarries, becomes NAICS industry Mining and Quarrying of Stone. However these 4 digit industries are restored for national detail.

CSIC 0821, Sand and Gravel Pits, has been combined with CSIC 0815, Shale Quarries, and the crude clays from clay pits part of CSIC 3511, Clay Products, to form NAICS industry Sand, Gravel, Clay, Ceramic and Refractory Mineral Mining and Quarrying. However, CSIC 0821, Sand and Gravel Pits, is restored at the level of national detail. There are no known establishments primarily engaged in extracting clay in Canada, although extraction of clay exists by the manufacturers of clay products.

For Mexico, peat mining has been split from CMAP 210000, Mining and/or Beneficiation of Coal, to be included in NAICS industry Non-Metallic Mineral Mining and Quarrying. The remaining portion of CMAP 21000 is equivalent to NAICS industry Coal Mining. Peat extraction is of little statistical significance in Mexico.

For Mexico, the nickel part of CMAP 232006, Mining and/or Beneficiation of Other Nonferrous Metallic Ores, has been split out. This split will have little statistical impact as there is only a very small amount of nickel mining in Mexico. The split is combined with CMAP 232003, Mining and/or Beneficiation of Industrial Ore with a High Lead and Zinc Content, and CMAP 232005, Mining and/or Beneficiation of Ore with a High Copper Content, to form the NAICS four digit industry Copper, Nickel, Lead, and Zinc Mining.

The creation of the Support Activities for Mining subsector in is an important change for Mexico, since such activities are not represented in the Mexican classification. However, the coverage of the mining sector is very close to the current mining sector in CMAP.

For the United States, a structural change involved moving the support

activity industries from their respective 1987 SIC Major Groups and bringing them all together in the NAICS structure under the subsector Support Activities for Mining.

The nickel ore mining part of 1987 SIC 1061, Ferroalloy Ores, Except Vanadium, has been combined with 1987 SIC 1021, Copper Ores, at the national level. This has a small statistical impact as production is relatively insignificant. This national level industry plus 1987 SIC 1031, Lead and Zinc Ores, also maintained at the national level, form NAICS industry Copper, Nickel, Lead, and Zinc Mining.

The bituminous limestone and bituminous sandstone part of 1987 SIC 1499, Miscellaneous Nonmetallic Minerals, Except Fuels, is moved out of Non Metallic Minerals Mining to NAICS industry Mining and Quarrying of Stone.

*Achievement of Objectives*

The classification meets the objectives for the North American Industry

Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

Other objectives of the project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature and uses relatively stable technology for extraction.

The industries are highly specialized, and they are economically significant. Disruptions to time series are minimal. The classification achieves comparability for the three participating countries. All countries agree on the detailed definitions of the industries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the three NAICS industry subsectors presented in Part XV, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the three NAICS industry subsectors covered in Part XV of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Oil and Gas Extraction:			
XXX .....	Oil and Gas Extraction:			
XXXX ...	Oil and Gas Extraction:			
XXXXX	Crude Petroleum and Natural Gas Extraction.	E	1311	Crude Petroleum and Natural Gas.
XXXXX	Natural Gas Liquid Extraction .....	E	1321	Natural Gas Liquids.
XX .....	Mining except Oil and Gas:			
XXX .....	Coal Mining:			
XXXX ...	Coal Mining:			
XXXXX	Bituminous Coal and Lignite Surface Mining.	E	1221	Bituminous Coal and Lignite Surface Mining.
XXXXX	Bituminous Coal Underground Mining .....	E	1222	Bituminous Coal Underground Mining.
XXXXX	Anthracite Mining .....	E	1231	Anthracite Mining.
XXX .....	Metal Ore Mining:			
XXXX ...	Iron Mining .....	E	1011	Iron Ores.
XXXX ...	Gold and Silver Mining:			
XXXXX	Gold Mining .....	E	1041	Gold Ores.
XXXXX	Silver Mining .....	E	1044	Silver Ores.
XXXX ...	Copper, Nickel, Lead and Zinc Mining:			
XXXXX	Copper and Nickel Mining .....	R	1021	Copper Ores.
XXXXX	Lead and Zinc Mining .....	E	*1061	Ferroalloy Ores, Except Vanadium (nickel).
XXXX ...	Other Metal Ore Mining:			
XXXXX	Uranium-Radium-Vanadium Ores Mining ...	E	1094	Uranium-Radium-Vanadium Ores.
XXXXX	Other Metal Ore Mining .....	R	*1061	Ferroalloy Ores, Except Vanadium (other ferroalloys except nickel).
			1099	Miscellaneous Metal Ores, NEC.
XXX .....	Non-Metallic Mineral Mining and Quarrying:			
XXXX ...	Stone Mining and Quarrying:			
XXXXX	Dimension Stone Mining and Quarrying .....	E	1411	Dimension Stone.
XXXXX	Crushed and Broken Limestone Mining and Quarrying.	E	1422	Crushed and Broken Limestone.
XXXXX	Crushed and Broken Granite Mining and Quarrying.	E	1423	Crushed and Broken Granite.
XXXXX	Other Crushed and Broken Stone Mining and Quarrying.	R	1429	Crushed and Broken Stone, NEC.
			*1499	Miscellaneous Nonmetallic Minerals, Except Fuels (bituminous limestone and bituminous sandstone).
XXXX ...	Sand, Gravel, Clay, Ceramic and Refractory Mineral Mining and Quarrying:			

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Construction Sand and Gravel Mining .....	E	1442	Construction Sand and Gravel.
XXXXX	Industrial Sand Mining .....	E	1446	Industrial Sand.
XXXXX	Kaolin and Ball Clay Mining .....	E	1455	Kaolin and Ball Clay.
XXXXX	Clay, Ceramic, and Refractory Mineral Mining.	E	1459	Clay, Ceramic, and Refractory Minerals, NEC.
XXXX ...	Other Non-Metallic Mineral Mining and Quarrying:			
XXXXX	Potash, Soda, and Borate Mineral Mining	E	1474	Potash, Soda, and Borate Minerals.
XXXXX	Phosphate Rock Mining .....	E	1475	Phosphate Rock.
XXXXX	Other Chemical and Fertilizer Mineral Mining.	E	1479	Chemical and Fertilizer Mineral Mining, NEC.
XXXXX	All Other Non-Metallic Mineral Mining .....	R	*1499	Miscellaneous Non-Metallic Minerals, Except Fuels (except bituminous limestone and bituminous sandstone).
XX .....	Support Activities for Mining:			
XXX .....	Support Activities for Mining:			
XXXX ...	Support Activities for Mining:			
XXXXX	Support Activities for Metal Mining .....	E	1081	Metal Mining Services.
XXXXX	Support Activities for Coal Mining .....	E	1241	Coal Mining Services.
XXXXX	Drilling Oil and Gas Wells .....	E	1381	Drilling Oil and Gas Wells.
XXXXX	Support Activities for Oil and Gas Field Exploration.	E	1382	Oil and Gas Field Exploration Services.
XXXXX	Other Oil and Gas Field Support Activities	E	1389	Oil and Gas Field Services, NEC.
XXXXX	Support Activities for Non-Metallic Minerals Except Fuels.	E	1481	Non-Metallic Minerals Services, except Fuels.

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
1011 .....	Iron Ores .....	Iron Ore Mining.
1021 .....	Copper Ores .....	Copper Mining.
1031 .....	Lead and Zinc Ores .....	Lead and Zinc Mining.
1041 .....	Gold Ores .....	Gold Mining.
1044 .....	Silver Ores .....	Silver Mining.
1061 .....	Ferroalloy Ores, Except Vanadium:	
	Nickel Ore Mining .....	Copper and Nickel Mining (pt).
	Other Ferroalloys .....	Other Metal Ore Mining (pt).
1081 .....	Metal Mining Services .....	Support Activities for Metal Mining.
1094 .....	Uranium-Radium-Vanadium Ores .....	Uranium-Radium-Vanadium Ore Mining.
1099 .....	Miscellaneous Metal Ores, NEC .....	Other Metal Ore Mining (pt).
1221 .....	Bituminous Coal and Lignite Surface Mining .....	Bituminous Coal and Lignite Surface Mining.
1222 .....	Bituminous Coal Underground Mining .....	Bituminous Coal Underground Mining.
1231 .....	Anthracite Mining .....	Anthracite Mining.
1241 .....	Coal Mining Services .....	Support Activities for Coal Mining.
1311 .....	Crude Petroleum and Natural Gas .....	Crude Petroleum and Natural Gas Extraction.
1321 .....	Natural Gas Liquids .....	Natural Gas Liquid Extraction.
1381 .....	Drilling Oil and Gas Wells .....	Drilling Oil and Gas Wells.
1382 .....	Oil and Gas Field Exploration Services .....	Support Activities for Oil and Gas Field Exploration.
1389 .....	Oil and Gas Field Services, NEC .....	Other Oil and Gas Field Support Activities.
1411 .....	Dimension Stone .....	Dimension Stone Mining or Quarrying.
1422 .....	Crushed and Broken Limestone .....	Crushed and Broken Limestone Mining or Quarrying.
1423 .....	Crushed and Broken Granite .....	Crushed and Broken Granite Mining or Quarrying.
1429 .....	Crushed and Broken Stone, NEC .....	Other Crushed and Broken Stone Mining or Quarrying (pt).
1442 .....	Construction Sand and Gravel .....	Construction Sand and Gravel Mining.
1446 .....	Industrial Sand .....	Industrial Sand Mining.
1455 .....	Kaolin and Ball Clay .....	Kaolin and Ball Clay Mining.
1459 .....	Clay, Ceramic, and Refractory Minerals, NEC .....	Clay, Ceramic, and Refractory Mineral Mining.
1474 .....	Potash, Soda, and Borate Minerals .....	Potash, Soda, and Borate Mineral Mining.
1475 .....	Phosphate Rock .....	Phosphate Rock Mining.
1479 .....	Chemical and Fertilizer Mineral Mining, NEC .....	Other Chemical and Fertilizer Mineral Mining.
1481 .....	Non-Metallic Mineral Services, Except Fuels .....	Support Activities for Non-Metallic Minerals, Except Fuels.
1499 .....	Miscellaneous Non-Metallic Minerals, Except Fuels	
	Bituminous Limestone and Bituminous Sandstone	Other Crushed and Broken Stone Mining or Quarrying (pt).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Except Bituminous Limestone and Bituminous Sandstone.	All Other Non-Metallic Mineral Mining.

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

*Description of Changes to the U.S. System*

There were no new industries added to the 1997 industry structure for this industry sector.

Oil and Gas Extraction—All oil and gas field services (1987 SIC's 1381, 1382, 1389) were transferred to the new 1997 subsector Services Incidental to Mining. There were no changes in the existing 1987 industries.

Coal Mining—1987 SIC 1241, Coal Mining Services, was transferred to the new 1997 subsector Services Incidental to Mining. There were no changes in the existing 1987 industries.

Metal Ore Mining—1987 SIC 1061, Ferroalloy Ores, Except Vanadium, has been split into two new industries, Copper and Nickel Mining and Other Metal Ore Mining. 1987 SIC 1081, Metal Mining Services, was transferred to the 1997 subsector Services Incidental to Mining. There were no changes in the other existing 1987 industries.

Non-Metallic Mineral Mining and Quarrying—1987 SIC 1499, Miscellaneous Non-Metallic Minerals, except Fuels, has been split between Other Crushed and Broken Stone Quarrying and Mining (bituminous limestone and bituminous sandstone) and All Other Non-Metallic Mineral Mining (all other miscellaneous non-metallic minerals). 1987 SIC 1481, Non-Metallic Mineral Services, except Fuels, was transferred to the 1997 subsector Services Incidental to Mining. There were no changes in the other existing 1987 industries.

Support Activities for Mining—This new subsector was created to include all incidental mining services. No new industries were created within this subsector; however, six existing industries were transferred out of the 1987 SIC industry groups based upon the mineral/ore mined into this subsector.

The number of Mining Industries decreased from 31 in 1987 to 30 in 1997. For time series linkage 30 of the 31 1987 industries are comparable within three percent of the 1997 industries.

Part XVI—Proposed New Industry Structure for Paper Manufacturing

*Section A—NAICS Structure*

North American Industry Classification System

(NAICS)

Agreement Number 27

This document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries: Paper Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

- XX Paper Manufacturing
- XXX Pulp, Paper, and Paperboard Mills
- XXXX Pulp Mills
- XXXX Paper Mills
- XXXX Paperboard Mills
- XXX Converted Paper Product Manufacturing
- XXXX Paperboard Container Manufacturing
- XXXX Paper Bag and Coated and Treated Paper Manufacturing
- XXXX Stationery Product Manufacturing
- XXXX Other Converted Paper Product Manufacturing

Attachment 2—North American Industry Classification System

Draft Classification for:

Paper Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsector, Paper Manufacturing. This subsector is further subdivided into two industry groups and seven industries. The subsector will be part of the Manufacturing sector of the classification.

*A General Outline*

The Paper Manufacturing industries produce pulp, paper and converted paper products. The manufacture of these products is grouped together because they constitute a series of vertically connected processes. More than one is often carried out in a single establishment. There are essentially three activities. The manufacture of pulp involves separating the cellulose fibers from other impurities in wood or used paper. The manufacture of paper involves matting these fibers into a sheet. Converted paper products are produced from paper and other materials by various cutting and shaping techniques.

The Paper Manufacturing subsector is subdivided into two industry groups, the first for the manufacture of pulp and paper and the second for the manufacture of converted paper products. Paper making is treated as the core activity of the subsector. Therefore, any establishment that makes paper (including paperboard), either alone or in combination with pulp manufacture or paper converting, is classified as a Paper or Paperboard Mill.

Establishments that make pulp but no paper are classified as Pulp Mills. Pulp Mills, Paper Mills and Paperboard Mills comprise the first industry group.

Establishments that make products from purchased paper and other materials make up the second industry group, Converted Paper Product Manufacturing. This general activity is then subdivided based, for the most part, on process distinctions. Paperboard Container Manufacturing

uses corrugating and cutting machinery to form paperboard into containers. Paper Bag and Coated and Treated Paper Manufacturing establishments cut and coat paper. Stationery Product Manufacturing establishments produce a variety of paper products used for writing, filing and similar applications. Other Converted Paper Product Manufacturing includes in particular the conversion of sanitary paper stock into such things as tissue paper and disposable diapers.

An important process used in the Paper Bag and Coated and Treated Paper Manufacturing industry is lamination, often combined with coating. Lamination and coating produces a composite material with improved properties of strength, impermeability and so on. The laminated materials may be paper, metal foil or plastic film. While paper is often one of the components, it is not always. However, lamination of plastic film to plastic film is classified in Rubber and Plastic Product Manufacturing because establishments that do this often first produce the film. The same situation holds with respect to bags. The manufacture of bags from plastic only, whether or not laminated, is classified in Rubber and Plastic Product Manufacturing, but all other bag manufacturing is classified in this industry.

#### *Limitations and Constraints of the Classification*

In the Paper Manufacturing industry, most activities that were identified in one country exist in the others. However, often an activity is not economically significant to the same degree in all three countries. For example, a relatively broad NAICS industry was created for Paper Mills, because the possible subdivisions are small in Mexico.

An operating rule has therefore been adopted for this industry subsector that the NAICS industries must be economically significant and publishable in all three countries. Each country will publish additional categories that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

#### *Relationship to ISIC*

Most 4-digit NAICS industries in this subsector are contained in Division 21,

Manufacture of Paper and Paper Products, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Four of the seven NAICS 4-digit industries in this subsector are contained entirely in this Division. There are, however, some differences between the two systems.

NAICS includes the manufacture of some products that are made from non-paper materials, such as multi-web plastic bags, in Paper Bag and Coated and Treated Paper Manufacturing, because the production processes are similar regardless of the material. ISIC classifies these articles according to their principal component material.

The other differences with ISIC are minor, but they do result in the following NAICS industries not being entirely contained within ISIC Division 21. Paper Mills in NAICS includes the manufacture of saturated papers, if the paper is made in the same establishment. ISIC treats this activity in manufacture of Non-Metallic Mineral Products. It is a minor difference. Other Converted Paper Product Manufacturing includes some minor activities, such as the manufacture of paper novelties, that are classified elsewhere in ISIC.

#### *Some Changes to the National Classifications*

For Canada, the Paper Manufacturing subsector is largely the same as the current Canadian classification's Paper and Allied Products Industries major group. There are two major differences. The Canadian classification includes the manufacture of building board in Paper Manufacturing, whereas NAICS includes it in Wood Manufacturing, except Furniture because it is in fact made from wood fibers and not paper. The saturation of paper products with asphalt is classified in NAICS Petroleum and Coal Product Manufacturing, because the saturation process is more important to the activity than the material being saturated. The structure of this NAICS subsector is similar to that of the Canadian classification, but there is less detail.

For Mexico, the Paper Manufacturing subsector is largely the same as the current Mexican classification's Manufacture of Pulp, Paper and Paper Products. The main difference is the classification of some sanitary products, such as disposable paper diapers, in Textile Products. The structure and amount of detail of this NAICS subsector is similar to that of the corresponding area of the Mexican classification.

For the United States, there is little difference between the Paper

Manufacturing subsector of NAICS and the current Paper and Allied Products Major Group. Converted foil containers are included in the NAICS subsector; they are classified in Metal Fabricating in the 1987 SIC.

#### *Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept. Pulp and paper manufacturing are much more capital intensive operations than paper converting, and the material inputs are different.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries and service industries. The industrial sector in question is relatively mature and generally produces goods. At the product level, there are numerous developments, such as the use of recycled paper in pulp making; however, these do not form the basis of establishment organization and hence of industries. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The detail (4-digit) level and structure of the classification are balanced in size. This enhances the classification's suitability for sampling, data-publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they have been minimized. The statistical agencies can develop statistical "links" to enable the re-tabulation of time series on the new NAICS classification structure.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

#### *Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XVI, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than

is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national

detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XVI of this

notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Paper Manufacturing:			
XXX .....	Pulp, Paper and Paperboard Mills:			
XXXX ...	Pulp Mills .....	R	*2611	Pulp Mills (pulp producing mills only).
XXXX ...	Paper Mills:			
XXXXX	Paper Mills, except Newsprint Mills .....	R	*2611	Pulp Mills (pulp mills producing paper).
			*2621	Paper Mills (pt) (except newsprint mills).
XXXXX	Newsprint Mills .....	N	*2621	Paper Mills (pt) (newsprint mills).
XXXX ...	Paperboard Mills .....	E	*2631	Paperboard Mills.
XXX .....	Converted Paper Product Manufacturing:			
XXXX ...	Paperboard Container Manufacturing:			
XXXXX	Setup Paperboard Box Manufacturing .....	E	2652	Setup Paperboard Boxes.
XXXXX	Corrugated and Solid Fiber Box Manufacturing.	E	2653	Corrugated and Solid Fiber Boxes.
XXXXX	Fiber Can, Tube, Drum, and Similar Product.	E	2655	Fiber Cans, Tubes, Drums, and Similar Products.
XXXXX	Manufacturing:			
	Non-Folding Sanitary Food Container Manufacturing.	R	2656	Sanitary Food Containers, Except Folding.
			*2679	Converted Paper and Paperboard Products, NEC (egg cartons and other containers from purchased paper).
XXXXX	Folding Paperboard Box Manufacturing .....	E	2657	Folding Paperboard Boxes, Including Sanitary.
XXXX ...	Paper Bag and Coated and Treated Paper Manufacturing:			
XXXXX	Coated and Laminated Packaging Paper and Plastic Film Manufacturing.	R	*2671	Packaging Paper and Plastics Film, Coated and Laminated (single-web paper, paper multiweb laminated rolls and sheets for packaging uses).
XXXXX	Coated and Laminated Paper Manufacturing.	R	2672	Coated and Laminated Paper, NEC.
			*2679	Converted Paper and Paperboard Products, NEC (wallpaper and gift wrap paper).
XXXXX	Plastic, Foil, and Coated Paper Bag Manufacturing.	R	*2673	Plastics, Foil, and Coated Paper Bags (coated or multiweb laminated bags).
XXXXX	Uncoated Paper and Multiwall Bag Manufacturing.	E	2674	Uncoated Paper and Multiwall Bags.
XXXXX	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.	N	*3497	Metal Foil and Leaf (laminated aluminum foil rolls and sheets for flexible packaging uses).
XXXX ...	Stationery Product Manufacturing:			
XXXXX	Die-Cut Paper and Paperboard Office Supply Manufacturing.	N	*2675	Die-Cut Paper and Paperboard and Cardboard (file folders, tabulating cards, and other paper and paperboard office supplies)
			*2679	Converted Paper and Paperboard Products, NEC (paper supplies for business machines and other paper office supplies).
XXXXX	Envelope Manufacturing .....	E	2677	Envelopes.
XXXXX	Stationery, Tablet, and Related Product Manufacturing.	E	2678	Stationery, Tablets, and Related Products.
XXXX ...	Other Converted Paper Product Manufacturing:			
XXXXX	Surface-Coated Paperboard Manufacturing	N	*2675	Die-Cut Paper and Paperboard and Cardboard (pasted, lined, laminated, or surface-coated paperboard).
XXXXX	Sanitary Paper Product Manufacturing .....	E	2676	Sanitary Paper Products.
XXXXX	Other Converted Paper and Paperboard Product Manufacturing.	R	*2675	Die-Cut Paper and Paperboard and Cardboard (die-cut paper and paperboard products, except office supplies).
			*2679	Converted Paper and Paperboard Products, NEC (Other converted paper and paperboard products such as paper filters, crepe paper, and laminated and tiled wallboard).

The definitions of status codes are as follows: E—existing industry; L—null industry for the U.S.; N—new industry R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC code	1997 U.S. description
2611	Pulp Mills: Pulp Producing Mills Only	Pulp Mills.
	Pulp and Paper Producing Mills	Paper Mills, except Newsprint Mills (pt).
2621@	Paper Mills: Except Newsprint Mills	Paper Mills, except Newsprint Mills (pt).
	Newsprint Mills	Newsprint Mills.
2631	Paperboard Mills	Paperboard Mills.
2652	Setup Paperboard Boxes	Setup Paperboard Box Manufacturing.
2653	Corrugated and Solid Fiber Boxes	Corrugated and Solid Fiber Box Manufacturing.
2655	Fiber Cans, Tubes, Drums, and Similar Products	Fiber Can, Tube, Drum, and Similar Product Manufacturing.
2656	Sanitary Food Containers, Except Folding	Non-Folding Sanitary Food Container Manufacturing (pt).
2657	Folding Paperboard Boxes, Including Sanitary	Folding Paperboard Box Manufacturing.
2671@	Packaging Paper and Plastics Film, Coated and Laminated Single-Web Paper, Paper Multiweb Laminated Rolls and Sheets for Packaging Uses.	Coated and Laminated Packaging Paper and Plastic Film Manufacturing.
	Plastic Packaging Film and Sheet	Unsupported Plastic Packaging Film and Sheet Manufacturing (Included in Rubber and Plastic Product Manufacturing subsector).
2672	Coated and Laminated Paper, NEC	Coated and Laminated Paper Manufacturing (pt).
2673@	Plastics, Foil, and Coated Paper Bags: Coated or Multiweb Laminated Bags	Coated and Laminated Paper Manufacturing (pt).
	Plastics Bags	Plastic, Foil, and Coated Paper Bag Manufacturing.
		Unsupported Plastic Bag Manufacturing (Included in Rubber and Plastic Product Manufacturing subsector).
2674	Uncoated Paper and Multiwall Bags	Uncoated Paper and Multiwall Bag Manufacturing.
2675@	Die-Cut Paper and Paperboard and Cardboard: File Folders, Tabulating Cards, and Other Paper and Paperboard Office Supplies.	Die-Cut Paper and Paperboard Office Supply Manufacturing (pt).
	Pasted, Lined, Laminated, or Surface-Coated Paperboard.	Surface-Coated Paperboard Manufacturing.
	Die-Cut Paper and Paperboard Products, Except Office Supplies.	Other Converted Paper and Paperboard Product Manufacturing (pt).
2676	Sanitary Paper Products	Sanitary Paper Product Manufacturing.
2677	Envelopes	Envelope Manufacturing.
2678	Stationery, Tablets, and Related Products	Stationery, Tablet, and Related Product Manufacturing.
2679@	Converted Paper and Paperboard Products, NEC: Egg Cartons and Other Containers from Purchased Paper.	Non-Folding Sanitary Food Container Manufacturing (pt).
	Wallpaper and Gift Wrap Paper	Coated and Laminated Paper Manufacturing (pt).
	Paper Supplies for Business Machines and Other Paper Office Supplies.	Die-Cut Paper and Paperboard Office Supply Manufacturing (pt).
	Other Converted Paper and Paperboard Products such as Paper Filters, Crepe Paper, and Laminated and Tiled Wallboard.	Other Converted Paper and Paperboard Product Manufacturing (pt).
3497@	Metal Foil and Leaf: Laminated Aluminum Foil Rolls and Sheets for Flexible Packaging Uses.	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.
	Foil and Foil Containers	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

#### Description of Changes to the U.S. System

Four new industries were added to the 1997 industry structure for this industry subsector. The industries created were:

Newsprint Mills from part of 1987 SIC 2621, Paper Mills, to achieve international comparability with Canada.

Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses from part of 1987 SIC 3497, Metal Foil and Leaf, to achieve international comparability, and because the

production processes are similar, regardless of the material used. This is the lamination, not creation of foil. Canada has this in CSIC 27, Paper and Allied Products.

Die-Cut Paper and Paperboard Office Supply Manufacturing from part of 1987 SIC 2675, Die-Cut Paper and Paperboard and Cardboard, and 1987 SIC 2679, Converted Paper and Paperboard Products, NEC. These two 1987 SIC industries (SIC 2675 and SIC 2679) were split and recombined in order to achieve international comparability with Canada and Mexico; as a result of this split, it

was possible for the U.S. to form this new industry, which is justified on the production-oriented criterion and has the effect of reducing the size of an "NEC" category in the 1987 SIC.

Surface-Coated Paperboard Manufacturing from part of 1987 SIC 2675, Die-Cut Paper and Paperboard and Cardboard, to achieve international comparability.

Two activities were transferred out of 1987 Major Group 26, Paper and Allied Products, into the 1997 NAICS Rubber and Plastic Product Manufacturing

subsector, because of similarities of production process. These were:

Plastic packaging film and sheet from 1987 SIC 2671, Packaging Paper and Plastics Film, Coated and laminated plastic bags from 1987 SIC 2673, Plastics, Foil, and Coated Paper Bags.

Also, several activities were transferred within the Paper Manufacturing subsector. The number of paper manufacturing industries increased from 17 in 1987 to 20 in 1997. For time series linkage, 13 of the 17 1987 industries are comparable within three percent of the 1997 industries.

Part XVII—Proposed New Industry Structure for Nonmetallic Mineral Product Manufacturing

*Section A—NAICS Structure*

North American Industry Classification System (NAICS)

Agreement Number 28

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Nonmetallic Mineral Product Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

- XX Nonmetallic Mineral Product Manufacturing
- XXX Clay Product and Refractories Manufacturing
- XXXX Pottery, Ceramics, and Plumbing Fixture Manufacturing

- XXXX Clay Building Material and Refractories Manufacturing
- XXX Glass, Glass Product and Glass Container Manufacturing
- XXXX Glass and Glass Product Manufacturing
- XXXX Glass Container Manufacturing
- XXX Cement and Concrete Product Manufacturing
- XXXX Hydraulic Cement Manufacturing
- XXXX Ready-Mix Concrete Manufacturing
- XXXX Concrete Pipe, Brick, and Block Manufacturing
- XXXX Other Precast Concrete Product Manufacturing
- XXX Lime, Gypsum and Gypsum Product Manufacturing
- XXXX Lime Manufacturing
- XXXX Gypsum and Gypsum Product Manufacturing
- XXX Miscellaneous Nonmetallic Mineral Product Manufacturing
- XXXX Abrasive Product Manufacturing
- XXXX Other Miscellaneous Nonmetallic Mineral Product Manufacturing

Attachment 2—North American Industry Classification System

Draft Classification for: Nonmetallic Mineral Product Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsector Nonmetallic Mineral Product Manufacturing. The subsector is sub-divided into five industry groups and twelve industries. This subsector will be part of the Manufacturing sector of the classification.

*A General Outline*

The Nonmetallic Mineral Product Manufacturing industries produce such products as bricks, refractories, and ceramic products, and glass and glass products, such as plate glass, fiberglass and containers. Also included are cement and concrete products, lime, gypsum and other nonmetallic mineral products, including abrasive products, cut stone and mineral wool. The products are used in a wide range of activities from construction and heavy and light manufacturing to articles for personal consumption.

Processes used in the Nonmetallic Mineral Product Manufacturing industries include grinding, mixing, cutting, shaping, and honing sand, stone, ceramic, and other nonmetallic raw material inputs. Heat often is used in the process, and chemicals are frequently mixed to change the composition, purity, and chemical properties of the intended product. For example, glass is produced by heating silica sand to the melting point (sometimes combined with cullet or

recycled glass) and then drawn or blow molded to the desired shape or thickness. Refractory materials are heated and then formed to brick or other shapes for use in industrial applications.

*Limitations and Constraints of the Classification*

A few factors constrained the structure and detail of the classification in the area under consideration. Most of the activities that take place in one country exist in the others. However, often an activity is not economically significant to the same degree in all countries. Another constraint is the small number of producers in some countries. For example, separate NAICS industries could not be created for refractories or concrete pipe because of confidentiality problems in Canada. Similar limitations prevent creation of more detailed industries for glass and glass products, mineral wool and other nonmetallic minerals products. Each country will publish additional categories that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

*Relationship to ISIC*

All NAICS 4-digit industries in this subsector are contained in Division 26, Manufacture of Nonmetallic Mineral Products, of the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. This means that one can combine the industries of this NAICS subsector and be comparable to ISIC Division 26.

*Some Changes to the National Classifications*

For Canada, the production of glass yarn was moved from CSIC 1811, Man-Made Fiber and Filament Yarn, and mirrors from CSIC 3259, Other Motor Vehicle Accessories and Parts. Other changes consist of a restructuring of the existing Canadian subsector for Nonmetallic Minerals Product Manufacturing. For example, the production of glass products was separated for establishments producing glass, and those that purchase glass, then manufacture glass products.

For Mexico, all changes are within the existing CMAP class for Nonmetallic Minerals. Changes include the separation of glass fibers (in primary

glass production in NAICS) from glass insulation; moving the production of dead burned dolomite from the refractory industry to the NAICS Lime Manufacturing industry; separating decorative glass from glass containers; and moving articles made from plaster of Paris to the Other Nonmetallic Mineral Product Manufacturing industry.

For the United States, little change was made to this subsector. The most important change was the elimination of the all but non-existent asbestos product industry. Two remaining products are made by establishments formerly classified in this industry: (1) Brake linings were moved to the brake parts industry in the Transportation Equipment Manufacturing subsector and (2) gaskets were moved to the Other Nonmetallic Mineral Product Manufacturing industry. Other changes within the subsector were to move dry mix cement from the concrete products industry, to move steel wool from the abrasives industry, to move some plaster work into the NAICS industry for Gypsum and Gypsum Product Manufacturing, and to create new industries for cast concrete products.

*Achievement of Objectives*

The classification meets the objectives for the North American Industry

Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods, and has employed relatively stable technology. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The detail (4-digit) level and structures of the classification are balanced in size. This enhances the classification's suitability for sampling, data publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they have been minimized.

The classification achieves comparability for the three participating countries. Based on existing data, all

three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XVII, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XVII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Nonmetallic Mineral Product Manufacturing:			
XXX .....	Clay Product and Refractories Manufacturing			
XXXX ...	Pottery, Ceramics and Plumbing Fixture Manufacturing:			
XXXXX	Vitreous China Plumbing Fixture and China and Earthenware Fitting and Bathroom Accessory Manufacturing.	E	3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.
XXXXX	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing.	N	3262	Vitreous China Table and Kitchen Articles.
			3263	Fine Earthenware (Whiteware) Table and Kitchen Articles.
			3269	Pottery Products, NEC.
XXXXX	Porcelain Electrical Supply Manufacturing	E	3264	Porcelain Electrical Supplies.
XXXX ...	Clay Building Material and Refractories Manufacturing:			
XXXXX	Brick and Structural Clay Tile Manufacturing.	E	3251	Brick and Structural Clay Tile.
XXXXX	Ceramic Wall and Floor Tile Manufacturing	E	3253	Ceramic Wall and Floor Tile.
XXXXX	Other Structural Clay Product Manufacturing.	E	3259	Structural Clay Products, NEC.
XXXXX	Clay Refractory Manufacturing .....	E	3255	Clay Refractories.
XXXXX	Nonclay Refractory Manufacturing .....	E	3297	Nonclay Refractories.
XXX .....	Glass, Glass Product and Glass Container Manufacturing:			
XXXX ...	Glass and Glass Product Manufacturing:			
XXXXX	Flat Glass Manufacturing .....	E	3211	Flat Glass.
XXXXX	Other Pressed and Blown Glass and Glassware Manufacturing.	E	3229	Pressed and Blown Glass and Glassware, NEC.
XXXXX	Glass Product Manufacturing Made of Purchased Glass.	E	3231	Glass Products, Made of Purchased Glass.
XXXX ...	Glass Container Manufacturing .....	E	3221	Glass Containers.
XXX .....	Cement and Concrete Product Manufacturing:			

TABLE 1—Continued

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Hydraulic Cement Manufacturing .....	E	3241	Cement, Hydraulic.
XXXX ...	Ready-Mix Concrete Manufacturing .....	E	3273	Ready-Mixed Concrete.
XXXX ...	Concrete Pipe, Brick and Block Manufacturing:			
XXXXX	Concrete Block and Brick Manufacturing ....	E	3271	Concrete Block and Brick.
XXXXX	Concrete Pipe Manufacturing .....	N	*3272	Concrete Products, Except Block and Brick (concrete pipe).
XXXX ...	Other Precast Concrete Product Manufacturing	N	*3272	Concrete Products, Except Block and Brick (concrete products, except dry mix concrete, pipe, bricks and blocks).
XXX .....	Lime, Gypsum and Gypsum Product Manufacturing:			
XXXX ...	Lime Manufacturing .....	E	3274	Lime.
XXXX ...	Gypsum and Gypsum Product Manufacturing	R	3275 *3299	Gypsum Products. Nonmetallic Mineral Products, NEC (moldings, ornamental and architectural plaster work).
XXX .....	Miscellaneous Nonmetallic Mineral Product Manufacturing:			
XXXX ...	Abrasive Product Manufacturing .....	R	*3291	Abrasive Products (except metallic scouring sponges and scouring pads).
XXXX ...	Other Miscellaneous Nonmetallic Mineral Product Manufacturing:			
XXXXX	Cut Stone and Stone Product Manufacturing.	E	3281	Cut Stone and Stone Products.
XXXXX	Ground or Treated Mineral and Earth Manufacturing.	E	3295	Minerals and Earths, Ground or Otherwise Treated.
XXXXX	Mineral Wool Manufacturing .....	E	3296	Mineral Wool.
XXXXX	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.	R	*3272 *3292 *3299	Concrete Products, Except Block and Brick (dry mixture concrete). Asbestos Products (except brake pads and linings). Nonmetallic Mineral Products, NEC (except moldings, ornamental and architectural plaster work).

The definitions of status codes are as follows: E—existing industry; L—null industry for the U.S.; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
3211 .....	Flat Glass .....	Flat Glass Manufacturing.
3221 .....	Glass Containers .....	Glass Container Manufacturing.
3229 .....	Pressed and Blown Glass and Glassware, NEC ...	Other Pressed and Blown Glass and Glassware Manufacturing.
3231 .....	Glass Products, Made of Purchased Glass .....	Glass Product Manufacturing Made of Purchased Glass.
3241 .....	Cement, Hydraulic .....	Hydraulic Cement Manufacturing.
3251 .....	Brick and Structural Clay Tile .....	Brick and Structural Clay Tile Manufacturing.
3253 .....	Ceramic Wall and Floor Tile .....	Ceramic Wall and Floor Tile Manufacturing.
3255 .....	Clay Refractories .....	Clay Refractory Manufacturing.
3259 .....	Structural Clay Products, NEC .....	Other Structural Clay Product Manufacturing.
3261 .....	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.	Vitreous China Plumbing Fixture and China and Earthenware Fitting and Bathroom Accessory Manufacturing.
3262 .....	Vitreous China Table and Kitchen Articles .....	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing (pt).
3263 .....	Fine Earthenware (Whiteware) Table and Kitchen Articles.	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing (pt).
3264 .....	Porcelain Electrical Supplies .....	Porcelain Electrical Supply Manufacturing.
3269 .....	Pottery Products, NEC .....	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing (pt).
3271 .....	Concrete Block and Brick .....	Concrete Block and Brick Manufacturing.
3272@ .....	Concrete Products, Except Block and Brick: Dry Mixture Concrete .....	Other Miscellaneous Nonmetallic Mineral Product Manufacturing (pt).
	Concrete Pipes .....	Concrete Pipe Manufacturing.
	Other Concrete Products .....	Other Precast Concrete Product Manufacturing.
3273 .....	Ready-Mixed Concrete .....	Ready-Mix Concrete Manufacturing.
3274 .....	Lime .....	Lime Manufacturing.
3275 .....	Gypsum Products .....	Gypsum and Gypsum Product Manufacturing (pt).
3281 .....	Cut Stone and Stone Products .....	Cut Stone and Stone Product Manufacturing.
3291 .....	Abrasive Products: Metallic Scouring Sponges and Scouring Pads	Other Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Other Abrasive Products .....	Abrasive Product Manufacturing.
3292@ .....	Asbestos Products	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Asbestos Brake Linings and Pads .....	Motor Vehicle Brake System Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Other Asbestos Products .....	Other Miscellaneous Nonmetallic Mineral Product Manufacturing.
3295 .....	Minerals and Earths, Ground or Otherwise Treated.	Ground or Treated Mineral and Earth Manufacturing.
3296 .....	Mineral Wool .....	Mineral Wool Manufacturing.
3297 .....	Nonclay Refractories .....	Nonclay Refractory Manufacturing.
3299@ .....	Nonmetallic Mineral Products, NEC.	
	Moldings, Ornamental and Architectural Plaster Work.	Gypsum and Gypsum Product Manufacturing (pt).
	Other Nonmetallic Mineral Products .....	Other Miscellaneous Nonmetallic Mineral Product Manufacturing (pt).

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

*Description of Changes to the U.S. System*

1987 SIC 3272, Concrete Products, Except Block and Brick, was split into three new industries in the 1997 structure for this industry subsector as follows:

Concrete Pipe Manufacturing for international comparability.

Other Precast Concrete Product Manufacturing.

Other Miscellaneous Nonmetallic Mineral Product Manufacturing.

Two activities were transferred out of 1987 Major Group 32, Stone, Clay, Glass and Concrete Products:

Metallic scouring sponges and scouring pads from 1987 SIC 3291, Abrasive Products, were moved into the 1997 NAICS Fabricated Metal Product Manufacturing subsector to achieve comparability with Canada and Mexico and to better meet production concept criteria.

Asbestos brake linings and pads from 1987 SIC Code 3292, Asbestos Products, were moved into the 1997 NAICS Transportation Equipment Manufacturing subsector to match Canada and Mexico, and because the production of brake linings from asbestos and non-asbestos materials are similar processes.

1987 SIC 3262, Vitreous China Table and Kitchen Articles; 1987 SIC 3263, Fine Earthenware (Whiteware) and Kitchen Articles; and 1987 SIC 3269, Pottery Products, Not Elsewhere Classified, were combined into the new Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing national industry. The combination was made because the 1987 SIC's were too small to warrant separation. The new national industry, however, shows strong production concept characteristics.

Also, some activities were transferred within the Nonmetallic Mineral Product

Manufacturing subsector. The number of nonmetallic mineral product manufacturing industries decreased by two to 24, from the 1987 SIC. For time series linkage, 23 of the 26 1987 industries are comparable within three percent of the 1997 industries.

Part XVIII—Proposed New Industry Structure for Primary Metal Manufacturing

*Section A—NAICS Structure*

North American Industry Classification System (NAICS)

Agreement Number 29

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industry:

Primary Metal Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95

Accepted	Signature	Date
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

- XX Primary Metal Manufacturing
- XXX Iron and Steel Mills and Ferroalloy Manufacturing
- XXXX Iron and Steel Mills and Ferroalloy Manufacturing
- XXX Steel Products Made from Purchased Steel
- XXXX Iron and Steel Pipe and Tube Manufacturing from Purchased Steel
- XXXX Rolling and Drawing of Purchased Steel
- XXX Smelting, Refining, Rolling, Drawing, and Extruding of Aluminum
- XXXX Smelting, Refining, Rolling, Drawing and Extruding of Aluminum
- XXX Smelting, Refining, Rolling, Drawing, and Extruding of Other Nonferrous Metal
- XXXX Smelting and Refining of Nonferrous Metal Except Aluminum
- XXXX Rolling, Drawing and Extruding Copper
- XXXX Rolling, Drawing and Extruding of Nonferrous Metal Except Copper or Aluminum
- XXX Metal Castings
- XXXX Ferrous Castings
- XXXX Nonferrous Castings

Attachment 2—North American Industry Classification System

Draft Classification for: Primary Metal Manufacturing

Representatives of the statistical agencies of Canada, Mexico and the United States agree to a draft industry classification for these industries.

The draft classification provides for the subsector, Primary Metal Manufacturing. This subsector is divided into five industry groups and nine industries. The subsector is part of the Manufacturing sector.

*A General Outline*

The Primary Metal Manufacturing industries are well defined and include

the production of steel and steel products; the smelting, refining, and rolling of nonferrous metals; and the production of metal castings. The processes employed in these industries include the use of blast furnaces to produce iron, and the use of basic oxygen and other steel making furnaces to produce steel. Rolling, drawing, and extruding processes to produce such products as pipe and tube, wire, and sheet are also used in this subsector. Similar processes are used to produce the nonferrous metal and metal products also included in this subsector.

A structure along the lines of function or process (refining and smelting, or rolling, drawing, and extruding) for all metals was considered for this subsector. It was not adopted, because: (1) The processes, although they have some similarity, are clearly distinct for steel versus nonferrous metals. Within nonferrous metal manufacturing, the processes are also different. For example, the primary reduction of aluminum involves the massive use of electricity, where the primary reduction of copper is accomplished by using heat and chemicals; (2) establishments that roll, draw or extrude are highly specialized by type of nonferrous metal; (3) due to the combination of process activities in aluminum manufacture in Mexico, a separate trilateral NAICS industry could not be created that would split primary aluminum from aluminum, rolling, drawing, and extrusion. For this reason, a separate NAICS 3-digit and 4-digit industry group and industry was created for Smelting, Refining, Rolling, Drawing and Extruding Aluminum, and a 3-digit NAICS group, Smelting, Refining, Rolling, Drawing, and Extruding of Other Nonferrous Metal, that parallels the 3-digit structure for Aluminum. The "Other" nonferrous group, however, contains 4-digit levels for process industries for copper and for nonferrous metals, except aluminum and copper.

The Iron and Steel Mills and Ferroalloy Manufacturing industry group comprises establishments that produce steel products, beginning with the treatment of iron ore, using furnaces or direct reduction techniques and establishments that begin their process with the purchase of iron, pig iron, or scrap. Establishments that produce ferroalloys are also included in this subsector. Establishments classified in the NAICS industry Rolling and Drawing of Purchased Steel produce sheet and plate, pipe and tube, and wire drawn from purchased steel. The subsector also includes establishments that produce wire rods, bars, plates,

sheet, and wire from purchased primary shapes.

The Smelting, Refining, Rolling, Drawing, and Extruding of Aluminum and Other Nonferrous Metal industry groups include establishments that produce primary nonferrous metals and those that produce nonferrous metal products such as sheet, foil, shapes, etc.

#### *Limitations and Constraints of the Classification*

In the Primary Metal Manufacturing subsector, most activities that were identified in one country exist in the others. However, the combination of activities within establishments varied across the three countries resulting in higher aggregations of some NAICS industries. For example, broad NAICS classes were created for nonferrous castings, due to production overlap in Mexico. Similarly, often an activity is not economically significant to the same degree in all countries. For example, a separate NAICS industry cannot be created for the smelting and refining of copper, because the resulting industries are too small in Canada.

Each country may publish additional national industries that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant. For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

#### *Relationship to ISIC*

Each of the NAICS industries created in this subsector can be assigned without any subdivision to Division 27, Manufacture of Basic Metals, of the current International Standard Industrial Classification of all Economic Activities (ISIC Revision 3) of the United Nations. The movement of steel and nonferrous wire drawing (CSIC's 3052 & 3381), and precious metal refining (CSIC 3922), for Canada; of molding of metal castings (CMAP 381100) for Mexico; and of the production of alumina (1987 SIC 2819 pt), for the United States are all changes that enhance the NAICS/ISIC relationship. This means that one can combine the industries of this subsector and be comparable to ISIC Division 27.

#### *Some Changes to the National Classifications*

For Canada, an important improvement for both production precepts and for international comparability was the movement of

ferrous and nonferrous wire drawing to this subsector from other areas. Smelting and refining of precious metals was moved for the same reasons. Other changes for Canada were internal to the existing subsector structure. These changes generally involved realignment of industries to achieve three country comparability, as well as to better meet the production process principle. Some examples are the split of the Other Primary Steel industry to match the NAICS industries for Iron and Steel Mills and Ferroalloy Manufacturing and Rolling and Drawing of Purchased Steel, and the separation of various types of castings from other ferrous or nonferrous manufacturing to match agreed upon NAICS classes.

For Mexico, the only structural modification was to move the production of ferrous and nonferrous castings from the current CMAP classes for machinery. This change allows for three country comparability, and improves the production definition of this subsector. Other changes are internal to the existing Mexican structure, but like those made for Canada above, they were made to both achieve an international NAICS level, while at the same time, they are sound production industry moves. An example is splitting the production of rods and structural shapes, pipe and tube and wire made in a steel making facility from those made from purchased primary steel shapes.

In the United States, a significant structural change was to move the production of alumina from the Chemical Product Manufacturing subsector. This change both matches the Canadian and Mexican treatment, and groups the basic reduction of this ore with metal manufacturing rather than in a chemical processing group. Other changes entailed the realignment of internal nonferrous smelting, rolling and drawing, mostly to achieve three country compatibility.

#### *Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System. It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All

countries agree on the definitions of industries.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods and employs relatively stable technology. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are

economically significant. The classification is suitable for sampling, data-publishing, and other aspects of survey operations.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XIX, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three

country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XIX of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Primary Metal Manufacturing:			
XXX .....	Iron and Steel Mills and Ferroalloy Manufacturing:			
XXXX ...	Iron and Steel Mills and Ferroalloy Manufacturing:			
XXXXX	Iron and Steel Mills .....	N	3312	Steel Works, Blast Furnaces, and Rolling Mills (except stand-alone cake ovens).
			*3399	Primary Metal Products, NEC (ferrous powder, paste, flakes, etc.).
XXXXX	Electrometallurgical Ferroalloy Product Manufacturing.	R	*3313	Electrometallurgical Products, except Steel (ferroalloys).
XXX .....	Steel Products Made from Purchased Steel:			
XXXX ...	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel.	E	3317	Steel Pipe and Tubes.
XXXX ...	Rolling and Drawing of Purchased Steel:			
XXXXX	Cold-Rolled Steel Shape Manufacturing .....	E	3316	Cold-Rolled Steel Sheet, Strip, and Bars.
XXXXX	Steel Wire Drawing .....	R	*3315	Steel Wire Drawing and Steel Nails and Spikes (steel wire drawing).
XXX .....	Smelting, Refining, Rolling, Drawing and Extruding of Aluminum:			
XXXX ...	Smelting, Refining, Rolling, Drawing and Extruding of Aluminum:			
XXXXX	Primary Refining of Aluminum .....	E	3334	Primary Production of Aluminum.
XXXXX	Secondary Smelting of Aluminum .....	N	*3341	Secondary Smelting and Refining of Nonferrous Metals (aluminum).
			*3399	Primary Metal Products, NEC (aluminum powder, paste, flakes, etc.)
XXXXX	Alumina Manufacturing .....	N	*2819	Industrial Inorganic Chemicals, NEC (alumina).
XXXXX	Aluminum Sheet, Plate, and Foil Manufacturing.	E	3353	Aluminum Sheet, Plate, and Foil.
XXXXX	Aluminum Extruded Product Manufacturing	E	3354	Aluminum Extruded Products.
XXXXX	Other Aluminum Rolling and Drawing	R	3355	Aluminum Rolling and Drawing, NEC.
			*3357	Drawing and Insulating of Nonferrous Wire (aluminum wire drawing).
XXX .....	Smelting, Refining, Rolling, Drawing, and Extruding of Other Nonferrous Metal:			
XXXX ...	Smelting and Refining of Nonferrous Metal Except Aluminum:			
XXXXX	Primary Smelting and Refining of Copper	E	3331	Primary Smelting and Refining of Copper.
XXXXX	Primary Smelting and Refining of Nonferrous Metal, Except Copper and Aluminum.	E	3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.
XXXXX	Secondary Smelting and Refining of Nonferrous Metals.	R	*3313	Electrometallurgical Products, Except Steel (except ferrous alloys).
			*3341	Secondary Smelting and Refining of Nonferrous Metals (except aluminum).
			*3399	Primary Metal Products, NEC (nonferrous powders, flakes, paste, etc., except aluminum).
XXXX ...	Rolling, Drawing and Extruding Copper:			
XXXXX	Rolling, Drawing and Extruding Copper .....	R	3351	Rolling, Drawing, and Extruding of Copper.
XXXXX	Drawing of Copper Wire .....	N	*3357	Drawing and Insulating of Nonferrous Wire (copper wire drawing).

TABLE 1—Continued

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Rolling, Drawing, and Extruding of Nonferrous Metal Except Copper or Aluminum.	R	3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.
			3357*	Drawing and Insulating of Nonferrous Wire (wire drawing except copper or aluminum).
XXX .....	Metal Castings:			
XXXX ...	Ferrous Castings:			
XXXXX	Gray, Malleable, and Ductile Iron Foundries.	R	3321	Gray and Ductile Iron Foundries.
			3322	Malleable Iron Foundries.
XXXXX	Steel Investment Foundries .....	E	3324	Steel Investment Foundries.
XXXXX	Steel Foundries .....	E	3325	Steel Foundries, NEC.
XXXX ...	Nonferrous Castings:			
XXXXX	Aluminum Die-Castings .....	E	3363	Aluminum Die-Castings.
XXXXX	Nonferrous Die-Castings, Except Aluminum .....	E	3364	Nonferrous Die-Castings, Except Aluminum.
XXXXX	Aluminum Foundries .....	E	3365	Aluminum Foundries.
XXXXX	Copper Foundries .....	E	3366	Copper Foundries.
XXXXX	Nonferrous Foundries, Except Aluminum and Copper.	E	3369	Nonferrous Foundries, Except Aluminum and Copper.

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means “part of”. The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2819@ .....	Industrial Inorganic Chemicals, NEC: Alumina .....	Alumina Manufacturing (pt).
	Activated Carbon and Charcoal .....	Other Miscellaneous Chemical Preparation Manufacturing (pt) (Included in Chemical Product Manufacturing subsector).
	Inorganic Dyes .....	Inorganic Dyes and Pigments Manufacturing (pt) (Included in Chemical Product Manufacturing subsector).
	Other .....	Other Miscellaneous Inorganic Chemical Manufacturing (pt) (Included in Chemical Manufacturing subsector).
3312@ .....	Steel Works, Blast Furnaces (Including Coke Ovens),and Rolling Mills. Coke Ovens, not Integrated With Steel Mills	Iron and Steel Mills. Other Petroleum and Coal Product Manufacturing (pt) (Included in Petroleum and Coal Product Manufacturing subsector).
3313@ .....	Electrometallurgical Products, Except Steel: Ferroalloys .....	Electrometallurgical Ferroalloy Product Manufacturing.
	Nonferrous Alloys .....	Secondary Smelting and Refining of Nonferrous Metal (pt).
3315@ .....	Steel Wire Drawing and Steel Nails and Spikes: Steel Wire Drawing .....	Steel Wire Drawing.
	Nails, Spikes, Paper clips, Wire, .....	Miscellaneous Fabricated Wire Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Not Made in Wire Drawing Plants .....	
3316 .....	Cold-Rolled Steel Sheet, Strip, and Bars .....	Cold-Rolled Steel Shape Manufacturing.
3317 .....	Steel Pipe and Tubes .....	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel.
3321 .....	Gray and Ductile Iron Foundries .....	Gray, Malleable, and Ductile Iron Foundries (pt).
3322 .....	Malleable Iron Foundries .....	Gray Malleable and Ductile Iron Foundries (pt).
3324 .....	Steel Investment Foundries .....	Steel Investment Foundries.
3325 .....	Steel Foundries, NEC .....	Steel Foundries (pt).
3331 .....	Primary Smelting and Refining of Copper .....	Primary Smelting and Refining of Copper (pt).
3334 .....	Primary Production of Aluminum .....	Primary Refining of Aluminum.
3339 .....	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum (pt).
3341@ .....	Secondary Smelting and Refining of Nonferrous Metals: Aluminum .....	Secondary Smelting of Aluminum (pt).
	Except Aluminum .....	Secondary Smelting and Refining of Nonferrous Metals (pt).
3351 .....	Rolling, Drawing, and Extruding of Copper .....	Rolling, Drawing, and Extruding of Copper.
3353 .....	Aluminum Sheet, Plate, and Foil .....	Aluminum Sheet, Plate, and Foil Manufacturing.
3354 .....	Aluminum Extruded Products .....	Aluminum Extruded Product Manufacturing.
3355 .....	Aluminum Rolling and Drawing, NEC .....	Other Aluminum Rolling and Drawing, (pt).
3356 .....	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.	Rolling, Drawing, and Extruding of Nonferrous Metals Except Copper or Aluminum (pt).
3357@ .....	Drawing and Insulating of Nonferrous Wire:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Aluminum Wire Drawing .....	Other Aluminum Rolling and Drawing (pt).
	Copper Wire Drawing .....	Drawing of Copper Wire.
	Wire Drawing Except Copper or Aluminum. ....	Rolling, Drawing, and Extruding of Nonferrous Metals Except Copper or Aluminum (pt).
	Communication and Energy Wire—Insulating Only..	Communication and Energy Wire Manufacturing (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
3363 .....	Aluminum Die-Castings .....	Aluminum Die-Castings.
3364 .....	Nonferrous Die-Castings, Except Aluminum .....	Nonferrous Die-Castings, Except Aluminum.
3365 .....	Aluminum Foundries .....	Aluminum Foundries.
3366 .....	Copper Foundries .....	Copper Foundries.
3369 .....	Nonferrous Foundries, Except Aluminum and Copper.	Nonferrous Foundries, Except Aluminum and Copper.
3398 .....	Metal Heat Treating .....	Metal Heat Treating (Included in Fabricated Metal Product Manufacturing subsector).
3399@ .....	Primary Metal Products, NEC:	
	Ferrous Powder, Paste, Flakes, etc. ....	Steel Mills (pt).
	Aluminum Powder, Paste, Flakes, etc. ....	Secondary Smelting of Aluminum (pt).
	Other Nonferrous Powder, Paste, Flakes, etc. ...	Secondary Smelting and Refining of Nonferrous Metals (pt).
	Nonferrous Nails, Brads, Staples, etc. ....	Miscellaneous Fabricated Wire Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Laminated Steel .....	Electroplating, Plating, Polishing, Anodizing, and Coloring (pt) (Included in Fabricated Metal Product Manufacturing subsector).

The abbreviation "pt." means "part of", @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

#### Description of Changes to the U.S. System

A number of the changes listed in this section were made for reasons of international comparability. Where one or more of the three North American countries had different definitions of an industry classification, adjustments to the definitions in one or more countries were required. In constructing NAICS, the three countries agreed to move, where change was required to attain international comparability, in the direction of the country or countries whose existing classification definitions most closely corresponded to the production-oriented concept adopted for NAICS. Cases where the U.S. changed are listed below; other cases where Canada or Mexico moved toward the U.S. classification are not, of course, listed in this section.

Four new industries were added to the 1997 industry structure for this industry subsector. New industries were created for:

Iron and Steel Mills, from 1987 SIC 3312, Steel Works, Blast Furnaces, and Rolling Mills, and part of 1987 SIC 3399, Primary Metal Products, NEC, for comparability with Canada and Mexico, and because the production processes include direct reduction and other furnace processes similar to those used in manufacturing steel.

Secondary Smelting of Aluminum from part of 1987 SIC 3341, Secondary Smelting and Refining of Nonferrous

Metals, and part of 1987 SIC 3399, Primary Metal Products, NEC, because of specialized production processes involved, and for international comparability.

Alumina Manufacturing from part of 1987 SIC 2819, Industrial Inorganic Chemicals, in the 1987 Major Group 28, Chemicals and Allied Products, to achieve international comparability. Canada has this in CSIC 2951, Primary Production of Aluminum.

Drawing of Copper Wire from part of 1987 SIC 3357, Drawing and Insulating of Nonferrous Wire, for international comparability, and because it is a specialized production process.

One complete industry was transferred out of 1987 Major Group 33, Primary Metals.

Metal Heat Treating was transferred into the 1997 subsector Fabricated Metal Product Manufacturing. The move improves the production process classification for this activity.

Five activities were transferred out of 1987 Major Group 33, Primary Metals, and are described more fully in their new respective NAICS subsectors.

Nails, spikes, paper clips, and wire, not made in wire drawing plants, were transferred from 1987 SIC 3315, Steel Wiredrawing and Steel Nails and Spikes, into Miscellaneous Fabricated Wire Product Manufacturing in the 1997 subsector Fabricated Metal Product Manufacturing.

Communication and energy wire-insulating only, was transferred from

1987 SIC 3357, Drawing and Insulating of Nonferrous Wire, into Communication and Energy Wire Manufacturing in 1997 subsector Electrical Equipment, Appliance and Component Manufacturing.

Nonferrous nails, brads, staples, etc. were transferred from 1987 SIC 3399, Primary Metal Products, NEC, into Miscellaneous Fabricated Wire Product Manufacturing in the 1997 subsector Fabricated Metal Product Manufacturing.

Laminated steel was transferred from 1987 SIC 3399, Primary Metal Products, NEC, into Electroplating, Polishing, Anodizing, and Coloring in 1997 subsector Fabricated Metal Product Manufacturing.

Coke ovens, not operated with a blast furnace were transferred from part of 1987 SIC 3312, Blast Furnaces and Steel Mills, into Other Petroleum and Coal Product Manufacturing in the 1997 NAICS subsector, Petroleum and Coal Product Manufacturing.

Also, several activities were transferred within the subsector for Primary Metal Manufacturing. The number of primary metal industries remained the same between 1997 and 1987 at 26. For time series linkage, 20 of the 26 1987 industries are comparable within three percent of the 1997 industries.

Part XIX—Proposed New Industry Structure for Miscellaneous Manufacturing

Section A—NAICS Structure

North American Industry Classification System (NAICS) Agreement Number 30

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries: Miscellaneous Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries.

This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

- XX Miscellaneous Manufacturing
- XXX Medical Equipment and Supply Manufacturing
- XXXX Medical Equipment and Supply Manufacturing
- XXX Cotton Ginning
- XXXX Cotton Ginning
- XXX Other Miscellaneous Manufacturing
- XXXX Jewelry and Silverware Manufacturing
- XXXX Sporting and Athletic Good Manufacturing
- XXXX Doll, Toy, and Game Manufacturing
- XXXX Office Supply, Except Paper Manufacturing
- XXXX All Other Miscellaneous Manufacturing

Attachment 2—North American Industry Classification System

Draft Classification for: Miscellaneous Manufacturing  
Representatives of the statistical agencies of Canada, Mexico, and the

United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsector, Miscellaneous Manufacturing. This subsector contains three industry groups and seven industries. The subsector will be part of the Manufacturing sector of the classification.

A General Outline

The Miscellaneous Manufacturing industries produce a wide range of products that cannot be logically classified in other, specific subsectors in manufacturing. Products as diverse as medical equipment and supplies, ginned cotton, jewelry, sporting goods, toys and office supplies are produced by the industries in the subsector.

Because this subsector is an "other" grouping, the processes used vary significantly. For example, for cotton ginning, the separation of the seed from the cotton lint, differs significantly from the fabrication processes in making dolls or toys. Other processes used in this subsector include the melting and shaping of precious metals to make jewelry, and the bending, forming and assembly used in making medical products.

Limitations and Constraints of the Classification

In the Miscellaneous Manufacturing industries, most activities that were identified in one country exist in the others. However, often an activity is not economically significant to the same degree in all countries. In some instances, separate industries could not be created due to size constraints. For example, a separate industry for musical instruments was too small in Canada to support a separate NAICS industry. Each country will publish additional categories that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

Three of the seven NAICS industries created in this subsector are contained in a single division of the International Standard Industrial Classification of all Economic Activities (ISIC Revision 3) of the United Nations, without any subdivision. Two 4-digit NAICS industries in this subsector, Sporting and Athletic Good Manufacturing and Doll, Toy and Game Manufacturing, are

contained within ISIC Division 36, Miscellaneous Manufacturing, and the third, Cotton Ginning, is contained within ISIC Division 01, Agriculture, Hunting and Related Service Activities.

The following NAICS industries cannot be assigned to a single ISIC division without being sub-divided: Medical Equipment and Supply Manufacturing; Jewelry and Silverware Manufacturing; Office Supply, Except Paper, Manufacturing; and Other Miscellaneous Manufacturing. The Jewelry and Silverware industry would fall within a single ISIC division, except for watch jewels and watch bands.

Some Changes to the National Classifications

The most significant change for Canada are the activities that moved out of Miscellaneous Manufacturing and into Computer and Electronic Product Manufacturing. These are the manufacturing of navigational, measuring and control instruments. Another significant change is the creation of the Medical Equipment and Supply Manufacturing industry. This industry is created by combining activities from nine separate industries in six different major groups. Other industries that moved from the Miscellaneous Manufacturing subsector include the Sign and Display industry and the Floor Tile Linoleum and Coated Fabrics industry.

The creation of Medical Equipment and Supply Manufacturing industries is the most significant change for Mexico. For Mexico, this industry is created by combining activities from 14 separate industries in three subsectors. Another structural change for Mexico is the movement of cotton ginning from Basic Textile Manufacturing to Miscellaneous Manufacturing. The NAICS industry, Doll, Toy and Game Manufacturing, includes the manufacture of wood and plastic toys that the Mexican classification places in wood products and plastics products, respectively.

The most significant changes for the United States are two structural changes. The Medical Equipment and Supply Manufacturing industry group moves from Instruments and Related Products to Miscellaneous Manufacturing and cotton ginning, formerly in 1987 SIC Major Group, Agricultural Services, is moved to Miscellaneous Manufacturing. In addition, several activities moved out of miscellaneous manufacturing. Hard Surface Floor Covering was moved from Miscellaneous Manufacturing to Rubber and Plastic Product Manufacturing. Signs and Advertising Specialties was eliminated as a separate industry and

the activities moved to various industries.

*Achievement of Objectives*

At the industry level, the classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. Since this is the miscellaneous subsector, the hierarchical structure is not truly a production concept.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods and has employed relatively

stable technology. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The detail (4-digit) level and structure of the classification are balanced in size. This enhances the classification's suitability for sampling, data-publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they have been minimized.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number

of reasons 4-digit industries in the NAICS industry subsector presented in Part XIX, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XIX of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Miscellaneous Manufacturing:			
XXX .....	Medical Equipment and Supply Manufacturing:			
XXXX ...	Medical Equipment and Supply Manufacturing:			
XXXXX	Laboratory Apparatus and Furniture Manufacturing.	E	3821	Laboratory Apparatus and Furniture.
XXXXX	Surgical and Medical Instrument Manufacturing.	E	3841	Surgical and Medical Instruments and Apparatus.
XXXXX	Surgical Appliance and Supply Manufacturing.	R	*2599	Furniture and Fixtures, NEC (hospital beds).
			*3829	Measuring and Controlling Devices, NEC (medical thermometers).
			*3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies (except electronic hearing aids).
XXXXX	Dental Equipment and Supply Manufacturing.	E	3843	Dental Equipment and Supplies.
XXXXX	Ophthalmic Good Manufacturing .....	E	3851	Ophthalmic Goods.
XXXXX	Dental Laboratories .....	E	8072	Dental Laboratories.
XXXXX	Eyeglass and Contact Lens Manufacturing	E	*5995	Optical Goods Stores (grinding of lenses to prescription).
XXX .....	Cotton Ginning:			
XXXX ...	Cotton Ginning .....	E	0724	Cotton Ginning.
XXX .....	Other Miscellaneous Manufacturing:			
XXXX ...	Jewelry and Silverware Manufacturing:			
XXXXX	Jewelry Manufacturing, including Precious Metal.	R	*3469	Metal Stamping, NEC (stamping coins).
			*3479	Coating, Engraving, and Allied Services, NEC (silver and plated ware engraving and etching).
XXXXX	Silverware and Plated Ware Manufacturing	R	3911	Jewelry, Precious Metal.
			*3479	Coating, Engraving, and Allied Services, NEC (silver and plated ware engraving and etching).
			*3914	Silverware, Plated Ware, and Stainless Steel Ware (excludes nonprecious metal cutlery and flatware).
XXXXX	Jewelers' Material and Lapidary Work Manufacturing.	E	3915	Jewelers' Findings and Materials, and Lapidary Work.
XXXXX	Costume Jewelry and Novelty Manufacturing.	R	*3479	Coating, Engraving, and Allied Services, NEC (costume jewelry engraving and etching).
			*3499	Fabricated Metal Products, NEC (trophies of nonprecious metals).
			3961	Costume Jewelry and Costume Novelties, Except Precious Metal.
XXXX ...	Sporting and Athletic Good Manufacturing .....	E	3949	Sporting and Athletic Goods, NEC.

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Doll, Toy, and Game Manufacturing: Doll and Stuffed Toy Manufacturing .....	E	3942	Dolls and Stuffed Toys.
XXXXX		R	*3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles (except metal tricycles).
XXXX ...	Office Supply, Except Paper, Manufacturing: Pen and Mechanical Pencil Manufacturing Lead Pencil and Art Good Manufacturing ...	E	3951	Pens, Mechanical Pencils, and Parts.
XXXXX		R	*2531	Public Building and Related Furniture (blackboards).
XXXXX		R	*3579	Office Machines, NEC (pencil sharpeners, staplers and other office equipment).
		R	*3952	Lead Pencils, Crayons, and Artists' Materials (except drawing and india ink, and drafting tables and boards).
XXXXX	Marking Device Manufacturing .....	E	3953	Marking Devices.
XXXXX	Carbon Paper and Inked Ribbon Manufacturing.	E	3955	Carbon Paper and Inked Ribbons.
XXXX ...	All Other Miscellaneous Manufacturing: Musical Instrument Manufacturing .....	E	3931	Musical Instruments.
XXXXX		E	3965	Fasteners, Buttons, Needles, and Pins.
XXXXX	Fastener, Button, Needle, and Pin Manufacturing.			
XXXXX	Broom, Brush, and Mop Manufacturing .....	R	3991	Brooms and Brushes.
			*2392	Housefurnishings, Except Curtains and Draperies (mops, floor and dust).
XXXXX	Burial Casket Manufacturing .....	E	3995	Burial Caskets.
XXXXX	All Other Miscellaneous Manufacturing .....	R	*2499	Wood Products, NEC (wood and metal frames for mirrors and pictures).
			*3999	Manufacturing Industries, NEC (other miscellaneous products not specially provided for previously).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \*means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
0724 .....	Cotton Ginning .....	Cotton Ginning.
2392@ .....	Housefurnishings, Except Curtains and Drapes: Blanket and Wardrobe Bags .....	Textile Bag Manufacturing (pt) (Included in Textile Mills subsector).
	Dusting Rags .....	Other Household Product Mills (pt) (Included in Textile Mills subsector).
	Mops, Floor and Dust .....	Broom, Brush and Mop Manufacturing (pt).
	Other .....	Other Household Textile Product Mills (pt) (Included in Textile Mills subsector).
2499 .....	Wood Products, NEC: Mirror and Picture Frames .....	All Other Miscellaneous Manufacturing (pt).
	Laundry Hampers Made from Rattan, Reed or Willow.	Other Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Wood Laundry Hampers .....	Household Wood Furniture Manufacturing, Except Upholstered (pt) (Included in Furniture Manufacturing subsector).
	Wood Tubs and Vats, Jewelry and Cigar Boxes	Other Wood Container Manufacturing (pt) (Included in Wood Product Manufacturing, except Furniture subsector).
	Other Wood Products .....	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, except Furniture subsector).
2531@ .....	Public Building and Related Furniture: Blackboards .....	All Other Miscellaneous Manufacturing (pt).
	Metal Public Building Furniture .....	Metal Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Seats for Motor Vehicles .....	Motor Vehicle Fabric Accessory and Seat Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Wood Public Building Furniture .....	Wood Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Other Public Building Furniture .....	Other Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
2599@ .....	Furniture and Fixtures, NEC: Furniture such as Ship Furniture, Metal Industrial Work Benches and Stools.	Other Metal Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Hospital Beds .....	Surgical Appliance and Supply Manufacturing (pt).
	Wood Industrial Work Benches and Stools, and Other.	Wood Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Other Furniture or Fixtures .....	Other Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
3469 .....	Metal Stamping, NEC: Stamping of Coins .....	Jewelry Manufacturing, including Precious Metal (pt). Metal Stamping and Powder Metallurgical Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Metal Stamping, except Kitchen Utensils, Pots and Pans for Cooking and Coins. Kitchen Utensils and Pots and Pans for Cooking .....	Kitchen Utensil, Pot and Pan Manufacturing (Included in Fabricated Metal Product Manufacturing subsector).
3479 .....	Coating, Engraving, and Allied Services, NEC: Jewelry Engraving and Etching, Costume Jewelry. Jewelry Engraving and Etching, Precious Metal Silverware and Flatware Engraving and Etching Other .....	Costume Jewelry and Novelty Manufacturing (pt). Jewelry Manufacturing, Precious Metal (pt). Silverware and Plated Ware Manufacturing (pt). Metal Coating, Engraving, and Allied Services, Except Jewelry and Silverware (Included in Fabricated Metal Product Manufacturing subsector).
3499@ .....	Fabricated Metal Products, NEC: Metal Aerosol Valves .....	Other Valve and Pipe Fitting Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Metal Boxes .....	Metal Shipping Container, Barrel, Drum, Keg, Pail, Bin, Box, etc. Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Metal Furniture Parts, Household .....	Household Metal Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Metal Furniture Parts, Office .....	Office Metal Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Powder Metallurgy .....	Metal Stampings and Powder Metallurgy Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Safe and Vault Locks .....	Hardware Manufacturing, Including Locks (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Trophies of Nonprecious Metals .....	Costume Jewelry and Novelty Manufacturing (pt).
	Other Metal Products .....	All Other Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
3579@ .....	Office Machines, NEC: Pencil Sharpeners, Staplers and Other Office Equipment. Timeclocks and Time Stamps .....	Lead Pencil and Art Good Manufacturing (pt). Watch, Clock, and Part Manufacturing (pt) (Included in Computer and Electronic Product Manufacturing subsector).
	Other Office Machines .....	Office Machine Manufacturing (pt) (Included in Machinery Manufacturing subsector).
3821 .....	Laboratory Apparatus and Furniture .....	Laboratory Apparatus and Furniture Manufacturing.
3827 .....	Optical Instruments and Lenses .....	Optical Instrument and Lens Manufacturing (Included in Machinery Manufacturing subsector).
3829 .....	Measuring and Controlling Devices, NEC: Medical Thermometers .....	Surgical Appliance and Supply Manufacturing (pt).
	Other Measuring and Controlling Devices .....	Other Measuring and Controlling Device Manufacturing (Included in Computer and Electronic Product Manufacturing subsector).
3841 .....	Surgical and Medical Instruments and Apparatus	Surgical and Medical Instrument Manufacturing.
3842@ .....	Orthopedic, Prosthetic, and Surgical Appliances and Supplies: Orthopedic, Prosthetic, and Surgical Appliances and Supplies, except Electronic Hearing Aids. Electronic Hearing Aids .....	Surgical Appliance and Supply Manufacturing (pt). Electromedical Equipment Manufacturing (pt) (Included in Computer and Electronic Product Manufacturing).
3843 .....	Dental Equipment and Supplies .....	Dental Equipment and Supply Manufacturing.
3844 .....	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	X-Ray Apparatus and Tube Manufacturing (Included in Computer and Electronic Product Manufacturing subsector).
3845 .....	Electromedical and Electrotherapeutic Apparatus	Electromedical Equipment Manufacturing (Included in Computer and Electronic Product Manufacturing subsector).
3851 .....	Ophthalmic Goods .....	Ophthalmic Good Manufacturing.
3911 .....	Jewelry, Precious Metal .....	Jewelry Manufacturing, except Precious Metal (pt).
3914 .....	Silverware, Plated Ware, and Stainless Steel Ware: Nonprecious Cutlery and Flatware .....	Cutlery and Flatware Manufacturing, Except Precious (pt) (Included in Fabricated Metal Product Manufacturing subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Silverware, Plated Ware, and Stainless Steel Ware (Except Nonprecious Flatware and Cutlery).	Silverware and Plated Ware Manufacturing.
3915 .....	Jewelers' Findings and Materials, and Lapidary Work.	Jewelers' Material and Lapidary Work Manufacturing.
3931 .....	Musical Instruments .....	Musical Instrument Manufacturing.
3942 .....	Dolls and Stuffed Toys .....	Doll and Stuffed Toy Manufacturing.
3944 .....	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles: Tricycles and .....	Motorcycle, Bicycle, and Part Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Other .....	Game, Toy, and Children's Vehicle Manufacturing.
3949 .....	Sporting and Athletic Goods, NEC .....	Sporting and Athletic Good Manufacturing.
3951 .....	Pens, Mechanical Pencils and Parts .....	Pen and Mechanical Pencil Manufacturing.
3952@ .....	Lead Pencils, Crayons, and Artists' Materials: Drawing and India Ink .....	Printing Ink Manufacturing (pt) (Included in Chemical Product Manufacturing subsector).
	Metal Drafting Tables and Boards .....	Metal Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Wood Drafting Tables and Boards .....	Wood Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Other .....	Lead Pencil and Art Good Manufacturing (pt).
3953 .....	Marking Devices .....	Marking Device Manufacturing.
3955 .....	Carbon Paper and Inked Ribbons .....	Carbon Paper and Inked Ribbon Manufacturing.
3961 .....	Costume Jewelry and Costume Novelties, Except Precious Metals.	Costume Jewelry and Novelty Manufacturing (pt).
3965 .....	Fasteners, Buttons, Needles, and Pins .....	Fastener, Button, Needle and Pin Manufacturing.
3991 .....	Brooms and Brushes .....	Broom, Brush and Mop Manufacturing.
3993@ .....	Signs and Advertising Specialties: Flexographic Printing of Advertising Specialties .....	Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Gravure Printing of Advertising Specialties .....	Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector).
	Lithographic Printing of Advertising Specialties .....	Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Screen Printing of Advertising Specialties .....	Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector).
	Other Printing of Advertising Specialties .....	Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector).
	Electric Signs .....	Electric Sign Manufacturing (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Metal Signs .....	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Wood Signs .....	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, except Furniture subsector).
3995 .....	Burial Caskets .....	Burial Casket Manufacturing.
3996 .....	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, NEC.	Resilient Floor Coverings Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
3999@ .....	Manufacturing Industries, NEC: Beauty and Barber Chairs .....	Metal Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Burnt Wood Articles .....	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, except Furniture subsector).
	Fur Bleaching, Currying, Scraping, Tanning and Dyeing.	Leather and Hide Tanning and Finishing Manufacturing (pt) (Included in Leather and Allied Product Manufacturing subsector).
	Lamp Shades of Paper and Textile .....	Other Lighting Equipment Manufacturing (pt) (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Matches .....	Other Miscellaneous Chemical Product Manufacturing (pt) (Included in Chemical Manufacturing subsector).
	Metal Products, such as Combs, Hair Curlers, etc.	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Plastics Products, such as Combs, Hair Curlers, etc.	All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
	Flexographic Printing Eyeglass Frames for the Trade.	Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Gravure Printing Eyeglass Frames for the Trade	Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Lithographic Printing Eyeglass Frames for the Trade.	Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Screen Printing Eyeglass Frames for the Trade	Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector).
	Other Printing Eyeglass Frames for the Trade ...	Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector).
	Tape Measures .....	Hand and Edge Tool Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Other .....	All Other Miscellaneous Manufacturing (pt).
5995 .....	Optical Goods Stores:	
	Grinding of lenses to prescription only .....	Eyeglass and Contact Lens Manufacturing.
	Other .....	Optical Goods Stores (Included in Retail sector).
8072 .....	Dental Laboratories .....	Dental Laboratories.

The abbreviation "pt." means "part of", means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

#### *Description of Changes to the U.S. System*

Two complete industries were transferred out of 1987 Major Group 39, Miscellaneous Manufacturing Industries.

Signs and Advertising Specialties was transferred out as follows: printing advertising specialties were transferred into the 1997 subsector Printing and Related Support Activities, in response to an industry proposal; electric signs were transferred into the 1997 subsector, Electrical Equipment, Appliance and Component Manufacturing; metal signs were transferred into the 1997 subsector, Fabricated Metal Product Manufacturing; and wood signs were transferred into the 1997 subsector Wood Product Manufacturing, except Furniture.

Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, NEC was transferred into the 1997 subsector Rubber and Plastic Product Manufacturing.

Seven complete industries were transferred into the 1997 Miscellaneous Manufacturing subsector.

Cotton Ginning was transferred from 1987 SIC Industry Group 072, Crop Services, for international comparability. This is a nonexistent activity for Canada.

The following five industries were transferred from the discontinued 1987 SIC Major Group 38, Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks;

Laboratory Apparatus and Furniture Manufacturing (1987 SIC 3821).  
Surgical and Medical Instrument Manufacturing (1987 SIC 3841).  
Surgical Appliance and Supply Manufacturing (1987 SIC 3842).  
Dental Equipment and Supply Manufacturing (1987 SIC 3843).

Ophthalmic Good Manufacturing (1987 SIC 3851).

Dental Laboratories were transferred from 1987 SIC Major Group 807, Medical and Dental Laboratories.

Eyeglass and Contact Lens Manufacturing was transferred from part of 1987 SIC 5995, Optical Goods Stores.

Fourteen activities were transferred out of 1987 Major Group 39, Miscellaneous Manufacturing and are described more fully in their new respective NAICS subsectors.

Nonprecious cutlery and flatware were transferred from 1987 SIC 3914, Silverware, Plated and Stainless Steel Ware, into Cutlery and Flatware Manufacturing in the 1997 subsector Fabricated Metal Product Manufacturing.

Metal tricycles were transferred from 1987 SIC 3944, Games, Toys and Children's Vehicles, Except Dolls and Bicycles, into Motorcycle, Bicycle, and Part Manufacturing in 1997 subsector Transportation Equipment Manufacturing.

Drawing and india ink were transferred from 1987 SIC 3952, Lead Pencils, Crayons, and Artists' Materials, into Printing Ink Manufacturing in the 1997 subsector Chemical Product Manufacturing.

Drafting tables and boards were transferred from 1987 SIC 3952, Lead Pencils, Crayons and Boards, with metal going into Metal Office Furniture Manufacturing and wood going into Wood Office Furniture Manufacturing in the 1997 subsector Furniture Manufacturing.

Beauty and barber chairs were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Metal Office Furniture Manufacturing in the 1997 subsector Furniture Manufacturing.

Burnt wood articles were transferred from 1987 SIC Code 3999,

Manufacturing Industries, NEC, into Other Wood Product Manufacturing in the 1997 subsector Wood Product Manufacturing, Except Furniture.

Fur bleaching, currying, scraping, tanning and dyeing were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Allied and Hide Tanning and Finishing Manufacturing in the 1997 subsector Leather and Allied Product Manufacturing.

Lamp shades of paper and textile were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Other Lighting Equipment Manufacturing in the 1997 subsector Electrical Equipment, Appliance, and Component Manufacturing.

Matches were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Other Miscellaneous Chemical Manufacturing in the 1997 subsector Chemical Product Manufacturing.

Metal products such as combs, hair curlers, etc. were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into All Other Fabricated Metal Product Manufacturing in the 1997 subsector Fabricated Metal Product Manufacturing.

Plastic products such as combs, hair curlers, etc. were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into All Other Plastic Product Manufacturing in the 1997 subsector Rubber and Plastic Product Manufacturing.

Printing eyeglass frames for the trade was transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into the 1997 subsector Printing and Related Support Activities and was distributed by method of printing.

Tape measures were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Hand and Edge Tool Manufacturing in the 1997

subsector Fabricated Metal Product Manufacturing.

Teaching machine and flight simulator manufacturing was transferred from 1987 SIC 3699, Electrical Machinery, Equipment, and Supplies, NEC, into Other Commercial and Service Industry Machinery Manufacturing in the 1997 subsector Machinery Manufacturing.

There were nine activities that transferred into the 1997 subsector Miscellaneous Manufacturing.

Mops, floor and dust, were transferred into Broom, Brush, and Mop Manufacturing from 1987 SIC 2392, Housefurnishings, Except Curtains and Draperies, for international comparability. The U.S. moved to match Canada and Mexico.

Wood and metal frames for mirrors and pictures were transferred into All Other Miscellaneous Manufacturing from 1987 SIC 2499, Wood Products, NEC, to reflect similarities in production, and for three country comparability.

Blackboards were transferred into Lead Pencil and Art Good Manufacturing from 1987 SIC 2531, Public Building and Related Furniture, to achieve international comparability. The U.S. and Canada moved to agree with Mexico.

Hospital beds were transferred into Surgical Appliance and Supply Manufacturing from 1987 SIC 2599, Furniture and Fixtures, NEC, to reflect similarities in production and achieve international comparability.

Stamping of coins was transferred into Jewelry Manufacturing, including Precious Metal from 1987 SIC 3469, Metal Stampings, NEC, for international comparability.

Engraving and etching on precious jewelry, costume jewelry, and silverware and plated ware was transferred into Jewelry Manufacturing, including Precious Metal; Costume Jewelry and Novelty Manufacturing; and Silverware and Plated Ware Manufacturing, respectively, from 1987 SIC 3479, Coating, Engraving, and Allied Services, NEC, for international comparability. The U.S. and Mexico moved to agree with Canada.

Trophies of nonprecious metals were transferred into Costume Jewelry and Novelty Manufacturing from 1987 SIC 3499, Fabricated Metals, NEC, to achieve international comparability. The U.S. moved to agree with Canada and Mexico.

Pencil sharpeners, staplers and other office equipment were transferred into Lead Pencil and Art Good Manufacturing from 1987 SIC 3579, Office Machines, NEC, for international

comparability. The U.S. and Canada moved to agree with Mexico.

Medical thermometers were transferred into Surgical Appliance and Supply Manufacturing from 1987 SIC 3829, Measuring and Controlling Devices, NEC, to achieve international comparability. The U.S. and Canada moved to agree with Mexico.

Also there were several activities that were transferred within the subsector for Miscellaneous Manufacturing. The number of miscellaneous industries increased from 18 in 1987 to 24 in 1997. For time series linkage, 14 of the 18 1987 industries are comparable within three percent of the 1997 industries.

Part XX—Proposed New Industry Structure for Postal Service and Couriers

*Section A—NAICS Structure*

North American Industry Classification System (NAICS) Agreement Number 31

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Postal Service  
Couriers

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada .....	/S/ Jacob Ryten	11/9/95
Mexico .....	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Postal Service  
XXX Postal Service  
XXXX Postal Service  
XX Couriers

XXX Couriers  
XXXX Couriers  
XXX Local Messengers and Local Delivery  
XXXX Local Messengers and Local Delivery

Attachment 2—North American Industry Classification System

Draft Classification for:  
Postal Services  
Couriers

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsectors, Postal Services and Couriers. These subsectors are further subdivided into three industry groups, each with one industry. These subsectors will be part of the Transportation sector of the classification.

*A General Outline*

The Postal Service and Couriers industries deliver letters and small packages. These articles can be described as those that can be handled by a single person without special equipment. This allows the collection, pick-up and delivery operations to be done with limited labor costs and minimal equipment. Sorting and transportation activities, where necessary, are increasingly mechanized. The restriction to small parcels distinguishes these establishments from those in the transportation industries.

The Postal Service subsector includes the activities of the Post Office and its subcontractors in delivering letters and small parcels, normally without pick-up at the senders' location. This describes the traditional activity of national Postal Services.

Establishments that perform these activities, such as the operation of rural Post Offices on contract to the Postal Service, are included in this subsector. This follows the industrial classification concept that ownership should not determine the industry of an establishment, but rather the activity undertaken. However, the delivery of bulk mail on contract to the Postal Service is not included here, because it is usually done by transportation establishments that carry other customers' goods as well.

The Couriers subsector includes two types of activities. Couriers deliver parcels between cities. The parcels must be no larger or heavier than a single driver can handle without special equipment. The Couriers industry includes the establishments that perform intercity transportation as well as establishments that, under contract to them, do the local pick-up and delivery.

The intent is to include the complete hub-and-spoke network in the industry.

Where the Postal Service undertakes a courier activity, and it can be delineated as one or more separate establishments, it is included in the Couriers industry. This reflects the rule concerning ownership referred to above. Canada expects to be able to delineate such establishments, but Mexico and the United States do not.

The Local Messengers and Local Delivery industry undertakes deliveries of small parcels within a single urban area. There are two types of activity in practice. One is the delivery of letters and documents, usually of a legal nature, often by bicycle or on foot. The second is the delivery of small parcels, such as groceries or alcoholic beverages, usually by small truck or van.

*Relationship to ISIC*

Each of the NAICS industries included in this subsector can be assigned to Division 64, Post and Telecommunications of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations without any subdivision. The only difference is that ISIC includes separate courier establishments of the Postal Service in the National Post Activities class, whereas NAICS places them in the Couriers industry.

*Some Changes to the National Classifications*

For Canada, these subsectors include activities from several industries in the current Transportation and Storage

Industries division (part of the NAICS Couriers subsector) and from the Communication and Other Utilities Industries division (the Postal Service subsector and the rest of the Couriers subsector). The amount of detail of these NAICS subsectors is similar to that contained in the Canadian classification.

For Mexico, the NAICS Postal Service and Couriers subsectors have the same coverage as the Mexican classification's Postal Services (CMAP 720001) and Courier Services (CMAP 720002).

For the United States, the activities included in these subsectors are currently in the Transportation and Public Utilities division, with the exception of contract postal services, currently in the Services Division (1987 SIC 7389, Business Services, Not Elsewhere Classified). The Couriers industry combines the truck couriers included in 1987 SIC 4215, Courier Services, Except by Air, and air couriers included in 1987 SIC 4513, Air Courier Services.

*Achievement of Objectives*

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept.

The industries have high specialization ratios, and they are economically significant. Some are

much larger than others, but this was necessitated to make them homogenous in terms of production process. The classification is still suitable for sampling, data-publishing and other aspects of survey operations. Disruptions to time series are minimal. The statistical agencies can develop statistical "links", to enable the re-tabulation of time series on the new NAICS classification structure.

The classification achieves comparability for the three participating countries. All countries agree on the detailed definitions of the industries.

*Section B—Annex: United States National Industry Detail*

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the two NAICS industry subsectors presented in Part XX, Section A—Attachment 1, contains less detail than is currently in the U.S. SIC system and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the two NAICS industry subsectors covered in Part XX of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX .....	Postal Service:			
XXX .....	Postal Service:			
XXXX ...	Postal Service:			
XXXXX ..	National Postal Service .....	E	4311	United States Postal Service.
XXXXX	Contract Postal Operations, Excluding Bulk Mail Transportation.	N	*7389	Business Services, Not Elsewhere Classified (Postal Service contract operations).
XX .....	Couriers:			
XXX .....	Couriers:			
XXXX ...	Couriers .....	R	*4215	Courier Services, Except by Air (hub and spoke intercity delivery).
			4513	Air Courier Services.
XXX .....	Local Messengers and Local Delivery:			
XXXX ...	Local Messengers and Local Delivery .....	N	*4215	Courier Services, Except by Air (local delivery).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and \* means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
4215@ .....	Couriers Services Except by Air:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Hub and Spoke Intercity Delivery .....	Couriers (pt).
4311 .....	Local Delivery .....	Local Messengers and Local Delivery.
4513@ .....	United States Postal Service .....	National Postal Service.
7389 .....	Air Courier Services .....	Couriers (pt).
	Business Services, Not Elsewhere Classified: Post Office Contract Stations .....	Contract Postal Operations, Excluding Bulk Mail Transportation

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 industry. The abbreviation NEC is used for Not Elsewhere Classified.

*Description of Changes to the U.S. System*

There are two new industries, one in each of the proposed subsectors. The Contract Postal Operations, Excluding Bulk Mail Transportation industry was created to reflect operations similar to the Postal Service in process but which provide for fewer of the production equipment and facilities. This activity is included in 1987 SIC 7389, Business Services, Not Elsewhere Classified.

The Local Messengers and Local Delivery industry located in the Couriers subsector identifies establishments involved in local pick up and delivery and is created from part of 1987 SIC 4215, Courier Services, Except by Air. These establishments are identified separately from the Couriers industry based on production differences involving equipment and the method of delivery. This industry includes establishments that pick up and deliver by foot, bicycle, car and

small van. The Couriers industry, created from part of 1987 SIC 4215, Courier Services, Except by Air, and part of 1987 SIC 4513, Air Courier Services, includes establishments that are part of a hub and spoke network by truck and air delivery.

Sally Katzen,  
*Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. 96-13039 Filed 5-24-96; 8:45 am]

BILLING CODE 3110-01-P

# 47 CFR Part 1 et al.

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Tuesday  
May 28, 1996

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## Part III

# Federal Communications Commission

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47 CFR Part 1 et al.  
Terrestrial Microwave Fixed Radio  
Services; Final Rule

**FEDERAL COMMUNICATIONS  
COMMISSION**
**47 CFR Parts 1, 2, 21, 94, and 101**
**[WT Docket No. 94-148, FCC 96-51]**
**Terrestrial Microwave Fixed Radio  
Services**
**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted a Report and Order to establish regulations governing the Terrestrial Microwave Fixed Radio Services and implement section 403(j) of the Telecommunications Act of 1996. These amendments streamline the Commission's rules, expedite processing of authorizations for the Terrestrial Microwave Fixed Radio Services, and clarify rules concerning the Terrestrial Microwave Fixed Radio Services.

**EFFECTIVE DATE:** These regulations are effective August 1, 1996.

**FOR FURTHER INFORMATION CONTACT:**  
Robert James of the Wireless  
Telecommunications Bureau at (202)  
418-0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, adopted February 8, 1996, and released February 29, 1996. The full text of this action is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Report and Order**

1. In this action, the Commission created one comprehensive new rule part for the microwave services and eliminated undue regulatory burdens resulting in significant benefits for both the public and the Commission. We reorganized and amended parts 21 and 94 of the rules to establish a new part 101. We anticipate that the new consolidated part 101 will result in a number of major benefits. First, the public will benefit from simplified and streamlined rules. Second, both the public and the Commission will benefit from reduced regulatory burdens. Third, the new rules will encourage more efficient use of microwave spectrum by permitting more intensive use of microwave equipment. Fourth, common technical standards for common carrier and private operational fixed microwave equipment will lead to economics of

scale in microwave equipment production and lower equipment prices to licensees. The new consolidated part 101 will eliminate arbitrary distinction and further regulatory symmetry between common carrier and private operational fixed microwave services.

2. Section 403(j) of the 1996 Telecommunications Act amends section 309(b) of the Communications Act by removing the requirement that the Commission delay granting an application for a private fixed point-to-point microwave station until thirty days after the Commission issues a public notice announcing that it has accepted the application for filing. This Report and Order deletes § 1.962(a) of its rules, 47 CFR 1.962(a), to reflect this statutory change.

3. These new rules reflect a comprehensive restructuring in the regulatory requirements and policies of the fixed microwave services. The streamlined and simplified rules, reduce regulatory burdens, encourage more efficient use of the microwave spectrum, and foster economies of scale in microwave equipment production. These rules will allow licensees to compete more on price and quality of service rather than on regulatory gamesmanship.

4. The rules are set forth below.

5. This Report and Order is issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

6. Need and purpose of this action. This Report and Order simplifies the rules for the common carrier and private operational fixed services, currently contained respectively in parts 21 and 94 of the Commission's rules, and consolidates those rules into a new part 101. These new rules eliminate unnecessary information collection requirements, eliminate redundancy, remove obsolete language, and promote the public interest.

7. Summary of issues raised by the public. Several commenters suggested modifications to some of the Commission's proposals. As a result of these comments, we have made modifications to the proposed rules as appropriate. The specific suggestions and modifications are discussed in the paragraphs above.

8. Significant alternatives considered. The Notices of Proposed Rule Making in the two subject proceedings offered numerous proposals. The commenters overwhelmingly supported the majority of the proposed rule changes. Several commenters suggested modifications to some of the Commission's proposals. Many of the suggested modifications are

incorporated in the final rules. The regulatory burdens which we have retained are necessary to fulfill our duties under the Communications Act of 1934, as amended. We will continue to examine alternatives in the future with the objective of eliminating unnecessary regulations and minimizing economic impact on small business entities.

**List of Subjects**
**47 CFR Part 1**

Administrative practice and procedure.

**47 CFR Part 2**

Communications equipment.

**47 CFR Part 21**

Communications equipment, Radio, Reporting and recordkeeping requirements.

**47 CFR Part 94**

Communications equipment, Radio, Reporting and recordkeeping requirements.

**47 CFR Part 101**

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

**Final Rules**

Parts 1, 2, 21 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

**PART 1—PRACTICE AND  
PROCEDURE**

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

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

2. Section 1.77 is amended by adding a new paragraph (i) to read as follows:

**§ 1.77 Detailed application procedures;  
cross references.**

\* \* \* \* \*

(i) Rules governing applications for authorizations in the Common Carrier and Private Radio terrestrial microwave services are set out in part 101 of this chapter.

3. Section 1.741 is revised to read as follows:

**§ 1.741 Scope.**

The general rules relating to applications contained in §§ 1.742 through 1.748 apply to all applications filed by carriers except those filed by public correspondence radio stations

pursuant to parts 80, 87, and 101 of this chapter, and those filed by common carriers pursuant to part 25 of this chapter. Parts 21 and 101 of this chapter contain general rules applicable to applications filed pursuant to these parts. For general rules applicable to applications filed pursuant to parts 80 and 87 of this chapter, see such parts and subpart F of this part. For rules applicable to applications filed pursuant to part 25, see said part.

4. Section 1.761 is revised to read as follows:

**§ 1.761 Cross reference.**

Specific types of applications under Title III of the Communications Act involving public correspondence radio stations are specified in parts 23, 80, 87, and 101 of this chapter.

5. Section 1.825 is amended by revising paragraph (b) to read as follows:

**§ 1.825 Random selection procedures for Digital Electronic Message Service.**

(b) Petitions to deny applications for digital electronic message service authorizations, and responsive pleadings, shall be filed prior to conducting the random selection, pursuant to the requirements of § 101.43 of this chapter. Following the random selection, petitions against tentative selectee's applications shall be resolved by the Commission.

6. Section 1.901 is revised to read as follows:

**§ 1.901 Scope.**

In the case of any conflict between the rules set forth in this subpart and the rules set forth in part 13 of this chapter or the rules set forth for specific services in parts 80 through 101 of this chapter, the rules in this subpart shall govern.

7. Section 1.924 is amended by revising paragraph (b)(2)(ii) to read as follows:

**§ 1.924 Assignment or transfer of control, voluntary and involuntary.**

(b)(1) \* \* \*  
 (2) \* \* \*  
 (ii) *FCC Form 402*. For assignment of station authorizations in the Private Operational Fixed Microwave Service (part 101 of this chapter). Attached thereto shall be an executed Form 1046 or a signed letter from proposed assignor stating the assignor's desire to assign the current authorization in accordance with the rules governing the particular service involved.

8. Section 1.926 is amended by revising paragraph (a)(6) to read as follows:

**§ 1.926 Application for renewal of license.**

(a) \* \* \*  
 (6) Renewal of station authorizations in the Private Operational Fixed Microwave Service (part 101 of this chapter) shall be submitted on such form as the Commission may designate by the public notice in accordance with the provisions of § 101.13 of this chapter.

**§ 1.962 [Amended]**

9. Section 1.962 is amended by removing paragraph (a)(1) and redesignating paragraphs (a)(2) through paragraphs (a)(7) as paragraphs (a)(1) through (a)(6) respectively.

10. Section 1.972 is amended by revising paragraphs (a)(1) and (c) to read as follows:

**§ 1.972 Grants by random selection.**

(a) \* \* \*  
 (1) For stations in the following Private Radio Services:

- Part 80—Stations in the Maritime Services
- Part 87—Aviation Services
- Part 90—Private Land Mobile Services
- Part 95—Subpart F—Personal Radio Services
- Part 101—Subpart H—Private Operational Fixed Point-to-Point Microwave Service.

(c) If there are mutually exclusive applications for an initial license for stations subject to part 80 or part 87 of this chapter, or if there are more applications for an initial license in part 90, part 95-subpart F, or part 101-subpart H of this chapter, than can be accommodated on available frequencies, the Commission may process the applications pursuant to a system of random selection. Each such random selection shall be conducted pursuant to an order issued by the Wireless Telecommunications Bureau and under the direction of the Chief of the Bureau.

**PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

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

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.995 is amended by revising paragraph (a)(2) to read as follows:

**§ 2.995 Measurements required: Frequency stability.**

(a) \* \* \*  
 (2) From  $-20^{\circ}$  to  $+50^{\circ}$  centigrade for equipment to be licensed for use in the

Maritime Services under part 80 of this chapter, except Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBS), and equipment to be licensed for use above 952 MHz at operational fixed stations in all services, stations in the Local Television Transmission Service and Point-to-Point Microwave Radio Service under part 101 of this chapter, and equipment licensed for use aboard aircraft in the Aviation Services under part 87 of this chapter.

**PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES**

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. Section 21.2 is revised to read as follows:

**§ 21.2 Definitions.**

As used in this part:  
*Antenna power gain*. The square of the ratio of the root-mean-square free space field intensity produced at one mile in the horizontal plane, in millivolts per meter for one kilowatt antenna input power to 137.6 mV/m. This ratio should be expressed in decibels (dB). (If specified for a particular direction, antenna power gain is based on the field strength in that direction only.)

*Antenna power input*. The radio frequency peak or RMS power, as the case may be, supplied to the antenna from the antenna transmission line and its associated impedance matching network.

*Antenna structures*. The antenna, its supporting structure and anything attached to it.

*Assigned frequency*. The centre of the frequency band assigned to a station.

*Authorized bandwidth*. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

*Authorized frequency*. The frequency, or frequency range, assigned to a station by the Commission and specified in the instrument of authorization.

*Authorized power*. The maximum power a station is permitted to use. This power is specified by the Commission in the station's authorization.

*Bandwidth occupied by an emission*. The band of frequencies comprising 99

percent of the total radiated power extended to include any discrete frequency on which the power is at least 0.25 percent of the total radiated power.

**Basic Trading Area (BTA).** The geographic areas by which the Multipoint Distribution Service is licensed. BTA boundaries are based on the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39, and include six additional BTA-like areas as specified in § 21.924(b).

**Bit rate.** The rate of transmission of information in binary (two state) form in bits per unit time.

**BTA authorization holder.** The individual or entity authorized by the Commission to provide Multipoint Distribution Service to the population of a BTA.

**BTA service area.** The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS facilities, including registered receive sites.

**Carrier.** In a frequency stabilized system, the sinusoidal component of a modulated wave whose frequency is independent of the modulating wave; or the output of a transmitter when the modulating wave is made zero; or a wave generated at a point in the transmitting system and subsequently modulated by the signal; or a wave generated locally at the receiving terminal which when combined with the side bands in a suitable detector, produces the modulating wave.

**Carrier frequency.** The output of a transmitter when the modulating wave is made zero.

**Communication common carrier.** Any person engaged in rendering communication service for hire to the public.

**Control point.** A control point is an operating position at which an operator responsible for the operation of the transmitter is stationed and which is under the control and supervision of the licensee.

**Control station.** A fixed station whose transmissions are used to control automatically the emissions or operations of another radio station at a specified location, or to transmit automatically to an alarm center telemetering information relative to the operation of such station.

**Coordination distance.** For the purpose of this part, the expression "coordination distance" means the distance from an earth station, within which there is a possibility of the use of

a given transmitting frequency at this earth station causing harmful interference to stations in the fixed or mobile service, sharing the same band, or of the use of a given frequency for reception at this earth station receiving harmful interference from such stations in the fixed or mobile service.

**Digital modulation.** The process by which some characteristic (frequency, phase, amplitude or combinations thereof) of a carrier frequency is varied in accordance with a digital signal, e.g. one consisting of coded pulses or states.

**Domestic fixed public service.** A fixed service, the stations of which are open to public correspondence, for radiocommunications originating and terminating solely at points all of which lie within:

- (a) The State of Alaska;
- (b) The State of Hawaii;
- (c) The contiguous 48 States and the District of Columbia; or
- (d) A single possession of the United States. Generally, in cases where service is afforded on frequencies above 72 MHz, radio-communications between the contiguous 48 States (including the District of Columbia) and Canada or Mexico, or radiocommunications between the State of Alaska and Canada, are deemed to be in the domestic fixed public service.

**Domestic public radio services.** The land mobile and domestic fixed public services the stations which are open to public correspondence.

Note: Part 80 of this chapter is applicable to the maritime services and fixed stations associated with the maritime services; part 87 of this chapter is applicable to aeronautical services.

**Earth station.** A station located either on the earth's surface or within the major portion of the earth's atmosphere and intended for communications:

- (a) With one or more space stations; or
- (b) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space.

**Effective radiated power (ERP).** The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

**Equivalent Isotropically Radiated Power (EIRP).** The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna. This product may be expressed in watts or dB above 1 watt (dBW).

**Facsimile.** A form of telegraphy for the transmission of fixed images, with or without half-tones, with a view to their reproduction in a permanent form.

**Fixed earth station.** An earth station intended to be used at a specified fixed point.

**Fixed station.** A station in the fixed service.

**Frequency tolerance.** The maximum permissible departure by the centre frequency of the frequency band occupied by an emission from the assigned frequency or, by the characteristic frequency of an emission from the reference frequency. The frequency tolerance is expressed as a percentage or in Hertz.

**Harmful interference.** Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service.

**Incumbent.** An MDS station that was authorized or proposed before September 15, 1995, including those stations that are subsequently modified, renewed or reinstated.

**Landing area.** A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

**Microwave frequencies.** As used in this part, this term refers to frequencies of 890 MHz and above.

**Multichannel multipoint distribution service.** Those multipoint distribution service channels that use the frequency band 2596 MHz to 2644 MHz and associated response channels.

**Multipoint distribution service.** A one-way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in an omnidirectional pattern) to multiple receiving facilities located at fixed points.

**Multipoint distribution service response station.** A fixed station operated at an MDS receive location to provide communications with the associated station in the Multipoint Distribution Service.

**Necessary bandwidth of emission.** For a given class of emission, the width of the frequency band that is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions.

Note: The necessary bandwidth for an emission may be calculated using the formulas in § 2.202 of this chapter.

**Partitioned service area authorization holder.** The individual or entity authorized by the Commission to

provide Multipoint Distribution Service to the population of a partitioned service area.

*Partitioned service area (PSA).* The area within the coterminous boundaries of one or more counties or other geopolitical subdivisions, drawn from a BTA, to which an authorization holder may provide Multipoint Distribution Service or the area remaining in a BTA upon partitioning any portion of that BTA. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS stations, including registered receive sites.

*Private line service.* A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time.

*Public correspondence.* Any telecommunication which the offices and stations, by reason of their being at the disposal of the public, must accept for transmission.

*Radio station.* A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

*Radiocommunication.* Telecommunication by means of radio waves.

*Rated power output.* The term "rated power output" of a transmitter means the normal radio frequency power output capability (Peak or Average Power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

*Record communication.* Any transmission of intelligence which is reduced to visual record form at the point of reception.

*Reference frequency.* A frequency having a fixed and specified position with respect to the assigned frequency. The displacement of this frequency with respect to the assigned frequency has the same absolute value and sign that the displacement of the characteristic frequency has with respect to the center of the frequency band occupied by the emission.

*Relay station.* A fixed station used for the reception and retransmission of the signals of another station or stations.

*Repeater station.* A fixed station established for the automatic retransmission of radiocommunications received from one or more stations and directed to a specified receiver site.

*Signal booster station.* A low-power repeater station automatically retransmitting on the same frequency as

the received signal, and located within the protected service area of a Multipoint Distribution Service station.

*Standby transmitter.* A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main transmitter is out of service for maintenance or repair.

*Symbol rate.* Modulation rate in bauds. This rate may be higher than the transmitted bit rate as in the case of coded pulses or lower as in the case of multilevel transmission.

*Television.* A form of telecommunication for transmission of transient images of fixed or moving objects.

*Television STL station (studio transmitter link).* A fixed station used for the transmission of television program material and related communications from a studio to the transmitter of a television broadcast station.

**§ 21.3 [Amended]**

3. Section 21.3 is amended by removing paragraph (b), and redesignating paragraph (c) as paragraph (b).

4. Section 21.6 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 21.6 Filing of applications, fees, and numbers of copies.**

\* \* \* \* \*

(b) Applications requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter. Applications not requiring fees shall be submitted to: Federal Communications Commission, Washington, DC 20554.

(c) All correspondence or amendments concerning a submitted application shall clearly identify the radio service, the name of the applicant, station location, and the Commission file number (if known) or station call sign of the application involved. All correspondence or amendments concerning a submitted application may be sent directly to the Mass Media Bureau.

\* \* \* \* \*

5. Section 21.13 is amended by removing paragraph (f), redesignating paragraph (g) as paragraph (f), and revising paragraphs (a)(6) and (b) to read as follows:

**§ 21.13 General application requirements.**

(a) \* \* \*

(b) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (e.g., those required by secs. 21.900, 21.912 and 21.913).

(b) Applications filed in the Multipoint Distribution Service shall not cross-reference previously filed material.

\* \* \* \* \*

6. Section 21.15 is amended by revising the introductory text, and paragraphs (c), (d), and (g) to read as follows:

**§ 21.15 Technical content of applications.**

Applications shall contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see subparts C, F and K as appropriate). The following paragraphs describe a number of technical requirements.

\* \* \* \* \*

(c) Each application involving a new or modified transmitting antenna supporting structure, passive facility, or the addition or removal of a transmitting antenna, or the repositioning of an authorized antenna for a station must be accompanied by a vertical profile sketch of the total structure depicting its structural nature and clearly indicating the ground elevation (above sea level) at the structure site, the overall height of the structure above ground (including obstruction lights when required, lightning rods, etc.) and, if mounted on a building, its overall height above the building. The proposed antenna on the structure must be clearly identified and its height above-ground (measured to the center of radiation) clearly indicated. Alternatively, applicants in the Multipoint Distribution Service who filed applications on or after September 15, 1995, may provide this information in the MDS long-form application.

(d) Each application proposing a new or modified antenna structure for a station (including a passive repeater or signal booster station) so as to change its overall height shall indicate whether any necessary notification of the FAA has been made. Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in part 17 of this chapter. See also § 21.111 if the structure is used by more than one station.

\* \* \* \* \*

(g) Applications in the Multipoint Distribution Service filed before September 15, 1995, proposing a new or replacement antenna (excluding omnidirectional antennas) shall include an antenna radiation pattern showing the antenna power gain distribution in the

horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC-ID number that indicates that the pattern is on file with the Commission. Multipoint Distribution Service applicants who filed applications on or after September 15, 1995 must provide related information in completing an MDS long-form application.

\* \* \* \* \*

7. Section 21.20 is amended by revising paragraph (b)(5) to read as follows:

**§ 21.20 Defective applications.**

\* \* \* \* \*

(b) \* \* \*

(5) The application does not certify the availability of the proposed station site.

\* \* \* \* \*

8. Section 21.23 is amended by removing paragraphs (c)(1) and (d), redesignating (c)(2) through (c)(7) as paragraphs (c)(1) through (c)(6), redesignating paragraphs (e) through (g) as paragraphs (d) through (f), and revising the newly redesignated paragraphs (c)(1) introductory text, and (d)(1) to read as follows:

**§ 21.23 Amendment of applications.**

\* \* \* \* \*

(c) \* \* \*

(1) If in the Multipoint Distribution Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

\* \* \* \* \*

(d) \* \* \*

(1) Any applicant whose application appears on its face to be mutually exclusive with the application being amended, including those applicants originally served under § 21.902;

\* \* \* \* \*

**§ 21.27 [Amended]**

9. Section 21.27 is amended by removing paragraph (d).

**§ 21.31 [Amended]**

10. Section 21.31 is amended by removing paragraph (f).

**§ 21.33 [Amended]**

11. Section 21.33 is amended by removing paragraph (a), and redesignating paragraphs (b) through (d) as paragraphs (a) through (c) respectively.

12. Section 21.39 is amended by revising paragraph (d)(3) to read as follows:

**§ 21.39 Considerations involving transfer or assignment applications.**

\* \* \* \* \*

(d) \* \* \*

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (c) (1) and (2) of this section) if the transaction involves two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

13. Section 21.41 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 21.41 Special processing of applications for minor facility modifications.**

\* \* \* \* \*

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Multipoint Distribution Service;

(2) The cumulative effect of all such applications made within any 60 days period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section;

(6) Frequency notification procedures are complied with and a copy of the application has been served on those who also were served under § 21.902; and

(7) In the Multipoint Distribution Service, the modified facility would not produce a power flux density that exceeds -73 dBW/m<sup>2</sup>, pursuant to §§ 21.902 and 21.939 at locations on the boundaries of protected service areas to which there is an unobstructed signal path.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In the Multipoint Distribution Service, any increase in EIRP is one and one-half dB or less over the previously-authorized power value; or

(ii) The necessary bandwidth is not increased by more than 10% of the previously authorized necessary bandwidth.

(2) Changes in the height of an antenna, provided that:

(i) In Multipoint Distribution Service, any increase in antenna height is less than 3.0 meters above the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station by ten seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by part 17 of this chapter for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of § 21.15(d).

\* \* \* \* \*

14. Section 21.42 is amended by removing paragraph (c)(7), redesignating paragraph (c)(8) as paragraph (c)(7), and revising paragraphs (a), (b)(1), (b)(4), and (c)(3) to read as follows:

**§ 21.42 Certain modifications not requiring prior authorization.**

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if:

(1) The replacement equipment is identical (i.e., same manufacturer and model number) with the replacement equipment; or

(2) The replacement transmitter, transmitting antenna, transmission line loss and/or devices between the transmitter and antenna, or combinations of the above, do not change the EIRP of a station in any direction.

(b) Licensees of fixed stations in the Multipoint Distribution Service may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

(1) The Multipoint Distribution Service licensee serves a copy of the notification described in paragraph (b)(3) of this section on those who were served under § 21.902, and

\* \* \* \* \*

(4) In the Multipoint Distribution Service, the modified facility would not produce a power flux density at the protected service area boundary that

exceeds - 73 dBW/m<sup>2</sup>, pursuant to §§ 21.902 and 21.939.

(c) \* \* \*

(3) Change to an antenna when the new antenna conforms with § 21.906 and the EIRP resulting from the new antenna does not exceed that resulting from the previously authorized antenna by more than one dB in any direction.

\* \* \* \* \*

15. Section 21.43 is amended by revising paragraph (a) to read as follows:

**§ 21.43 Period of construction; certification of completion of construction.**

(a) Except for Multipoint Distribution Service station licenses granted to BTA and PSA authorization holders, each license for a radio station for the services included in this part shall specify as a condition therein the period during which construction of facilities will be completed and the station made ready for operation. Construction may not commence until the grant of a license, and must be completed by the date specified in the license as the termination date of the construction period. Except as may be limited by § 21.45(b) or otherwise determined by the Commission for any particular application, the maximum construction period for all stations licensed under this part shall be a maximum of 12 months from the date of the license grant.

\* \* \* \* \*

16. Section 21.45 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 21.45 License period.**

(a)(1) Licenses for stations in the Multipoint Distribution Service will be issued for a period not to exceed 10 years, except that licenses for developmental stations will be issued for a period not to exceed one year. The expiration date of developmental licenses shall be one year from the date of the grant thereof. Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the following date in the year of expiration.

Multipoint Distribution Service—May 1.

(2) When a license is granted subsequent to the last renewal date of the class of license involved, the license shall be issued only for the unexpired period of the current license term of such class.

\* \* \* \* \*

(c) Upon the expiration or termination of any station license, any related conditional authorization, which bears a later expiration date, shall be automatically terminated concurrently

with the related station license, unless it shall have been determined by the Commission that the public interest, convenience or necessity would be served by continuing in effect said conditional authorization.

17. Section 21.100 is revised to read as follows:

**§ 21.100 Frequencies.**

The frequencies available for use in the service covered by this part are listed in subpart K. Assignment of frequencies will be made only in such a manner as to facilitate the rendition of communication service on an interference-free basis in each service area. Unless otherwise indicated, each frequency available for use by stations in this service will be assigned exclusively to a single applicant in any service area. All applicants for, and licensees of, stations in this service shall cooperate in the selection and use of the frequencies assigned in order to minimize interference and thereby obtain the most effective use of the authorized facilities. In the event harmful interference occurs or appears likely to occur between two or more radio systems and such interference cannot be resolved between the licensees thereof, the Commission may, after notice and opportunity for hearing, require the licensees to make such changes in operating techniques or equipment as it may deem necessary to avoid such interference.

18. Section 21.101 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising paragraph (a) to read as follows:

**§ 21.101 Frequency tolerance.**

(a) The carrier frequency of each transmitter authorized in these services shall be maintained within the following percentage of the reference frequency except as otherwise provided in paragraph (b) of this section or in the applicable subpart of this part (unless otherwise specified in the instrument of station authorization the reference frequency shall be deemed to be the assigned frequency):

Frequency range (MHz)	Frequency tolerance for fixed stations (percent)
2,150 to 2,162 <sup>1 2</sup> .....	0.001

Frequency range (MHz)	Frequency tolerance for fixed stations (percent)
2,596 to 2,680 <sup>2</sup> .....	0.005

<sup>1</sup> Beginning Aug. 9, 1975, this tolerance will govern the marketing of equipment pursuant to §§ 2.803 and 2.805 of this chapter and the issuance of all authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of 0.03 percent in the frequency range 2,200 to 10,500 MHz and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee. Equipment authorized in the frequency range 2,450 to 10,500 MHz prior to June 23, 1969, at a tolerance of 0.05 percent may continue to be used until February 1, 1976 provided it does not cause interference to the operation of any other licensee.

<sup>2</sup> Beginning November 1, 1991, equipment authorized to be operated in the frequency bands 2150-2162 MHz, 2596-2644 MHz, 2650-2656 MHz, 2662-2668 MHz, and 2674-2680 MHz for use in the Multipoint Distribution Service shall maintain a frequency tolerance within +1 KHz of the assigned frequency.

\* \* \* \* \*

**§ 21.106 [Amended]**

19. Section 21.106 is amended by removing paragraphs (a)(2)(ii), (a)(3), and (a)(4) and redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(ii).

20. Section 21.107 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

**§ 21.107 Transmitter power.**

\* \* \* \* \*

(b) The EIRP of a transmitter station employed in this radio service shall not exceed the values shown in the following tabulation:

Frequency range (MHz)	Maximum allowable EIRP for a fixed station (Watts)
2,150 to 2,162 .....	1 2000
2,596 to 2,680 .....	1 2000

<sup>1</sup> When a Multipoint Distribution Service station uses a non-omnidirectional antenna EIRP up to 7943 Watts may be authorized pursuant to § 21.904(b) of this Part.

**§ 21.108 [Removed and reserved]**

21. Section 21.108 is removed and reserved.

22. Section 21.109 is amended by revising paragraph (b) to read as follows:

**§ 21.109 Antenna and antenna structures.**

\* \* \* \* \*

(b) The Commission may require the replacement, at the licensee's expense, of any antenna system of a permanent fixed station operating at 2500 MHz or higher upon a showing that said

antenna causes or is likely to cause interference to any other authorized or proposed station.

§ 21.114 [Removed and reserved]

23. Section 21.114 is removed and reserved.

§ 21.119 [Removed and reserved]

24. Section 21.119 is removed and reserved.

25. Section 21.120 is amended by removing paragraphs (d) and (e), and revising paragraph (a) to read as follows:

§ 21.120 Authorization of transmitters.

(a) Except for transmitters used at developmental stations, each transmitter shall be a type which has been type accepted by the Commission for use under the applicable rules of this part.

\* \* \* \* \*

26. Section 21.122 is amended by revising paragraph (a) and removing paragraphs (d) and (e), to read as follows:

§ 21.122 Microwave digital modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 15 GHz shall, with appropriate multiplex equipment, comply with the following additional requirement: The bit rate, in bits per second, shall be equal to or greater than the bandwidth specified by the emission designator in Hertz (e.g., to be acceptable, equipment transmitting at a 6 Mb/s rate must not require a bandwidth of greater than 6 MHz), except the bandwidth used to calculate the minimum rate shall not include any authorized guard band.

\* \* \* \* \*

§§ 21.212–21.214 [Removed]

27. Sections 21.212 through 21.214 are removed.

28. Section 21.303 is amended by revising paragraphs (a), (b), (c) and (d)(1) to read as follows:

§ 21.303 Discontinuance, reduction or impairment of service.

(a) If the public communication service provided by a station subject to this rule part is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee shall promptly give notification thereof in writing to the Mass Media Bureau at Washington, DC 20554. In every such case, the licensee shall furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof shall be given in writing to the

Mass Media Bureau at Washington, DC 20554.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, shall voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter or complying with the requirements set forth at § 21.910. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee shall promptly send the station license for cancellation to the Mass Media Bureau at Washington, DC 20554, except that station licenses need not be surrendered for cancellation if the discontinuance is a result of a change of status by a Multipoint Distribution Service licensee from common carrier to non-common carrier pursuant to § 21.910.

(c) Any station licensee, not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community shall give written notification to the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station licensee shall promptly send the station license for cancellation to the Mass Media Bureau at Washington, DC 20554, except that Multipoint Distribution Service station licenses need not be surrendered for cancellation if the discontinuance is a result of a change of status by a Multipoint Distribution Service licensee from non-common carrier to common carrier.

(d) \* \* \*

(1) Submit for cancellation the station license (or licenses) to the Commission at Washington, DC 20554.

\* \* \* \* \*

§§ 21.500–21.512 (Subpart G) [Removed and reserved]

29. Subpart G of part 21 (21.500 through 21.512) is removed and reserved.

§§ 21.700–21.713 (Subpart I) [Removed and reserved]

30. Subpart I of part 21 (21.700 through 21.713) is removed and reserved.

§§ 21.800–21.809 (Subpart J) [Removed and reserved]

31. Subpart J of part 21 (21.800 through 21.809) is removed and reserved.

32. Section 21.901 is amended by revising paragraph (e) to read as follows:

§ 21.901 Frequencies.

\* \* \* \* \*

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz are available for assignment to fixed stations in this service for a point-to-point return link from a subscriber's location. Assignments in the 18 GHz band for these return links will be made in accordance with the provisions of subpart I of part 101 of this chapter.

\* \* \* \* \*

33. Section 21.902 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 21.902 Frequency interference.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) if the great circle path between the applicant's proposed transmitter and the protected service area of any authorized, or previously-proposed, cochannel or adjacent-channel station(s) is within 241.4 kilometers or less and 90 percent or more of the path is over water or within 16.1 kilometers of the coast or shoreline of the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, any of the Great Lakes, or any bay associated with any of the above (see §§ 21.901(a) and 74.902 of this chapter);

\* \* \* \* \*

34. Section 21.903 is amended by revising paragraph (a) to read as follows:

§ 21.903 Purpose and permissible service.

(a) Multipoint Distribution Service stations are generally intended to provide one-way radio transmission (usually in an omnidirectional pattern) from a stationary transmitter to multiple receiving facilities located at fixed points. When service is provided on a common carrier basis, subscriber supplied information is transmitted to points designated by the subscriber. When service is provided on a non-common carrier basis, transmissions may include information originated by persons other than the licensee, licensee-manipulated information supplied by other persons, or information originated by the licensee. Point-to-point radio return links from a subscriber's location to a MDS operator's facilities may be authorized in the 18,580 through 18,820 MHz and 18,920 through 19,160 MHz bands. Rules governing such operation are contained in subpart I of part 101 of this chapter, the Point-to-Point Microwave Radio Service.

\* \* \* \* \*

**PART 94—[REMOVED AND RESERVED]**

35. Part 94 is removed and reserved.

36. Part 101 is added to read as follows:

**PART 101—FIXED MICROWAVE SERVICES****Subpart A—General**

Sec.

- 101.1 Scope and authority.  
101.3 Definitions.

**Subpart B—Applications and Licenses***General Filing Requirements*

- 101.4 Transition plan.  
101.5 Station authorization required.  
101.7 Eligibility for station license.  
101.9 Formal and informal applications.  
101.11 Filing of applications, fees, and number of copies.  
101.13 Application forms and requirements for private operational fixed stations.  
101.15 Application forms for common carrier fixed stations.  
101.17 [Reserved]  
101.19 General application requirements.  
101.21 Technical content of applications.  
101.23 Waiver of rules.  
101.25 Inconsistent or conflicting applications.  
101.27 Repetitious applications.  
101.29 Amendment of pending applications.  
101.31 Special temporary, temporary, and conditional authorizations.  
101.33 Who may sign applications.

*Processing of Applications*

- 101.35 Preliminary processing of applications.  
101.37 Public notice period.  
101.39 Dismissal and return of applications.  
101.41 Ownership changes and agreements to amend or dismiss applications or pleadings.  
101.43 Opposition to applications.  
101.45 Mutually exclusive applications.  
101.47 Consideration of applications.  
101.49 Grants by random selection.  
101.51 Comparative evaluation of mutually exclusive applications.

*License Transfers, Modifications, Conditions and Forfeitures*

- 101.53 Assignment or transfer of station authorization.  
101.55 Considerations involving transfer or assignment applications.  
101.57 Modification of station license.  
101.59 Processing of applications for facility minor modifications.  
101.61 Certain modifications not requiring prior authorization.  
101.63 Period of construction; certification of completion of construction.  
101.65 Forfeiture and termination of station authorizations.  
101.67 License period.

- 101.69 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from the Common Carrier Fixed Point-to-Point Microwave Services and the 1.85–1.99, 2.13–2.15, and 2.18–2.20 GHz bands from the Private Operational Fixed Point-to-Point Microwave Service to emerging technologies.

**Subpart C—Technical Standards**

- 101.101 Frequency availability.  
101.103 Frequency coordination procedures.  
101.105 Interference protection criteria.  
101.107 Frequency tolerance.  
101.109 Bandwidth.  
101.111 Emission limitations.  
101.113 Transmitter power limitations.  
101.115 Directional antennas.  
101.117 Antenna polarization.  
101.119 Simultaneous use of common antenna structures.  
101.121 Marking of antenna structures.  
101.123 Quiet zones.  
101.125 Temporary fixed antenna height restrictions.  
101.127 Topographical data.  
101.129 Transmitter location.  
101.131 Transmitter construction and installation.  
101.133 Limitations on use of transmitters.  
101.135 Shared use of radio stations and the offering of private carrier service.  
101.137 Interconnection of private operational fixed point-to-point microwave stations.  
101.139 Authorization of transmitters.  
101.141 Microwave modulation.  
101.143 Minimum path length requirements.  
101.145 Interference to geostationary-satellites.  
101.147 Frequency assignments.  
101.149 Special requirements for operation in the band 38,600–40,000 MHz.

**Subpart D—Technical Operation**

- 101.201 Station inspection.  
101.203 Communications concerning safety of life and property.  
101.205 Operation during emergency.  
101.207 Suspension of transmission.  
101.209 Operation of stations at temporary fixed locations for communication between the United States and Canada or Mexico.  
101.211 Operator requirements.  
101.213 Station identification.  
101.215 Posting of station authorization and transmitter identification cards, plates, or signs.  
101.217 Station records.

**Subpart E—Miscellaneous Common Carrier Provisions**

- 101.301 National defense; free service.  
101.303 Answers to notices of violation.  
101.305 Discontinuance, reduction or impairment of service.  
101.307 Tariffs, reports, and other material required to be submitted to the Commission.  
101.309 Requirement that licensees respond to official communications.  
101.311 Equal employment opportunities.

**Subpart F—Developmental Authorizations**

- 101.401 Eligibility.  
101.403 Scope of service.  
101.405 Adherence to program of research and development.  
101.407 Special procedure for the development of a new service or for the use of frequencies not in accordance with the provisions of the rules in this part.  
101.409 Terms of grant; general limitations.  
101.411 Supplementary showing required.  
101.413 Developmental report required.

**Subpart G—Digital Electronic Message Service**

- 101.501 Eligibility.  
101.503 Digital Electronic Message Service Nodal Stations.  
101.505 Frequencies.  
101.507 Frequency stability.  
101.509 Interference protection criteria.  
101.511 Purpose and permissible service.  
101.513 Transmitter power.  
101.515 Emissions and bandwidth.  
101.517 Antennas.  
101.519 Interconnection.  
101.521 Spectrum utilization.

**Subpart H—Private Operational Fixed Point-to-Point Microwave Service**

- 101.601 Eligibility.  
101.603 Permissible communications.

**Subpart I—Common Carrier Fixed Point-to-Point Microwave Service**

- 101.701 Eligibility.  
101.703 Permissible communications.  
101.705 Renewal of station licenses.

**Subpart J—Local Television Transmission Service**

- 101.801 Eligibility.  
101.803 Frequencies.  
101.805 Assignment of frequencies to mobile stations.  
101.807 Transmitter power.  
101.809 Bandwidth and emission limitations.  
101.811 Modulation requirements.  
101.813 Remote control operation of mobile television pickup stations.  
101.815 Stations at temporary fixed locations.  
101.817 Notification of station operation at temporary locations.  
101.819 Stations affected by coordination contour procedures.

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

**Subpart A—General****§ 101.1 Scope and authority.**

(a) The purpose of the rules in this part is to prescribe the manner in which portions of the radio spectrum may be made available for private operational and common carrier fixed microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

(b) The rules in this part are issued pursuant to the authority contained in

Titles I through III of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate common carriers of interstate and foreign communications, to regulate radio transmissions and issue licenses for radio stations, and to regulate all interstate and foreign communications by wire and radio necessary to the accomplishment of the purposes of the Act.

### § 101.3 Definitions.

As used in this part.

**Antenna power gain.** The ratio of the maximum radiation intensity to that of an isotropic (omnidirectional) radiator in the far field of its main (forward direction) lobe.

**Antenna power input.** The radio frequency peak or RMS power, as the case may be, supplied to the antenna from the antenna transmission line and its associated impedance matching network.

**Antenna structure.** The antenna, its supporting structure and anything attached to it.

**Assigned frequency.** The center of the frequency band assigned to a station.

**Assigned frequency bandwidth.** The frequency band within which the emission of a station is authorized; the width of the band equals the necessary bandwidth plus twice the absolute value of the frequency tolerance.

**Authorized bandwidth.** The maximum bandwidth authorized to be used by a station as specified in the station license. (See § 2.202 of this chapter)

**Authorized frequency.** The frequency, or frequency range, assigned to a station by the Commission and specified in the instrument of authorization.

**Authorized power.** The maximum power a station is permitted to use. This power is specified by the Commission in the station's authorization.

**Automatic Transmitter Power Control (ATPC).** ATPC is a feature of a digital microwave radio system that adjusts the transmitter output power. ATPC allows the transmitter to operate at less than maximum power for most of the time. In a radio employing ATPC, the transmit power is reduced during normal operation conditions. When the receiver detects a reduction in signal level, a control signal is sent to the far end transmitter, instructing it to increase the power output to compensate for the signal reduction. The power output is limited to the licensed (maximum) transmit power. Guidelines for use of ATPC are set forth in the TIA Telecommunications Systems Bulletin

TSB 10, "Interference Criteria for Microwave Systems (TSB 10)."

**Bandwidth occupied by an emission.** The band of frequencies comprising 99 percent of the total radiated power extended to include any discrete frequency on which the power is at least 0.25 percent of the total radiated power.

**Bit rate.** The rate of transmission of information in binary (two state) form in bits per unit time.

**Carrier.** In a frequency stabilized system, the sinusoidal component of a modulated wave whose frequency is independent of the modulating wave; or the output of a transmitter when the modulating wave is made zero; or a wave generated at a point in the transmitting system and subsequently modulated by the signal; or a wave generated locally at the receiving terminal which when combined with the side bands in a suitable detector, produces the modulating wave.

**Carrier frequency.** The output of a transmitter when the modulating wave is made zero.

**Central office.** A landline termination center used for switching and interconnection of public message communication circuits.

**Common carrier fixed point-to-point microwave service.** A common carrier public radio service rendered on microwave frequencies by fixed and temporary fixed stations between points that lie within the United States or between points to its possessions or to points in Canada or Mexico.

**Communication common carrier.** Any person engaged in rendering communication service for hire to the public.

**Control point.** An operating position at which an operator responsible for the operation of the transmitter is stationed and which is under the control and supervision of the licensee.

**Control station.** A fixed station, the transmissions of which are used to control automatically the emissions or operations of a radio station, or a remote base station transmitter.

**Coordination area.** The area associated with a station outside of which another station sharing the same or adjacent frequency band neither causes nor is subject to interfering emissions greater than a permissible level.

**Coordination contour.** The line enclosing the coordination area.

**Coordination distance.** The distance on a given azimuth from a station beyond which another station neither causes nor is subject to interfering emissions greater than a permissible level.

**Digital Electronic Message Nodal Station.** A fixed point-to-multipoint radio station in a Digital Electronic Message Service providing two-way communication with Digital Electronic Message User Stations.

**Digital Electronic Message Service.** A two-way end-to-end fixed radio service utilizing digital termination systems for the exchange of digital information. This service may also make use of point-to-point microwave facilities, satellite facilities or other communications media to interconnect digital termination systems to comprise a network.

**Digital Electronic Message User Station.** Any one of the fixed microwave radio stations located at users' premises, lying within the coverage area of a Digital Electronic Message Nodal Station, and providing two-way digital communications with the Digital Electronic Message Nodal Station.

**Digital modulation.** The process by which some characteristic (frequency, phase, amplitude or combinations thereof) of a carrier frequency is varied in accordance with a digital signal, e.g., one consisting of coded pulses or states.

**Drop point.** A term used in the point-to-point microwave radio service to designate a terminal point where service is rendered to a subscriber.

**Earth station.** A station located either on the Earth's surface or within the major portion of Earth's atmosphere and intended for communication:

- (1) With one or more space stations; or
- (2) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space.

**Effective radiated power (ERP).** The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

**Equivalent Isotropically Radiated Power (EIRP).** The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

**Exchange.** A unit of a communication company or companies for the administration of communication service in a specified area, which usually embraces a city, town, or village and its environs, and consisting of one or more central offices, together with the associated plant, used in furnishing communication service in that area.

**Exchange area.** The geographic area included within the boundaries of an exchange.

**Fixed satellite earth station.** An earth station intended to be used at a specified fixed point.

**Fixed relay station.** A fixed station associated with one or more stations, established to receive radio signals directed to it and to retransmit them automatically on a fixed service frequency.

**Fixed Service.** A radio communications service between specified fixed points.

**Fixed station.** A station in the fixed service.

**Frequency tolerance.** The maximum permissible departure by the center frequency of the frequency band occupied by an emission from the assigned frequency or, by the characteristic frequency of an emission from the reference frequency.

Note: The frequency tolerance is expressed as a percentage or in Hertz.

**General communication.** Two-way voice communication, through a base station, between:

- (1) A common carrier land mobile or airborne station and a landline telephone station connected to a public message landline telephone system;
- (2) Two common carrier land mobile stations;
- (3) Two common carrier airborne stations;
- (4) A common carrier land mobile station and a common carrier airborne station.

**Harmful interference.** Interference that endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with these regulations.

**Internodal link.** A point-to-point communications link used to provide communications between nodal stations or to interconnect nodal stations to other communications media.

**Landing area.** A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

**Local Television Transmission Service.** A public radio communication service for the transmission of television material and related communications.

**Long haul system.** A microwave system licensed under this part in which the longest radio circuit of tandem radio paths exceeds 402 kilometers.

**Master station.** A station in a multiple address radio system that controls, activates or interrogates four or more

remote stations. Master stations performing such functions may also receive transmissions from remote stations.

**Message center.** The point at which messages from members of the public are accepted by the carrier for transmission to the addressee.

**Microwave frequencies.** As used in this part, this term refers to frequencies of 890 MHz and above.

**Microwave link.** A link is defined as a simplex communications circuit between two points utilizing a single frequency/polarization assignment. A duplex communications circuit would require two links, one link in each direction.

**Miscellaneous common carriers.** Communications common carriers that are not engaged in the business of providing either a public landline message telephone service or public message telegraph service.

**Mobile earth station.** An earth station intended to be used while in motion or during halts at unspecified points.

**Mobile Service.** A radio communication service between mobile and land stations or between mobile stations.

**Mobile station.** A station in the mobile service intended to be used while in motion or during halts at unspecified points.

**Multiple address system (MAS).** A point-to-multipoint radio communications system, either one-way or two-way, utilizing frequencies in accordance with § 101.147 and serving a minimum of four unique remote stations. Each master station must serve at least its own four remotes. The remote stations must be scattered over the service area in such a way that two or more point-to-point systems would be needed to serve those remotes.

**National Spatial Reference System.** The National Spatial Reference System (NSRS) is the name given to all Geodetic Control information contained in the National Geodetic Survey (NGS) Data Base. This includes: A, B, First, Second, and Third Order horizontal and vertical control observed by NGS as well as data submitted by other agencies (i.e., USGS, BLM, States, Counties, Cities, and private surveying organizations).

**Necessary bandwidth.** For a given class of emission, the width of the frequency band that is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions. The necessary bandwidth may be calculated using the formulas in § 2.202 of this chapter.

**Nodal station.** The central or controlling station in a radio system

operating on point-to-multipoint frequencies in the 2.5, 10.6, or 18 GHz bands.

**Occupied bandwidth.** The width of a frequency bandwidth such that, below the lower and above the upper frequency limits, the mean powers emitted are each equal to a specified percentage, B/2 of the total mean power of a given emission. Unless otherwise specified by the CCIR for the appropriate class of emission, the value of B/2 should be taken as 0.5%.

Note: The percentage of the total power outside the occupied bandwidth is represented by B.

**Operational fixed station.** A private fixed station not open to public correspondence.

**Passive repeater.** A re-radiation device associated with a transmitting/receiving antenna system that re-directs intercepted radiofrequency energy. For example, it may consist of reflector(s) or back-to-back parabolic or horn antennas.

**Path length.** The total distance of a path from the transmit to the receive antenna, inclusive of all passive repeaters, if any.

**Periscope antenna system.** An antenna system which involves the use of a passive reflector to deflect radiation from or to a directional transmitting or receiving antenna which is oriented vertically or near vertically.

**Prior coordination.** A bilateral process conducted prior to filing applications which includes the distribution of the technical parameters of a proposed radio system to potentially affected parties for their evaluation and timely response.

**Private carrier.** An entity licensed in the private service and authorized to provide communications service to other private service eligibles on a commercial basis.

**Private line service.** A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time.

**Private operational fixed point-to-point microwave service.** A private line radio service rendered on microwave frequencies by fixed and temporary fixed stations between points that lie within the United States or between points to its possessions or to points in Canada or Mexico.

**Public correspondence.** Any telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission.

**Public message service.** A service whereby facilities are offered to the

public for communication between all points served by a carrier or by interconnected carriers on a non-exclusive message by message basis, contemplating a separate connection for each occasion of use.

**Radio station.** A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

**Radiocommunication.** Telecommunication by means of radio waves.

**Rated power output.** The maximum radio frequency power output capability (peak or average power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

**Record communication.** Any transmission of intelligence which is reduced to visual record form at the point of reception.

**Reference frequency.** A frequency having a fixed and specified position with respect to the assigned frequency. The displacement of this frequency with respect to the assigned frequency has the same absolute value and sign that the displacement of the characteristic frequency has with respect to the centre of the frequency band occupied by the emission.

**Relay station.** A fixed station used for the reception and retransmission of the signals of another station or stations.

**Remote station.** A fixed station in a multiple address radio system that transmits one-way to one or more central receive sites, controls a master station, or is controlled, activated or interrogated by, and may respond to, a master station.

**Repeater station.** A fixed station established for the automatic retransmission of radiocommunications received from one or more mobile stations and directed to a specified location; for public mobile radio operations, a fixed station that automatically retransmits the mobile communications and/or transmitter information about the base station, along a fixed point-to-point link between the base station and the central station.

**Short haul system.** A microwave system licensed under this part in which the longest radio circuit of tandem radio paths does not exceed 402 kilometers.

**Signaling communication.** One-way communications from a base station to a mobile or fixed receiver, or to multi-point mobile or fixed receivers by audible or subaudible means, for the purpose of actuating a signaling device

in the receiver(s) or communicating information to the receiver(s), whether or not the information is to be retained in record form.

**Standby transmitter.** A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main transmitter is out of service for maintenance or repair.

**Symbol rate.** Modulation rate in bauds. This rate may be higher than the transmitted bit rate as in the case of coded pulses or lower as in the case of multilevel transmission.

**Telegraphy.** A form of telecommunication which is concerned in any process providing transmission and reproduction at a distance of documentary matter, such as written or printed matter or fixed images, or the reproduction at a distance of any kind of information in such a form. Unless otherwise specified, telegraphy means a form of telecommunication for the transmission of written matter by the use of signal code.

**Telemetry.** The use of telecommunication for automatic indicating or recording measurements at a distance from the measuring instrument.

**Telephony.** A form of telecommunication set up for the transmission of speech, or in some cases, other sounds.

**Television.** A form of telecommunication for transmission of transient images of fixed or moving objects.

**Temporary fixed station.** A station established in a non-permanent mode (temporary) at a specified location for a short period of time, ranging up to one year. Temporary-fixed operations are itinerant in nature, and are not to be confused with mobile-type operations.

**Video entertainment material.** The transmission of a video signal (e.g. United States Standard Monochrome or National Television Systems Committee 525-line television) and an associated audio signal which is designed primarily to amuse or entertain, such as movies and games.

## Subpart B—Applications and Licenses

### General Filing Requirements

#### § 101.4 Transition plan.

(a) All systems subject to parts 21 and 94 of this chapter in effect as of July 31, 1996, which are licensed or which are proposed in an application on file, as of July 31, 1996, are subject to the requirements under part 21 or part 94 of this chapter as contained in the CFR edition revised as of October 1, 1995 and amended in the Federal Register through July 31, 1996, as applicable.

(b) For purposes of this section, a "system" shall include:

- (1) The originally licensed system;
- (2) Any modification to the original system involving a change in antenna azimuth, antenna beam width, channel loading, emission, station location, antenna height, authorized power, or authorized frequencies;
- (3) Additional links constructed to complete an integrated communications network; or
- (4) Operationally connecting new facilities and/or frequencies.

(c) All radio frequency devices authorized pursuant to part 2 of this chapter as being in compliance with applicable part 21 or part 94 of this chapter in effect as of July 31, 1996, requirements can be used indefinitely with systems licensed under this part 101.

#### § 101.5 Station authorization required.

(a) No radio transmitter shall be operated in this service except under and in accordance with a proper station authorization granted by the Federal Communications Commission. Except as provided in paragraph (d) of this section, no construction, modification or operation of a station may be commenced without an authorization from the Commission.

(b) A separate application form must be filed for each Digital Electronic Message Service Nodal Station. No license is required for a Digital Electronic Message User Station. Authority for a Digital Electronic Message Nodal Station licensee to serve a specific number of user stations to be licensed in the name of the carrier must be requested on FCC Form 494 filed for the Digital Electronic Message Nodal Station.

(c) If construction and or operation may have a significant environmental impact as defined by § 1.1307 of this chapter, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed before construction of the station is initiated. See § 1.1312 of this chapter.

(d) For stations authorized under subpart H (Private Operational Fixed Point-to-Point Microwave Service) and subpart I (Common Carrier Fixed Point-to-Point Microwave Service), construction of new or modified stations may be initiated prior to grant of an authorization. As a condition to commencing construction under this paragraph (d), the Commission may, at any time and without hearing or notice, prohibit such construction for any

reason. Any construction conducted hereunder is at the applicant's sole risk.

**§ 101.7 Eligibility for station license.**

(a) A station license may not be granted to or held by a foreign government or by a representative of a foreign government.

(b) In the Common Carrier service, a station license may not be granted or held by:

(1) Any alien or the representative of any alien;

(2) Any corporation organized under the laws of any foreign government;

(3) Any corporation of which any officer or director is an alien;

(4) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: Aliens or their representatives; a foreign government or representatives thereof; or any corporation organized under the laws of a foreign country;

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license; or

(6) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

**§ 101.9 Formal and informal applications.**

(a) Except for an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission will grant the following authorizations only upon written application: Station licenses; modifications of station licenses; renewals of station licenses; extensions of time to construct; transfers and assignments of station licenses or of any rights thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application must be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

**§ 101.11 Filing of applications, fees, and number of copies.**

(a) Part 1 of this chapter contains information on application filing procedures and requirements for all services authorized under this part. All filings must include the original application plus one copy.

(b) Applications or filings requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter. Applications or filings not requiring fees must be submitted to: Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, PA 17325.

(c) All correspondence or amendments concerning a submitted application must clearly identify the radio service, the name of the applicant, station location, and the Commission file number (if known) or station call sign of the application involved.

(d) Except as otherwise specified, all applications, amendments, and correspondence must be signed as prescribed by part 1 of this chapter.

**§ 101.13 Application forms and requirements for private operational fixed stations.**

(a) A separate application must be submitted on FCC Form 402 for the following:

(1) New station authorization for private operational fixed microwave station;

(2) New authorization to operate one or more fixed stations at temporary locations in this service;

(3) Modification of station license;

(4) New station authorization or modification of license for each master station of a system consisting of a master station and its associated remote stations;

(5) The Commission's consent to the complete or partial assignment of an authorization to another person or entity, or the transfer of control of an entity holding an authorization. In addition, the application must be accompanied by a signed letter from

proposed assignor/transferor stating the desire to assign all or part of its right, title, and interest in and to such authorization, or to transfer control over the entity holding the authorization, stating the call sign and location of the station, and that, if applicable, the assignor will submit its current station authorization for cancellation upon completion of the assignment. Form 1046 may be used in lieu of this letter. Licensees who fail to consummate must modify their licenses to conform them to their initial state within 30 days of a failure to consummate; or

(6) Amendment of any application.

(b) An application for authority to operate a fixed station at temporary locations must specify the precise geographic area within which the operation will be confined. The area specified must be defined as a radius of operation about a given state or states, latitude/longitude, or as a rectangular area bounded by upper and lower lines of latitude and longitude. Exception to this specific requirement may be made for exceptionally large areas, such as the continental United States. Sufficient data must be submitted to show the need for the proposed area of operation. If an operational-fixed station is authorized to be operated at temporary locations and actually remains, or is to remain, at the same location for a period of over a year, application for a permanent authorization specifying the fixed location must be made as soon as possible but not later than 30 days after the expiration of the one-year period.

(c) A separate Form 402 for point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands must be filed for each Nodal Station except for operations consistent with § 101.147. Each Nodal Station application must specify the service area that will be served by the station in terms of a distance radius or other geographical specification, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) being served.

(d) Application for renewal of station licenses must be submitted on such form as the Commission may designate by public notice. Applications for renewal must be made during the license term and should be filed within 90 days, but not later than 30 days, prior to the end of the license term. When a licensee submits a timely application for renewal of a station license, the existing license for that station will continue as a valid authorization until the Commission has made a final decision on the application. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the

entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for such radio station(s).

(e) A separate application must be filed for each fixed master station in a Multiple Address System (MAS). Applications may include any number of remote stations in a single application, but must specify the geographic service area in which these remote stations will be located. Applications for mobile operations or for systems employing only remote stations must designate a reference point (set of coordinates) at or near the center of the area being served.

(f) Cancellation of a license can be made by letter.

**§ 101.15 Application forms for common carrier fixed stations.**

(a) *New or modified facilities.* FCC Form 494 must be submitted and a license granted for each station. FCC Form 494 also must be submitted to amend any license application, to modify any license pursuant to §§ 101.57(a) and 101.59, and to notify the Commission of modifications made pursuant to § 101.61. Cancellation of a license can be made by letter.

(b) *Additional time to construct.* FCC Form 701 ("Application for Additional Time to Construct Radio Station") must be filed prior to the expiration of the time for construction noted in a conditional license to modify the license by extending the period of construction.

(c) *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for each radio service. When a licensee submits a timely application for renewal of a station license, the existing license continues in effect until the Commission has rendered a decision on the renewal application.

(d) *Assignment of license.* FCC Form 702 ("Application for Consent to Assignment of Radio Station Construction Authorization or License for Stations in Services Other than Broadcast") must be submitted to assign

voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment (or transfer of control) the application must be filed within 10 days of the event causing the assignment (or transfer of control). FCC Form 702 must also be used for non-substantial (pro forma) assignments. Whenever a group of station licenses in the same radio services are to be assigned to a single assignee, a single "blanket" application may be filed to cover the entire group, if the application identifies each station by call sign and station location. Licensees who fail to consummate must modify their licenses to conform them to their initial state within 30 days of a failure to consummate.

(e) *Partial assignment of license.*

Authorization for assignment from one company to another of only a part or portions of the facilities (transmitters) authorized under an existing license (as distinguished from an assignment of the facilities in their entirety) may be granted upon application:

(1) By the assignor on FCC Form 494 for deletion of the assigned facilities (no fee required); and

(2) By the assignee on FCC Form 494 with a request for recertification in the name of the assignee for frequencies eliminated from assignor's license (fee required). In the event that consummation does not occur, FCC Form 494 must be submitted to return the assignor's license to its original condition.

(f) *Transfer of control of corporation holding a conditional license or license.* FCC Form 704 ("Application for Consent to Transfer of Control") must be submitted in order to voluntarily or involuntarily transfer control (de jure or de facto) of a corporation holding any conditional licenses or licenses. FCC Form 704 must also be used for non-substantial (pro forma) transfers of control. Licensees who fail to consummate must modify their licenses to conform them to their initial state within 30 days of a failure to consummate.

**§ 101.17 [Reserved]**

**§ 101.19 General application requirements.**

(a) Each application for a license or for consent to assignment or transfer of control must:

(1) Disclose fully the real party (or parties) in interest, including (as required) a complete disclosure of the identity and relationship of those persons or entities directly or indirectly

owning or controlling (or both) the applicant;

(2) Demonstrate the applicant's legal, technical, and other qualifications to be a licensee;

(3) Submit the information required by the Commission's rules, requests, and application forms;

(4) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter; and

(5) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (e.g., those required by §§ 101.103(d), 101.701, and of this part, etc.).

(b) In addition to the general application requirements of §§ 101.19 and 101.21, applicants must submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by the other parts of the Commission's rules, and the other subparts of this part (particularly Subpart C and those subparts applicable to the specific radio service involved); and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(c) All applicants are required to indicate at the time their application is filed whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an Environmental Assessment as described by § 1.1311 of this chapter, need not be filed with the application.

**§ 101.21 Technical content of applications.**

Applications must contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see subparts C, F, G, I, and J, as appropriate). The following paragraphs describe a number of technical requirements.

(a) Each application proposing a new or modified antenna structure for a station (including a receive-only or passive repeater) must indicate whether the owner has registered the structure with the Commission. Complete information as to rules concerning the registration, construction, marking and lighting of antenna structures is

contained in part 17 of this chapter. See also § 101.121 if the structure is used by more than one station.

(b) Each application for construction permit for a developmental authorization must be accompanied by pertinent supplemental information as required by § 101.411 in addition to such information as may be specifically required by this section.

(c) An applicant proposing construction of one or more new stations or modification of existing stations must submit the location and telephone number (if known) of the maintenance center for a fixed microwave system. In lieu of providing the location and telephone number of the maintenance center(s) on a case by case basis, a licensee may file a complete list for all operational stations with the Commission and the Engineer-In-Charge of the appropriate radio district on an annual basis or at more frequent intervals as necessary to keep the information current.

(d) Each application in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, and Digital Electronic Message Services (excluding user stations) proposing a new or replacement antenna (excluding omnidirectional antennas) must include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC-ID number that indicates that the pattern is on file with the Commission.

(e) Each application in the Private Operational Fixed Point-to-Point Microwave Service and the Common Carrier Fixed Point-to-Point Microwave Service must include the following information:

Applicant's name and address.  
 Transmitting station name.  
 Transmitting station coordinates.  
 Frequencies and polarizations to be added, changed or deleted.  
 Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation (loading).  
 Transmitting antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.  
 Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.  
 Receiving station name.  
 Receiving station coordinates.  
 Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.

Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.

Path azimuth and distance.

Estimated transmitter transmission line loss expressed in dB.

Estimated receiver transmission line loss expressed in dB.

Note: The position location of antenna sites shall be determined to an accuracy of no less than  $\pm 1$  second in the horizontal dimensions (latitude and longitude) and  $\pm 1$  meter in the vertical dimension (ground elevation) with respect to the National Spatial Reference System.

(f) All applicants for regular authorization must, before filing an application, amendments to a pending application, or modifications to a license, prior coordinate the proposed frequency usage with existing users in the area and other applicants with previously filed applications in accordance with the procedures in § 101.103. In those frequency bands shared with the communication-satellite service, an applicant for a new station, for new points of communication, for the initial frequency assignment in a shared band for which coordination has not been previously effected, or for authority to modify the emission or radiation characteristics of an existing station in a manner that may increase the likelihood of harmful interference, must ascertain in advance whether the station(s) involved lie within the great circle coordination distance contours of an existing Earth station or one for which an application has been accepted for filing, and must coordinate his proposal with each such Earth station operator or applicant. For each potential interference path, the applicant must perform the computations required to determine that the expected level of interference to or from the terrestrial station does not exceed the maximum permissible interference power level in accordance with the technical standards and requirements of §§ 25.251–25.256 of this chapter. The Commission may, in the course of examining any application, require the submission of additional showings, complete with pertinent data and calculations in accordance with part 25 of this chapter, showing that harmful interference will not likely result from the proposed operation. (Technical characteristics of the Earth stations on file and coordination contour maps for those Earth stations will be kept on file for public inspection in the offices of the Commission's International Bureau in Washington, DC)

#### § 101.23 Waiver of rules.

Waivers of these rules may be granted upon application or on the Commission's own motion.

A request for waiver shall contain a statement of reasons sufficient to justify a waiver. A waiver will not be granted except upon an affirmative showing that:

(a) The underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or

(b) The unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

#### § 101.25 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, the applicant's successor or assignee, or on behalf or for the benefit of the same applicant, the applicant's successor or assignee.

#### § 101.27 Repetitious applications.

(a) Where an applicant has been afforded an opportunity for a hearing with respect to a particular application for a new station, or for an extension or enlargement of a service or facilities, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by the applicant's successor or assignee, or on behalf or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station and for the same area, in whole or in part, filed by the same applicant or by the applicant's successor or assignee, or on behalf or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

#### § 101.29 Amendment of pending applications.

(a) Any pending application may be amended as a matter of right if the

application has not been designated for hearing, or for comparative evaluation pursuant to § 101.51, or for the random selection process, provided, however, that the amendments must comply with the provisions of § 101.41 as appropriate.

(b) Requests to amend an application designated for hearing or for comparative evaluation, or tentatively selected by the random selection process may be granted only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) The Commission will classify amendments on a case-by-case basis. Whenever previous amendments have been filed, the most recent amendment will be classified by reference to how the information in question stood as of the latest Public Notice issued which concerned the application. An amendment will be deemed to be a major amendment subject to § 101.37 and § 101.45 under any of the following circumstances:

(1) If the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

(i) A change in, or an addition of a radio frequency channel;

(ii) A change in polarization of the transmitted signal;

(iii) An increase in the equivalent isotropically radiated power of three (3) dB or more;

(iv) A change in type of transmitter emission or an increase in emission bandwidth of more than ten (10) percent;

(v) A change in the geographic coordinates of a station's transmitting antenna of more than five (5) seconds of latitude or longitude, or both;

(vi) A change of more than one (1) degree in the azimuth of the center of the main lobe of radiation of a point-to-point station's transmitting antenna (including any deflections by repeating devices);

(vii) Any change which increases the antenna center line height by 3.0 meters (ten (10) feet) or more;

(viii) Any changes or combination of changes which would cause harmful electrical interference to an authorized facility or result in a mutually exclusive conflict with another pending application; or

(ix) Any technical change that would increase the effective radiated power in any direction by more than one and one-half (1.5) dB in the Digital Electronic Message Service.

(2) If the amendment would convert a proposal, such that it may have a significant impact upon the

environment under § 1.1307 of this chapter, which would require the submission of an environmental assessment, see § 1.1311 of this chapter, and Commission environmental review, see §§ 1.1308 and 1.1312 of this chapter.

(3) If the amendment results in a substantial and material alteration of the proposed service.

(4) If the amendment specifies a substantial change in beneficial ownership or control (de jure or de facto) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 (47 U.S.C. 310(d)). Such a change would not be considered major where the assignment or transfer of control is for legitimate business purposes other than the acquisition of applications.

(5) If the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to section 309 of the Communications Act of 1934.

(d) A pending application may be amended by a major amendment to reflect the relocation of a proposed station site and a new application will not be required if:

(1) The geographic coordinates of the new station site are within 32.2 kilometers of the coordinates of the original site; and

(2) The relocated station would serve essentially the same purpose in the system as originally proposed.

(e) The applicant must serve copies of any amendments or other written communications upon the following parties:

(1) Any applicant whose application appears on its face to be mutually exclusive with the application being amended, including those applicants originally served under § 101.509;

(2) Any applicant whose application has been found by the Commission, as published in a public notice, to be mutually exclusive with the application being amended; and

(3) Any party who has filed a petition to deny the application or other formal objection, when that petition or formal objection has not been resolved by the Commission.

(f) The Commission may waive the service requirements of paragraph (e) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service

requirement is unreasonably burdensome. Requests for waiver must be served on petitioners. Oppositions to the petition may be filed within five (5) days after the petition is filed and must be served on the applicant. Replies to oppositions will not be entertained.

(g) Any amendment to an application must be signed and must be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

#### **§ 101.31 Special temporary, temporary, and conditional authorizations.**

(a) *Special temporary authorization.*

(1) In circumstances requiring immediate or temporary use of facilities, licensees subject to this part may request special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 101.9 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization.

(2) Special temporary authorization may be granted upon written request in the following circumstances:

(i) In emergency situations;

(ii) To permit restoration or relocation of existing facilities to continue communication service;

(iii) To conduct tests to determine necessary data for the preparation of an application for regular authorization;

(iv) For a temporary, non-recurring service where a regular authorization is not appropriate;

(v) In other situations involving circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest.

(3) The Commission may grant requests for special temporary authority without issuing the public notice provided for in § 101.37 for periods not exceeding 180 days, if there are extraordinary circumstances supporting the request and where delay in commencing temporary operation would seriously prejudice the public interest. Requests for special temporary authorization not involving extraordinary circumstances may be

granted without public notice for a period of 30 days where an application for regular operation is not contemplated or for 60 days pending or after the filing of an application for regular operation. Requests for special temporary authority are issued on a strictly secondary, non-interfering basis, and do not in any way affect the final disposition of any application or action pending before the Commission.

(4) Extension of a special temporary authorization for a period of 180 days may be granted, but the renewing applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(5) Request for special temporary authorization must contain the following information:

- (i) Name, address, and citizenship status of the applicant;
- (ii) Need for special action, including a description of any emergency or damage to equipment;
- (iii) Type of operation to be conducted;
- (iv) Purpose of operation;
- (v) Time and date of operation desired;
- (vi) Class of station and nature of service;
- (vii) Location of station and points with which station will communicate;
- (viii) Equipment to be used, specifying manufacturer, model number, and number of units;
- (ix) Frequency(s) desired;
- (x) Azimuth and beamwidth of major lobe of transmitting antenna and ERP;
- (xi) Type of emission;
- (xii) Description of antenna to be used, including height; and
- (xiii) Certification that prior coordination is complete.

(6) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the President or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant construction permits and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war,

requiring such action, without the filing of formal applications.

(b) *Temporary authorizations.* (1) Authorizations may be issued upon proper application for rendition of temporary service to subscribers under the following conditions:

(i) When a fixed station, authorized to operate at temporary locations, is to remain at a single location for more than 6 months, an application (FCC Form 402 or 494, as appropriate) for a station authorization designating that single location as the permanent location shall be filed at least 90 days prior to the expiration of the 6-month period;

(ii) The station shall be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable within the required time frame; and

(iii) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See § 101.125.

(2) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form 402 or 494, as appropriate. Blanket applications may be submitted for the required number of transmitters.

(3) The licensee of stations which are authorized pursuant to the provisions of paragraph (b) of this section shall notify the Commission at least five (5) days prior to installation of the facilities, stating:

(i) The call sign, manufacturer's name, type or model number, output power and specific location of the transmitter(s);

(ii) The maintenance location for the transmitter;

(iii) The location of the transmitting or receiving station with which it will communicate and the identity of the correspondent operating such facilities;

(iv) The exact frequency or frequencies to be used;

(v) The public interest, convenience and necessity to be served by operation of the proposed installation;

(vi) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly shall be given to the Commission;

(vii) A notification shall include compliance with the provisions of § 101.21(e) when operations are to be conducted in the area of other terrestrial

microwave stations and with the provisions of § 101.21(e) when operations are to be conducted within the coordination distance contours of a fixed earth station; and

(viii) Where the notification contemplates initially a service which is to be rendered for a period longer than 90 days, the notification shall contain a showing as to why application should not be made for regular authorization.

(4) Less than 5 days advance notice may be given when circumstances require shorter notice provided such notice is promptly given and the reasons in support of such shorter notice are stated.

(5) A copy of the notification shall be kept with the station license.

(c) *Prior coordination.* Stations authorized under this section may complete the prior coordination process orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. The requirements under § 101.103(d)(2)(i) for written documentation shall apply to such oral notice.

(d) *Certification.* Any applicant under this section must submit a certification that neither the applicant nor any party to the applicant is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, as required by § 1.2002 of this chapter.

(e) *Conditional authorization.* (1) An applicant for a new point-to-point microwave radio station(s) or a modification of an existing station(s) in the 3,700–4,200; 5,925–6,425; 6,525–6,875; 10,550–10,680; 10,700–11,700; 11,700–12,200; 12,200–12,700; 12,700–13,200; 13,200–13,250; 17,700–19,700; and 21,200–23,600 MHz bands (see § 101.147 for specific service usage) may operate the proposed station(s) during the pendency of its applications(s) upon the filing of a properly completed formal application(s) that complies with subpart B of part 101 if the applicant certifies that the following conditions are satisfied:

(i) The frequency coordination procedures of § 101.103 have been successfully completed;

(ii) The antenna structure(s) has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by subpart B of part 17 of this chapter; or the antenna or tower structure does not exceed 6.1 meters above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied

by the Federal Aviation Administration and cleared by the FCC;

(iii) The grant of the application(s) does not require a waiver of the Commission's rules;

(iv) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in § 1.1307 of this chapter;

(v) The station site(s) does not lie within 56.3 kilometers of any international border or within a radio "Quiet Zone" identified in § 101.123, or if operated on frequencies in the 17,700–19,700 MHz band, the station site(s) does not lie within the states of Colorado, Maryland and Virginia and the District of Columbia;

(vi) The filed application(s) does not propose to operate in the 10.6–10.68 GHz band, or in the 21.2–23.6 GHz band with an E.R.P. greater than 55 dBm pursuant to § 101.147(s); and

(vii) The filed application(s) is consistent with the proposal that was coordinated pursuant to § 101.103.

(2) Conditional authority ceases immediately if the application(s) is returned by the Commission because it is not acceptable for filing.

(3) A conditional authorization pursuant to paragraphs (e)(1) and (e)(2) of this section is evidenced by retaining the original executed conditional licensing Certification Form with the station records. Conditional authorization does not prejudice any action the Commission may take on the subject application(s). Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. An applicant operating pursuant to this conditional authority assumes all risks associated with such operation, the termination or modification of the conditional authority, or the subsequent dismissal or denial of its application(s).

(4) The Certification Form, or a copy thereof, must be posted at each station operating pursuant to this section consistent with § 101.215.

#### § 101.33 Who may sign applications.

See part 1 of this chapter (§§ 1.743 and 1.913), for practices and procedures governing signatures on applications, amendments and related statements of fact.

#### Processing of Applications

#### § 101.35 Preliminary processing of applications.

(a) Applications received for filing are given a file number. The assignment of a file number to an application is for

administrative convenience and does not indicate the acceptance of the application for filing and processing and does not preclude the subsequent return of the application.

(b) Applications that are incomplete with respect to answers, supplementary statements, execution, or other matters of a formal character will be considered defective and may be returned to the applicant with a brief statement as to such defects. If an applicant is requested by the Commission to file any additional documents or information not included in the prescribed application form, failure to comply with such request will be deemed to render the application defective, and such application may be dismissed. Applications will also be deemed to be defective and may be returned to the applicant in the following cases:

(1) Statutory disqualification of applicant;

(2) Proposed use or purpose of station would be unlawful;

(3) Requested frequency is not allocated for assignment for the service proposed;

(4) The submitted filing fee (if required) is insufficient;

(5) The application does not demonstrate compliance with the special requirements applicable to the radio service involved;

(6) The applications do not include all necessary exhibits; or

(7) The application fails to meet any other Commission requirements.

(c) Any application that has been returned to the applicant for correction will be processed in original order of receipt when resubmitted if it is received within 60 days from the date on which it was returned to the applicant and the change does not involve a major amendment. If the application is not resubmitted within the prescribed time, it will be treated as a new application and considered at the time other applications received on the same date are considered.

(d) Applications considered defective under paragraph (b) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict; or

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

#### § 101.37 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of common carrier applications and major amendments thereto;

(2) Significant Commission actions concerning these applications;

(3) The receipt of common carrier applications for minor modifications made pursuant to § 101.59;

(4) Information which the Commission in its discretion believes of public significance; and

(5) Special environmental considerations as required by part 1 of this chapter.

(b) A public notice will not normally be issued for any of the following applications:

(1) For authorization of a minor technical change in the facilities of a proposed or authorized station where such a change would not be classified as a major amendment to a pending application, as defined by § 101.29, or as a minor modification to a license pursuant to § 101.59;

(2) For temporary authorization pursuant to § 101.31;

(3) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(4) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(5) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

(c) Except as otherwise provided in this part (e.g., § 101.59), no application that has appeared on public notice will be granted until the expiration of a period of thirty days following the issuance of the public notice listing the application, or any major amendment thereto, or until the expiration of a period of thirty days following the issuance of a public notice identifying the tentative selectee of a random selection process, whichever is later.

(d) The listing of an application on public notice as accepted for filing does not indicate that the application has been found by the Commission to be acceptable for filing and does not preclude the subsequent return of the application.

#### § 101.39 Dismissal and return of applications.

(a) Except as provided under paragraph (c) of this section and under § 101.41, any application may, upon written request, be dismissed without prejudice as a matter of right prior to the adoption date of any final Commission action or the application's designation for hearing or comparative evaluation.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing, after selection through the comparative evaluation procedure of § 101.51, or after selection as a tentative selectee in a random selection proceeding, only if:

(1) A written petition is submitted to the Commission and, in the case of applications designated for hearing or comparative evaluation, is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provision of § 101.41 (whenever applicable) and demonstrates good cause.

(c) Except as provided under § 101.41, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding.

(d) Dismissal for failure to prosecute or for failure to respond to official correspondence or requests for additional information within a specified time period will be without prejudice prior to its designation for hearing, or tentative selection by the random selection process. Dismissal may be with prejudice after selection of the comparative evaluation process, or after selection as a tentative selectee in a random selection proceeding.

**§ 101.41 Ownership changes and agreements to amend or dismiss applications or pleadings.**

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications must comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 (47 U.S.C. 310(d)), or

(ii) Proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s),

or any combination thereof, which would thereby permit the grant without hearing, comparative evaluation under § 101.51, or random selection of an application previously in contested status.

(b) The provisions of this section will not be applicable to any engineering agreement (or understanding) that:

(1) Resolves frequency conflicts with authorized stations or other pending applications without the creation of new or increased frequency conflicts; and

(2) Does not involve any consideration promised or received, directly or indirectly (including any merger of interests or reciprocal withdrawal of applications), other than the mutual benefit of resolving the engineering conflict.

(c) For any agreement subject to this section, the applicant of an application which would remain pending pursuant to such an agreement will be considered responsible for the compliance by all parties with the procedures of this section. Failure of the parties to comply with the procedures of this section will constitute a defect in those applications which are involved in the agreement and remain in a pending status.

(d) The principals to any agreement or understanding subject to this section must comply with the standards of paragraph (e) of this section in accordance with the following procedure:

(1) Within ten (10) days after entering into the agreement, the parties thereto must jointly notify the Commission in writing of the existence and general terms of such agreement, the identity of all of the participants and the applications involved;

(2) Within thirty (30) days after entering into the agreement, the parties thereto must file any proposed application amendments, motions, or requests together with a copy of the agreement which clearly sets forth all terms and provisions, and such other facts and information as necessary to satisfy the standards of paragraph (e) of this section. Such submission must be accompanied by the certification by affidavit of each principal to the agreement declaring that the statements made are true, complete, and correct to the best of their knowledge and belief, and are made in good faith; and

(3) The Commission may request any further information which in its judgment it believes is necessary for a determination under paragraph (e) of this section.

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only if it finds upon examination of the

information submitted, and upon consideration of such other matters as may be officially noticed, that the agreement is consistent with the public interest, and the amount of any monetary consideration and the cash value of any other consideration promised or received is not in excess of those legitimate and prudent costs directly assignable to the engineering, preparation, filing and advocacy of the withdrawn, dismissed, or amended application(s), amendment(s), petition(s), pleading(s), or any combination thereof. Where such costs represent the applicant's in-house efforts, these costs may include only directly assignable costs and must exclude general overhead expenses. (The treatment to be accorded such consideration for interstate rate making purposes will be determined at such time as the question may arise in an appropriate rate proceeding.) An itemized accounting must be submitted to support the amount of consideration involved except where such consideration (including the fair market value of any non-cash consideration) promised or received does not exceed one thousand dollars (\$1,000.00). Where consideration involves a sale of facilities or merger of interests, the accounting must clearly identify that portion of the consideration allocated for such facilities or interests and a detailed description thereof, including estimated fair market value. The Commission will not presume an agreement (or understanding) to be prima facie contrary to the public interest solely because it incorporates a mutual agreement to withdraw pending application(s), amendment(s), petition(s), pleading(s), or any combination thereof.

**§ 101.43 Opposition to applications.**

(a) Any party in interest may file with the Commission a petition to deny any application for which public notice is required. All such petitions must:

(1) Identify the application or applications including applicant's name, station location, Commission file numbers and radio service involved with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of this part and part 1 of this chapter;

(3) Contain specific allegations of fact (except for those of which official notice may be taken), supported by affidavit of a person or persons with personal knowledge thereof and be sufficient to make a prima facie showing that the petitioner is a party in interest and that a grant of the application would be

inconsistent with the public interest, convenience and necessity;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of such applications or major amendments thereto, or, identifying the tentative selectee of a random selection proceeding (unless the Commission otherwise extends the deadline); and

(5) Contain a certificate of service showing that the applicant has been mailed a copy of the petition no later than the date on which the petition is filed with the Commission.

(b) The applicant may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof must be supported by an affidavit of a person or persons with personal knowledge thereof and be clearly identified. The applicant must serve a copy of the opposition on the petitioner, and the petitioner must serve a copy of its reply on the applicant. The time for filing such oppositions and replies are provided in § 1.45 of this chapter.

(c) Notwithstanding the provisions of paragraph (a) of this section, before Commission action on any application for an instrument of authorization, any person may file informal objections to the grant. The Commission will consider informal objections, but not necessarily discuss them in a written opinion, if the objection is filed at least one day prior to action on the application and the objection is signed by the submitting person with a disclosure of that person's interest. Such objections may be submitted in letter form. The limitation on pleadings and time for filing pleadings provided for in § 1.45 of this chapter will not be applicable to any objections duly filed pursuant to this paragraph.

(d) Petitions to deny not filed in accordance with paragraph (a) of this section will be treated as informal objections.

#### **§ 101.45 Mutually exclusive applications.**

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" exists when the levels of § 101.105 are exceeded, or when there is a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve

reasonable technical adjustments which would avoid electrical conflict.

(b) A common carrier application will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application established the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. (For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.)

(d) Private operational fixed point-to-point microwave applications for authorization under this part will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications in accordance with the provisions of § 1.227(b)(4) of this chapter.

(e) An application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraphs (b) or (d) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(f) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 101.29), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 101.51), and the Commission or the presiding officer accepts the amendment pursuant to § 101.29(b);

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing, by comparative evaluation pursuant to § 101.51, or by random selection pursuant to § 101.49 provided that the amendment does not create new or additional frequency conflicts;

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted;

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 101.41 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

(g) Applicants for the 932.5–935/941.5–944 MHz bands shall select a frequency pair. Applicants for these bands may select an unpaired frequency only upon a showing that spectrum efficiency will not be impaired and that unpaired spectrum is not available in other bands. During the initial filing window, frequency coordination is not

required, except that an application for a frequency in the 942–944 MHz band must be coordinated to ensure that it does not affect an existing broadcast auxiliary service licensee. After the initial filing window, an applicant must submit evidence that frequency coordination has been performed with all licensees affected by the application. All frequency coordination must be performed in accordance with § 101.103. In the event of mutually exclusive applications occurring during the initial filing window for the 932.5–935/941.5–944 MHz bands, applicants shall be given the opportunity to resolve these situations by applying for an alternative frequency pair, if one is available. To the extent that there are no other available frequencies or to the extent that mutually exclusive applications remain after this process is concluded, lotteries shall be conducted for each frequency pair among all remaining mutually exclusive applications, assuming appropriate coordination with existing broadcast auxiliary stations can be concluded, where necessary. In the event of mutually exclusive applications being received for these bands on the same day after the initial filing window has closed and a subsequent filing window opened, lotteries shall be conducted for each frequency pair among all mutually exclusive applications.

**§ 101.47 Consideration of applications.**

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant will be without a formal hearing if, upon consideration of the application, any pleadings of objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to comparative consideration (pursuant to § 101.45) with another application (or applications), except where the competing applicants have chosen the comparative evaluation procedure of § 101.51 and a grant is appropriate under that procedure;

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is legally, technically, financially and otherwise qualified, and a grant of the application would serve the public interest.

(c) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it will inform the applicant of the reasons therefor, and the grant will be considered final unless the Commission revises its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration that:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(d) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements;

(3) The application is entitled to comparative consideration (under § 101.45) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 101.45) and the applicants have chosen the comparative evaluation procedure of § 101.51 but the Commission deems such procedure to be inappropriate.

(e) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (d) of this section or part 1 of this chapter.

(f) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random section process (in specified services under this rules part),

designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 101.51, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing or a random selection proceeding on all applications might jeopardize the rights of the United States under the provision of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of part 1 of this chapter.

**§ 101.49 Grants by random selection.**

(a) If an application for an authorization in the Digital Electronic Message Service (DEMS) is mutually exclusive with another such application and satisfies the requirements of § 101.45, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.825 of this chapter.

(b) Renewal applications will not be included in a random selection process.

**§ 101.51 Comparative evaluation of mutually exclusive applications.**

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the random selection process does not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

(1) The applications are entitled to comparative consideration pursuant to § 101.45;

(2) The applications have not been designated for formal evidentiary hearing; and

(3) The Commission determines, initially or at any time during the

procedure outlined in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of fact presented (other than those relating to the comparative merits of the applications) which would preclude a grant under paragraphs (a) and (b) of § 101.47.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a formal hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of the applicant's right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and the principal's attorney if represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning the applicant's proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants will have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more)

of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision will be considered final.

License Transfers, Modifications, Conditions and Forfeitures

**§ 101.53 Assignment or transfer of station authorization.**

(a) No station license, or any rights thereunder, may be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity holding any such license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.

(b) For purposes of this section, transfers of control requiring Commission approval must include any and all transactions that:

(1) Change the party controlling the affairs of the licensee; or

(2) Affect any change in a controlling interest in the ownership of the licensee, including changes in legal or equitable ownership.

(c) Requests for transfer of control or assignment authority must be submitted on the application form prescribed by § 101.13 or § 101.15, and must be accompanied by the applicable showings required by §§ 101.19, 101.21, and 101.55.

(d) The Commission must be promptly notified in writing when a licensee is voluntarily or involuntarily placed in bankruptcy or receivership and when an individual licensee, a member of a partnership which is a licensee, or a person directly or indirectly in control of a corporation which is a licensee, dies or becomes legally disabled. Within thirty days after the occurrence of such bankruptcy, receivership, death or legal disability, an application of involuntary assignment of such license, or involuntary transfer of control of such corporation, must be filed with the Commission, requesting assignment or transfer to a successor legally qualified under the laws of the place having jurisdiction over the assets involved.

(e) The assignor of a station licensed under this part may retain no right of reversion or reassignment of the license and may not reserve the right to use the facilities of the station for any period whatsoever. No assignment of license

will be granted or authorized if there is a contract or understanding, express or implied, pursuant to which a right of reversion or reassignment of the license or right to use the facilities are retained as partial or full consideration for the assignment or transfer.

(f) No special temporary authority, or any rights thereunder, may be assigned or otherwise disposed of, directly or indirectly, voluntarily or involuntarily, without prior Commission approval.

**§ 101.55 Considerations involving transfer or assignment applications.**

(a) Licenses may not be assigned or transferred prior to the completion of construction of the facility. However, consent to the assignment or transfer of control of such a license may be given prior to the completion of construction where:

(1) The assignment or transfer does not involve a substantial change in or ownership or control of the authorized facilities; or

(2) The assignment or transfer of control is involuntary due to the licensee's bankruptcy, death, or legal disability.

(b) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses whenever applications (except those involving pro forma assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities:

(1) Authorized following a comparative hearing and have been operated less than one year;

(2) Involve facilities that have not been constructed; or

(3) Involve facilities that were authorized following a random selection proceeding in which the successful applicant received preference and that have been operated for less than one year.

(c) At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(d) If a proposed transfer of radio facilities is incidental to a sale or other facilities or merger of interests, any showing requested under paragraph (a) of this section must include an additional exhibit that:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(e) For the purposes of this section, the one year period is calculated using the following dates (as appropriate):

(1) The initial date of grant of the license, excluding subsequent modifications;

(2) The date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of license, or transfer of control of corporate licensee; or

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (d)(1) and (2) of this section) if the transaction involves a system (such as a Private Operational Fixed Point-to-Point Microwave system) of two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

#### **§ 101.57 Modification of station license.**

(a) Except as provided in § 101.59, no modification of a license issued pursuant to this part (or the facilities described thereunder) may be made except upon application to the Commission.

(b) No application for modification to extend a license construction period will be granted for delays caused by lack of financing or for lack of site availability. Applications for time extensions for other reasons must include a verified statement from the applicant showing that the licensee has made diligent efforts to construct the facilities and:

(1) That additional time is required due to circumstances beyond the applicant's control, in which case the applicant must describe such circumstances and must set forth with

specificity and justify the precise extension period requested; or

(2) That there are unique and overriding public interest concerns that justify such an extension, in which case the applicant must identify such interests and must set forth and justify a precise extension period.

(c) Notwithstanding the provisions of paragraph (b) of this section, when a station license has been assigned or transferred pursuant to § 101.53, any extension of time will be limited so that the time left to construct after Commission grant of the transfer or assignment will be no more than the time remaining for construction at the date of the filing of the application for transfer or assignment.

(d) Modification of license is required for the following changes in authorized stations:

(1) Any change in frequencies used;

(2) Any change in antenna azimuth;

(3) Any change in antenna

beamwidth;

(4) Any change in antenna or passive repeater location greater than 1 second or which involves a requirement for special aeronautical study;

(5) Any change in antenna polarization;

(6) Any change in antenna height;

(7) Any change in the size of passive reflectors or repeaters associated with the facilities of an authorized station;

(8) Any increase in emission bandwidth beyond that authorized;

(9) Any change in the type of emission;

(10) Any change in authorized equivalent isotropically radiated power in excess of 3 dB (a 2-to-1 ratio); or

(11) Substitution of equipment having a greater frequency tolerance.

(e) When the name of the licensee is changed (without changes in the ownership, control, or corporate structure), or when the mailing address is changed (without changing the authorized location of the fixed station) a formal application for modification of license is not required. However, the licensee must notify the Commission within thirty days of the effective date of these changes. The notice, which may be in letter form, must contain the name and address of the licensee as they appear in the Commission's records, the new name or address, the call signs and classes of all radio stations authorized to the licensee under this part and the radio service in which each station is authorized. The notice must be sent to the Federal Communications Commission, Gettysburg, PA 17325 and a copy must be maintained with the license of each station until a new license is issued.

#### **§ 101.59 Processing of applications for facility minor modifications.**

(a) Unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b) of this section and proposes only the change specified in paragraph (c) of this section will be deemed to have been authorized by the Commission.

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, or Digital Electronic Message Services;

(2) The cumulative effect of all such applications made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section; and

(6) Written notice of such filing has been provided to all parties otherwise required to be provided a prior coordination notice in accordance with § 101.103(d) or, in the Digital Electronic Message Services, a copy of the application has been served on those who also were served under § 101.509.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In all radio services other than Digital Electronic Message Service, any increase in equivalent isotropically radiated power is less than 3 dB over the previously authorized output power, and in Digital Electronic Message Service, any increase in equivalent isotropically radiated power is 1.5 dB or less over the previously authorized equivalent isotropically radiated power;

(ii) The necessary bandwidth is not increased beyond the previously authorized bandwidth;

(2) Changes in the center line height of an antenna, provided that:

(i) In all radio services except the Digital Electronic Message Service, any

increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height;

(ii) In the Digital Electronic Message Service, any increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height; and

(iii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station, receive station or passive facility by five (5) seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by part 17 of this chapter for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of § 101.21(a).

(d) Upon grant of an application under the procedure of this section and at such time that construction begins, the applicant must keep a complete copy of the application (including the filing date) with the station license if construction begins prior to receipt of the authorization.

**§ 101.61 Certain modifications not requiring prior authorization.**

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if the replacement equipment is equivalent to the replaced equipment.

(b) Licensees of fixed stations in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, or Digital Electronic Message Services, may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

(1) Frequency coordination procedures, as necessary, are complied with in accordance with § 101.103(d) or, in the Digital Electronic Message Services, a copy of the notification described in paragraph (b)(3) of this section is served on those who were served under § 101.509; and

(2) The cumulative effect of all facility changes made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section; and

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form

494 within thirty days after the changes are made.

(c) Modifications that may be made without prior authorization under paragraph (b) of this section are:

(1) Change or modification of a transmitter, when:

(i) The replacement or modified transmitter is type-accepted (or type-notified) for use under this part and is installed without modification from the type-accepted (or type notified) configuration;

(ii) The type of modulation is not changed;

(iii) The frequency stability is equal to or better than the previously authorized frequency stability; and

(iv) The necessary bandwidth and the output power do not exceed the previously authorized values.

(2) Addition or deletion of a transmitter for protection without changing the authorized power output (e.g. hot standby transmitters);

(3) Change to an antenna (other than any change involving a periscope antenna system), when:

(i) For the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, and Local Television Transmission Services, the new antenna conforms to the requirements of § 101.115 and has essentially the same or better radiation characteristics than the previously authorized antenna;

(ii) For the Digital Electronic Message Service, the new antenna conforms with § 101.517 and the gain of the new antenna does not exceed that of the previously authorized antenna by more than one dB in any direction.

(4) Any technical changes that would decrease the effective radiated power.

(5) Change to the height of an antenna system, when:

(i) The new center line height (measured at the center-of-radiation) is within  $\pm 1.5$  meters of the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters or less (above ground or man-made structure, as appropriate) after the change is made.

(6) Decreases in the overall height of an antenna structure, provided that, when notice to the FAA of proposed construction was required by part 17 of this chapter for the antenna structure at the previously authorized height, the applicant must comply with the provisions of § 101.21(a).

(7) Changes in the azimuth of the center of the main lobe of radiation of

a point-to-point station's antenna by a maximum of one degree.

(8) Changes to the transmission line and other devices between the transmitter and the antenna when the effective radiated power of the station is not increased by more than one dB.

(d) Licensees may notify the Commission of permissible changes or correct erroneous information on a license not involving a major change (i.e., a change that would be classified as a major amendment as defined by § 101.29) without obtaining prior Commission approval by filing FCC Form 494.

**§ 101.63 Period of construction; certification of completion of construction.**

(a) Each station authorized under this part must be in operation within 18 months from the initial date of grant. Modification of an operational station must be completed within 18 months of the date of grant of the applicable modification request.

(b) Failure to timely begin operation means the authorization cancels automatically and must be returned to the Commission.

(c) The frequencies associated with all point-to-multipoint authorizations which have cancelled automatically or otherwise been recovered by the Commission will again be made available for reassignment on a date and under terms set forth by Public Notice.

(d) Requests for extension of time to be in operation may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed period. Such requests must be submitted no later than 30 days prior to the end of the prescribed period to the Federal Communications Commission, Gettysburg, PA 17325-7245.

(e) Construction of any station must be completed by the date specified in the license as the termination date of the construction period. Licensees who fail to complete construction must return their authorization for cancellation within 5 days after the expiration of the construction period specified on the license.

**§ 101.65 Forfeiture and termination of station authorizations.**

(a) A license will be automatically forfeited in whole or in part without further notice to the licensee upon:

(1) The expiration of the construction period specified therein, or after such additional time as may be authorized by the Commission;

(2) The expiration of the license period specified therein, unless prior

thereto an application for renewal of such license has been filed with the Commission; or

(3) The voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) A license forfeited in whole or in part under the provisions of paragraph (a)(1) or (a)(2) of this section may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement filed pursuant to this subsection will be considered only if:

(1) The petition is filed within 30 days of the expiration date set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable;

(2) The petition explains the failure to timely file such notification or application as would have prevented automatic forfeiture; and

(3) The petition sets forth with specificity the procedures which have been established to insure timely filings in the future.

(c) A special temporary authorization will automatically terminate upon the expiration date specified therein, or upon failure to comply with any special terms or conditions set forth therein. Operation may be extended beyond such termination date only after application and upon specific authorization by the Commission.

(d) If a station licensed under this part discontinues operation on a permanent basis, the licensee must forward the station license to the Federal Communications Commission, Gettysburg, Pennsylvania 17325, for cancellation. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued. See § 101.305 for additional rules regarding temporary and permanent discontinuation of service.

#### § 101.67 License period.

Licenses for stations authorized under this part will be issued for a period not to exceed 10 years. Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the date (month and day) selected by licensees in the year of expiration.

#### § 101.69 Transition of the 2.11–2.13, and 2.16–2.18 GHz bands from the Common Carrier Fixed Point-to-Point Microwave Services and the 1.85–1.99, 2.13–2.15, and 2.18–2.20 GHz bands from the Private Operational Fixed Point-to-Point Microwave Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Common Carrier and Private Operational Fixed Point-to-Point Microwave Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Common Carrier and Private Operational Fixed Point-to-Point Microwave Service licensees, with the exception of public safety facilities defined in paragraph (f) of this section, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology service (two-year voluntary negotiation period), and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period) or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period). When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply. Public

safety facilities defined in paragraph (f) of this section will maintain primary status in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (three-year voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (two-year mandatory negotiation period).

(c) The Commission will amend the operation license of the Common Carrier and Private Operational Fixed Point-to-Point Microwave Service operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

(f) Public safety facilities subject to the three-year voluntary and two-year mandatory negotiation periods, are those that the majority of communications carried are used for police, fire, or emergency medical services operations involving safety of life and property. The facilities within this exception are those facilities

currently licensed on a primary basis pursuant to the eligibility requirements of § 90.19 of this chapter, Police Radio Service; § 90.21 of this chapter, Fire Radio Service; § 90.27 of this chapter Emergency Medical Radio Service; and subpart C of part 90 of this chapter,

Special Emergency Radio Services. Licensees of other part 101 facilities licensed on a primary basis under the eligibility requirements of subparts B and C, part 90 of this chapter, are permitted to request similar treatment upon demonstrating that the majority of

the communications carried on those facilities are used for operations involving safety of life and property.

**Subpart C—Technical Standards**

**§ 101.101 Frequency availability.**

Frequency band (MHz)	Radio service				Notes
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 24, 25, 74, 78 & 100)	
928–929		MAS			
932.0–932.5	MAS	MAS			(1)
932.5–935.0	CC	OFS			(1)
941.0–941.5	MAS	MAS			(1)
941.5–944.0	CC	OFS	Aural BAS		(1)
952–960		OFS/MAS			
1850–1990		OFS		PCS	
2110–2130	CC			PET	
72130–2150		OFS		PET	
2150–2160		OFS		MDS	
2160–2180	CC			ET	
2180–2200		OFS		PET	
2450–2500	LTTS	OFS	TV BAS	ISM	F/M/TF
2650–2690		OFS		MDS/ITFS	
3700–4200	CC LTTS	OFS		SAT	
5925–6425	CC LTTS	OFS		SAT	
6425–6525	LTTS	OFS	TV BAS	CARS	M
6525–6875	CC	OFS			F/TF
10,550–10,680	CC DEMS	OFS, DEMS			
10,700–11,700	CC LTTS	OFS		SAT	
11,700–12,200	LTTS			SAT	
12,200–12,700		OFS		DBS	
12,700–13,250	CC LTTS	OFS	TV BAS	CARS	F/M/TF
14,200–14,400	LTTS			SAT	
17,700–18,580	CC	OFS	TV BAS	SAT CARS	
18,580–18,820	CC	OFS	Aural BAS	SAT	
18,820–18,920	DEMS	OFS DEMS		SAT	
18,920–19,160	CC	OFS	Aural BAS	SAT	
19,160–19,260	DEMS	OFS DEMS		SAT	
19,260–19,700	CC	OFS	TV BAS	CARS SAT	
21,200–23,600	CC LTTS	OFS			TF
27,500–29,500	CC			SAT	
31,000–31,300	CC LTTS	OFS	TV BASCARS	F/M/TF	
38,600–40,000	CC	OFS	TV BAS		F/M/TF

BAS: Broadcast Auxiliary Service—(Part 74).  
 CARS: Cable Television Relay Service —(Part 78).  
 CC: Common Carrier Fixed Point-to-Point Microwave Service—(Part 101, Subparts C & I).  
 DBS: Direct Broadcast Satellite—(Part 100).  
 DEMS: Digital Electronic Message Service—(Part 101, Subpart G).  
 ET: Emerging Technologies (per ET Dkt. No. 92–9, not yet assigned).  
 ISM: Industrial, Scientific & Medical—(Part 18).  
 ITFS: Instructional Television Fixed Service—(Part 74)  
 LTTS: Local Television Transmission Service—(Part 101, Subpart J).  
 MAS: Multipoint Address System—(Part 101).  
 MDS: Multipoint Distribution Service—(Part 21).  
 OFS: Private Operational Fixed Point-to-Point Microwave Service—(Part 101, Subparts C & H).  
 PCS: Personal Communications Service—(Part 24).  
 SAT: Fixed Satellite Service—(Part 25).

Notes:  
 F—Fixed. M—Mobile. TF—Temporary Fixed.  
 (1)—Applications for frequencies in the 932.5–935/941.5–944 MHz bands may be filed initially during a one-week period to be announced by public notice. After these applications have been processed, the Commission will announce by public notice a filing date for remaining frequencies. From this filing date forward, applications will be processed on a daily first-come, first-served basis.

**§ 101.103 Frequency coordination procedures.**

(a) Assignment of frequencies will be made only in such a manner as to facilitate the rendition of communication service on an interference-free basis in each service

area. Unless otherwise indicated, each frequency available for use by stations in these services will be assigned exclusively to a single applicant in any service area. All applicants for, and licensees of, stations in these services must cooperate in the selection and use

of the frequencies assigned in order to minimize interference and thereby obtain the most effective use of the authorized facilities. In the event harmful interference occurs or appears likely to occur between two or more radio systems and such interference

cannot be resolved between the licensees thereof, the Commission may specify a time sharing arrangement for the stations involved or may, after notice and opportunity for hearing, require the licensees to make such changes in operating techniques or equipment as it may deem necessary to avoid such interference.

(b) The provisions of this section do not apply to operations in the band 31.0 to 31.3 GHz. Operations in this band are unprotected and subject to harmful interference from other licensed operations in this band.

(c) Frequency diversity transmission will not be authorized in these services in the absence of a factual showing that the required communications cannot practically be achieved by other means. Where frequency diversity is deemed to be justified on a protection channel basis, it will be limited to one protection channel for the bands 3,700–4,200, 5925–6425, and 6525–6875 MHz, and a ratio of one protection channel for three working channels for the bands 10,550–10,680 and 10,700–11,700 MHz. In the bands 3,700–4,200, 5,925–6,425, and 6525–6875 MHz, no frequency diversity protection channel will be authorized unless there is a minimum of three working channels, except that where a substantial showing is made that a total of three working channels will be required within three years, a protection channel may be authorized simultaneously with the first working channel. A protection channel authorized under such exception will be subject to termination if applications for the third working channel are not filed within three years of the grant date of the applications for the first working channel. Where equipment employing digital modulation techniques with cross-polarized operation on the same frequency is used, the protection channel authorized under the above conditions may be considered to consist of both polarizations of the protection frequency where such is shown to be necessary.

(d) Frequency coordination. For each frequency authorized under this part, the following frequency usage coordination procedures will apply:

(1) General requirements. Proposed frequency usage must be prior coordinated with existing licensees, permittees and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular

authorization, or an amendment to a pending application, or any major modification to a license. In coordinating frequency usage with stations in the fixed satellite service, applicants must also comply with the requirements of § 101.21(f). In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems as prior coordinated. The applicant must identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved, an explanation must be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of interference in excess of permissible levels (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof may be contained in the application.

(2) Coordination procedure guidelines are as follows:

(i) Coordination involves two separate elements: notification and response. Both or either may be oral or in written form. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The names of the licensees, permittees and applicants with coordinated proposals, applicants, permittees, and licensees with which coordination was accomplished must be specified. If such notice and/or response is oral, the party providing such notice or response must supply written documentation of the communication upon request;

(ii) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

Applicant's name and address.  
Transmitting station name.  
Transmitting station coordinates.  
Frequencies and polarizations to be added, changed or deleted.

Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation (loading).

Transmitting antenna type(s), model, gain and, if required, a radiation pattern provided or certified by the manufacturer.  
Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.

Receiving station name.

Receiving station coordinates.

Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.

Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.

Path azimuth and distance.

Estimated transmitter transmission line loss expressed in dB.

Estimated receiver transmission line loss expressed in dB.

Note: The position location of antenna sites shall be determined to an accuracy of no less than  $\pm 1$  second in the horizontal dimensions (latitude and longitude) and  $\pm 1$  meter in the vertical dimension (ground elevation) with respect to the National Spatial Reference System.

(iii) For transmitters employing digital modulation techniques, the notification should clearly identify the type of modulation. Upon request, additional details of the operating characteristics of the equipment must also be furnished;

(iv) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the applicant, in writing, within the 30-day notification period. Every reasonable effort should be made by all applicants, permittees and licensees to eliminate all problems and conflicts. If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file its application without a response;

(v) The 30-day notification period is calculated from the date of receipt by the applicant, permittee, or licensee being notified. If notification is by mail, this date may be ascertained by:

(A) The return receipt on certified mail;

(B) The enclosure of a card to be dated and returned by the recipient; or

(C) A conservative estimate of the time required for the mail to reach its destination. In the last case, the estimated date when the 30-day period would expire should be stated in the notification.

(vi) An expedited prior coordination period (less than 30 days) may be requested when deemed necessary by a notifying party. The coordination notice should be identified as "expedited" and

the requested response date should be clearly indicated. However, circumstances preventing a timely response from the receiving party should be accommodated accordingly. It is the responsibility of the notifying party to receive written concurrence (or verbal, with written to follow) from affected parties or their coordination representatives.

(vii) All technical problems that come to light during coordination must be resolved unless a statement is included with the application to the effect that the applicant is unable or unwilling to resolve the conflict and briefly the reason therefor;

(viii) Where a number of technical changes become necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified. When changes are not numerous or complex, the party receiving the changed notification should make an effort to respond in less than 30 days. When the notifying party believes a shorter response time is reasonable and appropriate, it may be helpful for that party to so indicate in the notice and perhaps suggest a response date;

(ix) If, after coordination is successfully completed, it is determined that a subsequent change could have no impact on some parties receiving the original notification, these parties must be notified of the change and of the coordinator's opinion that no response is required;

(x) Applicants, permittees and licensees should supply to all other applicants, permittees and licensees within their areas of operations, the name, address and telephone number of their coordination representatives. Upon request from coordinating applicants, permittees and licensees, data and information concerning existing or proposed facilities and future growth plans in the area of interest should be furnished unless such request is unreasonable or would impose a significant burden in compilation;

(xi) Parties should keep other parties with whom they are coordinating advised of changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was initiated, parties may assume that such frequency use is no longer desired unless a second notification has been received within 10 days of the end of the 6 month period. Renewal notifications are to be sent to

all originally notified parties, even if coordination has not been successfully completed with those parties; and

(xii) Any frequency reserved by a licensee for future use in the bands subject to this part must be released for use by another licensee, permittee or applicant upon a showing by the latter that it requires an additional frequency and cannot coordinate one that is not reserved for future use.

(e) Where frequency conflicts arise between co-pending applications in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave and Local Television Transmission Services, it is the obligation of the later filing applicant to amend his application to remove the conflict, unless it can make a showing that the conflict cannot be reasonably eliminated. Where a frequency conflict is not resolved and no showing is submitted as to why the conflict cannot be resolved, the Commission may grant the first filed application and dismiss the later filed application(s) after giving the later filing applicant(s) 30 days to respond to the proposed action.

(f) When the proposed facilities are to be operated in the band 12,500–12,700 MHz, applications must also follow the procedures in § 101.21 and the technical standards and requirements of part 25 of this chapter as regards licensees in the Communication-Satellite Service.

#### **§ 101.105 Interference protection criteria.**

(a) The interference protection criteria for fixed stations subject to this part are as follows:

(1) To long-haul analog systems, employing frequency modulated radio and frequency division multiplexing to provide multiple voice channels, the allowable interference level per exposure:

(i) Due to co-channel sideband-to-sideband interference must not exceed 5 pwpO (Picowatts of absolute noise power psophometrically weighted (pwpO), appearing in an equivalent voice band channel of 300–3400 Hz); or

(ii) Due to co-channel carrier-beat interference must not exceed 50 pwpO.

(2) To short-haul analog systems employing frequency modulated radio and frequency division multiplexing to provide multiple voice channels, the allowable interference level per exposure:

(i) Due to co-channel sideband-to-sideband interference must not exceed 25 pwpO except in the 952–960 MHz band interference into single link fixed relay and control stations must not exceed 250 pwpO per exposure; or

(ii) Due to co-channel carrier-beat interference must not exceed 50 pwpO except in the 952–960 MHz band interference into single link fixed relay and control stations must not exceed 1000 pwpO per exposure.

(3) FM–TV. In analog systems employing frequency modulated radio that is modulated by a standard, television (visual) signal, the allowable interference level per exposure may not exceed the levels which would apply to long-haul or short-haul FM–FDM systems, as outlined in paragraphs (b) (1) and (2) of this section, having a 600–1200 voice channel capacity.

(b) In addition to the requirements of paragraph (a) of this section the adjacent channel interference protection criteria to be afforded, regardless of system length, or type of modulation, multiplexing, or frequency band, must be such that the interfering signal does not produce more than 1.0 dB degradation of the practical threshold of the protected receiver. The “practical threshold” of the protected receiver can be based upon the definition in TSB 10, referenced in paragraph (c) of this section, or upon alternative generally acceptable good engineering standards.

(c) Applying the Criteria.

(1) Guidelines for applying the interference protection criteria for fixed stations subject to this part are specified in the Telecommunications Industry Association's Telecommunications Systems Bulletin TSB 10, “Interference Criteria for Microwave Systems” (TSB 10). Other procedures that follow generally acceptable good engineering practices are also acceptable to the Commission.

(2) If TSB 10 guidelines cannot be used, the following interference protection criteria may be used by calculating the ratio in dB between the desired (carrier signal) and the undesired (interfering) signal (C/I ratio) appearing at the input to the receiver under investigation (victim receiver): Except as provided in § 101.147 where the applicants proposed facilities are of a type not included in paragraphs (a) and (b) of this section or where the development of the carrier-to-interference (C/I) ratio is not covered by generally acceptable procedures, or where the applicant does not wish to develop the carrier-to-interference ratio, the applicant must, in the absence of criteria or a developed C/I ratio, employ the following C/I protection ratios:

(i) *Co-channel interference*: Both sideband and carrier-beat, applicable to all bands; the existing or previously authorized system must be afforded a carrier to interfering signal protection ratio of at least 90 dB except in the 952–

960 MHz band where it must be 75 dB; or

(ii) *Adjacent channel interference:* Applicable to all bands; the existing or previously authorized system must be afforded a carrier to interfering signal protection ratio of at least 56 dB.

(3) Applicants for frequencies listed in § 101.147(b)(1) must make the following showings that protection criteria have been met over the entire service area of existing systems. Such showings may be made by the applicant or may be satisfied by a statement from a frequency coordinator.

(i) For multiple address stations in the 928–929/952–960 MHz bands, a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications:

Fixed-to-fixed—145 km;  
Fixed-to-mobile—113 km;  
Mobile-to-mobile 81 km

Note to (3)(i): Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the mileage is measured from the reference point specified on the license application. For fixed operation on subfrequencies in accordance with § 101.147 the mileage also is measured from the reference point specified on the license application;

(ii) For multiple address stations in the 932–932.5/941–941.5 MHz bands, a statement that the proposed system complies with the following co-channel separation from all existing stations and pending applications:

Fixed-to-fixed—113 Km

(iii) In cases where the geographic separation standard in paragraphs (c)(3)(i) and (c)(3)(ii) of this section are not followed, an engineering analysis must be submitted to show the coordination of the proposed assignment with existing systems located closer than those standards. The engineering analyses will include:

(A) Specification of the interference criteria and system parameters used in the interference study;

(B) Nominal service areas of each system included in the interference analysis.;

(C) Modified service areas resulting from the proposed system. The propagation models used to establish the service boundary limits must be specified and any special terrain features considered in computing the interference impact should be described; and

(D) A statement that all parties affected have agreed to the engineering analysis and will accept the calculated levels of interference.

(4) Multiple address systems operating on subfrequencies in accordance with § 101.147 that propose to operate master stations at unspecified locations must define the operating area by a radius about a geographical coordinate and describe how interference to co-channel users will be controlled.

(5) Multiple address frequencies in the 956 MHz band may be assigned for use by mobile master stations on a primary basis. Multiple address frequencies in the 952 MHz band may be assigned for use by mobile master stations on a case-by-case basis. Mobile operation in the 952 MHz band will be on a secondary basis to fixed operations.

(6) Each application for new or modified nodal station on channels numbered 4A, 4B, 7, 9, and 19/20 in the 10.6 GHz band and all point-to-multipoint channels in the 18 GHz band must demonstrate that all existing co-channel stations are at least 56 kilometers from the proposed nodal station site. Applicants for these channels must certify that all licensees and applicants for stations on the adjacent channels within 56 kilometers of the proposed nodal station have been notified of the proposed station and do not object. Alternatively, or if one of the affected adjacent channel interests does object, the applicant may show that all affected adjacent channel parties are provided a C/I protection ratio of 0 dB. An applicant proposing to operate at an AAT greater than 91 meters must reduce its EIRP in accordance with the following table; however, in no case may EIRP exceed 70 dBm on the 10.6 GHz channels.

AAT (meters)	EIRP dBm
Above 300 .....	+38
251 to 300 .....	41
201 to 250 .....	43
151 to 200 .....	49
101 to 150 .....	55
100 and below .....	85

(7) Each application for new or modified nodal station on channels numbered 21, 22, 23, and 24 in the 10.6 GHz band must include an analysis of the potential for harmful interference to all other licensed and previously applied for co-channel and adjacent channel station located within 80 kilometers of the location of the proposed station. The criteria contained in § 101.103(d)(2) must be used in this analysis. Applicants must certify that copies of this analysis have been served on all parties which might reasonably be expected to receive interference above the levels set out in § 101.103(d)(2)

within 5 days of the date the subject application is filed with the Commission.

(8) If the potential interference will exceed the prescribed limits, a statement shall be submitted with the application for new or modified stations to the effect that all parties have agreed to accept the higher level of interference.

(d) Effective August 1, 1985, when a fixed station that conforms to the technical standards of this subpart (or, in the case of the 12,200–12,700 MHz band, a direct broadcast satellite station) receives or will receive interference in excess of the levels specified in this section as a result of an existing licensee's use of non-conforming equipment authorized between July 20, 1961 and July 1, 1976, and the interference would not result if the interfering station's equipment complied with the current technical standards, the licensee of the non-conforming station must take whatever steps are necessary to correct the situation up to the point of installing equipment which fully conforms to the technical standards of this subpart. In such cases, if the engineering analysis demonstrates that:

(1) The conforming station would receive interference from a non-conforming station in excess of the levels specified in this section; and

(2) The interference would be eliminated if the non-conforming equipment were replaced with equipment which complies with the standards of this subpart, the licensee (or prospective licensee) of the station which would receive interference must provide written notice of the potential interference to both the non-conforming licensee and the Commission's office in Gettysburg, PA. The non-conforming licensee must make all required equipment changes within 180 days from the date of official Commission notice informing the licensee that it must upgrade its equipment, unless an alternative solution has been agreed to by all parties involved in the interference situation. If a non-conforming licensee fails to make all required changes within the specified period of time, the Commission may require the licensee to suspend operation until the changes are completed.

(e) Interference Dispute Resolution Procedures. Should a licensee licensed under this part receive harmful interference from another licensee licensed under this chapter, the parties involved shall comply with the dispute resolution procedures set forth herein:

(1) The licensee experiencing the harmful interference shall notify the licensee believed to be causing the harmful interference and shall supply information describing its problem and supporting its claim;

(2) Upon receipt of the harmful interference notice, the licensee alleged to be causing the harmful interference

shall respond immediately and make every reasonable effort to identify and resolve the conflict; and  
 (3) Licensees are encouraged to resolve the harmful interference prior to contacting the Commission.

**§ 101.107 Frequency tolerance.**

(a) The carrier frequency of each transmitter authorized in these services

must be maintained within the following percentage of the reference frequency except as otherwise provided in paragraph (b) of this section or in the applicable subpart of this part (unless otherwise specified in the instrument of station authorization the reference frequency will be deemed to be the assigned frequency):

Frequency (MHz)	Frequency Tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less
928 to 929 <sup>2,5</sup>	0.0005		
932 to 932.5 <sup>2</sup>	0.00015		
932.5 to 935 <sup>2</sup>	0.00025		
941 to 941.5	0.00015		
941.5 to 944	0.00025		
952 to 960 <sup>7</sup>			
944.0 to 1,000	0.0005	0.0005	0.0005
1,850 to 1,990	0.002		
2,110 to 2,200	0.001		
2,200 to 12,200 <sup>1,3</sup>	0.005	0.005	0.005
2,450 to 2,500	0.001		
3,700 to 4,200	0.005		
5,925 to 6,875	0.005		
10,550 to 11,700	0.005		
12,200 to 13,250 <sup>6</sup>	0.005		
12,200 to 17,700	0.03	0.03	0.03
17,700 to 18,820 <sup>4,5</sup>	0.003		
18,820 to 18,920 <sup>4,5</sup>	0.001		
18,920 to 19,700 <sup>4,5</sup>	0.003		
19,700 to 40,000 <sup>6</sup>	0.03	0.03	0.03

<sup>1</sup> Applicable only to common carrier LTTS stations. Beginning Aug. 9, 1975, this tolerance will govern the marketing of LTTS equipment and the issuance of all such authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of .03 percent in the frequency range 2,200 to 10,500 MHz and .05 percent in the range 10,500 MHz to 12,200 MHz, and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee.

<sup>2</sup> Equipment authorized to be operated on frequencies between 890 and 940 MHz as of Oct. 15, 1956, must maintain a frequency tolerance within 0.03 percent subject to the condition that no harmful interference is caused to any other radio station.

<sup>3</sup> See subpart G of this part for the stability requirements for transmitters used in the Digital Electronic Message Service.

<sup>4</sup> Existing type accepted equipment with a frequency tolerance of ±0.03% may be marketed until December 1, 1988. Equipment installed and operated prior to December 1, 1988 may continue to operate after that date with a minimum frequency tolerance of ±0.03%. However, the replacement of equipment requires that the ±0.003% tolerance be met.

<sup>5</sup> For remote stations with 12.5 KHz bandwidth, the tolerance is ±0.00015%.

<sup>6</sup> Applicable to private operational fixed point-to-point microwave only. For exceptions see § 101.147.

<sup>7</sup> For private operational fixed point-to-point microwave systems, with a channel greater than or equal to 50 KHz bandwidth, ±0.0005%; for multiple address master stations, regardless of bandwidth, ±0.00015%; for multiple address remote stations with 12.5 KHz bandwidths, ±0.00015%; for multiple address remote stations with channels greater than 12.5 KHz bandwidth, ±0.0005%.

(b) Heterodyne microwave radio systems may be authorized at a somewhat less restrictive frequency tolerance (up to .01 percent) to compensate for frequency shift caused by numerous repeaters between base band signal insertion. Where such relaxation is sought, applicant must provide all calculations and indicate the desired tolerance over each path. In such instances the radio transmitters and receivers used must individually be capable of complying with the tolerance specified in paragraph (a) of this section. Heterodyne operation is restricted to channel bandwidth of 10 MHz or greater.

(c) As an additional requirement in any band where the Commission makes

assignments according to a specified channel plan, provisions must be made to prevent the emission included within the occupied bandwidth from radiating outside the assigned channel at a level greater than that specified in § 101.111.

**§ 101.109 Bandwidth.**

(a) Each authorization issued pursuant to these rules will show, as the emission designator, a symbol representing the class of emission which must be prefixed by a number specifying the necessary bandwidth. This figure does not necessarily indicate the bandwidth actually occupied by the emission at any instant. In those cases where part 2 of this chapter does not provide a formula for the computation

of the necessary bandwidth, the occupied bandwidth may be used in the emission designator.

(b) Stations in this service will be authorized any type of emission, method of modulation, and transmission characteristic, consistent with efficient use of the spectrum and good engineering practice, except that Type B, damped-wave emission will not be authorized.

(c) The maximum bandwidth which will be authorized per frequency assigned is set out in the table that follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it

appears that a lesser bandwidth would be sufficient to support an applicant's intended communications.

Frequency band (MHz)	Maximum authorized bandwidth
928 to 929 .....	25 KHz <sup>1 6</sup>
932 to 932.5, 941 to 941.5.	12.5 KHz <sup>1</sup>
932.5 to 935, 941.5 to 944.	200 KHz <sup>1</sup>
952 to 960 .....	200 KHz <sup>1 5</sup>
1,850 to 1,990 .....	10 MHz <sup>1</sup>
2,110 to 2,130 .....	3.5 MHz
2,130 to 2,150 .....	800 or 1600 KHz <sup>1</sup>
2,150 to 2,160 .....	10 MHz
2,160 to 2,180 .....	3.5 MHz
2,180 to 2,200 .....	800 or 1600 KHz <sup>1</sup>
2,450 to 2,483.5 .....	625 KHz <sup>2</sup>
2,483.5 to 2,500 .....	800 KHz
3,700 to 4,200 .....	20 MHz
5,925 to 6,425 .....	30 MHz <sup>1</sup>
6,425 to 6,525 .....	25 MHz
6,525 to 6,875 .....	10 MHz <sup>1</sup>
10,550 to 10,680 .....	5 MHz <sup>1</sup>
10,700 to 11,700 .....	40 MHz <sup>1</sup>
12,200 to 12,700 .....	20 MHz <sup>1</sup>
13,200 to 13,250 .....	25 MHz
17,700 to 18,140 .....	220 MHz <sup>1</sup>
18,140 to 18,142 .....	2 MHz
18,142 to 18,580 .....	6 MHz
18,580 to 18,820 .....	20 MHz <sup>1</sup>
18,820 to 18,920 .....	10 MHz
18,920 to 19,160 .....	20 MHz <sup>1</sup>
19,160 to 19,260 .....	10 MHz
19,260 to 19,700 .....	220 MHz <sup>1</sup>
21,200 to 23,600 .....	100 MHz <sup>4</sup>
27,500 to 29,500 .....	220 MHz
31,000 to 31,300 .....	25 or 50 MHz
38,600 to 40,000 .....	50 MHz Bands above 40,000 <sup>3</sup>

<sup>1</sup> The maximum bandwidth that will be authorized for each particular frequency in this band is detailed in the appropriate frequency table in § 101.147.

<sup>2</sup> 1250 KHz, 1875 KHz, or 2500 KHz on a case-by-case basis.

<sup>3</sup> To be specified in authorization.

<sup>4</sup> For exceptions, see § 101.147(t).

<sup>5</sup> A 12.5 KHz bandwidth applies only to frequencies listed in § 101.147(b)(1).

<sup>6</sup> For frequencies listed in § 101.147(b)(1), consideration will be given on a case-by-case basis to authorizing bandwidths up to 50 KHz.

**§ 101.111 Emission limitations.**

(a) The mean power of emissions must be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) When using transmissions other than those employing digital modulation techniques:

(i) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(ii) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(iii) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least  $43+10 \log_{10}$  (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(2) When using transmissions employing digital modulation techniques (see § 101.141(b)) in situations not covered in this section:

(i) For operating frequencies below 15 GHz, in any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$$A=35+0.8(P-50)+10 \log_{10} B.$$

(Attenuation greater than 80 decibels is not required.)

where:

A=Attenuation (in decibels) below the mean output power level.

P=Percent removed from the carrier frequency.

B=Authorized bandwidth in MHz.

(ii) For operating frequencies above 15 GHz, in any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels:

$$A=11+0.4(P-50)+10 \log_{10} B.$$

(Attenuation greater than 56 decibels is not required.)

(iii) In any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least  $43+10 \log_{10}$  (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(3) For Digital Termination System channels used in the Digital Electronic Message Service (DEMS) operating in the 10,550–10,680 MHz band:

(i) In any 4 KHz band, the center frequency of which is removed from the edge of the DEMS channel by up to and including 1.125 times the DEMS subchannel bandwidth: As specified by the following equation may in no event be less than  $50+10 \log_{10} N$  decibels:

$$A=50+0.0333 (F-0.5B)+10 \log_{10} N$$

decibels

Where:

A=Attenuation (in decibels) below means output power level contained within the DEMS channel for a given polarization.

B=Bandwidth of DEMS channel (in KHz).

F=Absolute value of the difference between the center frequency of the

4 KHz band measured and the center frequency of the DEMS channel (in KHz).

N=Number of active subchannels of the given polarization within the DEMS channel.

(ii) In any 4 KHz band within the authorized DEMS band the center frequency of which is removed from the center frequency of the DEMS channel by more than the sum of 50% of the DEMS channel bandwidth plus 1.125 times the subchannel bandwidth: As specified by the following equation but in no event less than 80 decibels:

$$A=80+10 \log_{10} N \text{ decibels}$$

(iii) In any 4 KHz band the center frequency of which is outside the authorized DEMS band: At least  $43+10 \log_{10}$  (mean output power in watts) decibels.

(4) For Digital Termination System channels used in the Digital Electronic Message Service (DEMS) operating in the 17,700–19,700 MHz band:

(i) In any 4 KHz band, the center frequency of which is removed from the frequency of the center of the DEMS channel by more than 50 percent of the DEMS channel bandwidth up to and including 50 percent plus 500 KHz: As specified by the following equation but in no event be less than  $50+10 \log_{10} N$  decibels:

$$A=50+0.06 (F-0.5B)+10 \log_{10} N \text{ decibels}$$

Where:

A=Attenuation (in decibels) below means output power level contained within the DEMS channel for a given polarization.

B=Bandwidth of DEMS channel (in KHz).

F=Absolute value of the difference between the center frequency of the 4 KHz band measured and the center frequency of the DEMS channel (in KHz).

N=Number of active subchannels of the given polarization within the DEMS channel.

(ii) In any 4 KHz band within the authorized DEMS band, the center frequency of which is removed from the center frequency of the DEMS channel by more than the sum of 50 percent of the channel bandwidth plus 500 KHz: As specified by the following equation but in no event less than 80 decibels:

$$A=80+10 \log_{10} N \text{ decibels}$$

(iii) In any 4 KHz band the center frequency of which is outside the authorized Digital Message Service band: At least  $43+10 \log_{10}$  (mean output power in watts) decibels.

(5) When using transmissions employing digital modulation techniques on the 900 MHz multiple address frequencies with a 12.5 KHz

bandwidth, the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) in accordance with the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 2.5 KHz up to and including 6.25 KHz: At least  $53 \log_{10} (fd/2.5)$  decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 6.25 KHz up to and including 9.5 KHz: At least  $103 \log_{10} (fd/3.9)$  decibels;

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 9.5 KHz up to and including 15 KHz: At least  $157 \log_{10} (fd/5.3)$  decibels; and

(iv) On any frequency removed from the center of the authorized bandwidth by a displacement frequency greater than 15 KHz: At least 50 plus  $10 \log_{10}(P)$  or 70 decibels, whichever is the lesser attenuation.

(6) When using transmissions employing digital modulation techniques on the 900 MHz multiple address frequencies with a bandwidth greater than 12.5 KHz, the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) in accordance with the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 5 KHz up to and including 10 KHz: At least  $83 \log_{10} (fd/5)$  decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 10 KHz up to and including 250 percent of the authorized bandwidth: At least  $116 \log_{10} (fd/6.1)$  decibels or 50 plus  $10 \log_{10} (P)$  or 70 decibels, whichever is the lesser attenuation; and

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus  $10 \log_{10}$  (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in paragraph (a) of this section.

(c) The emission of an unmodulated carrier is prohibited except for test purposes as required for proper station and system maintenance.

**§ 101.113 Transmitter power limitations.**

(a) On any authorized frequency, the average power delivered to an antenna in this service must be the minimum amount of power necessary to carry out the communications desired.

Application of this principle includes, but is not to be limited to, requiring a licensee who replaces one or more of its antennas with larger antennas to reduce its antenna input power by an amount appropriate to compensate for the increased primary lobe gain of the replacement antenna(s). In no event shall the average equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, exceed the values specified below. In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the effective radiated power of this station. Further, the output power of a transmitter on any authorized frequency in this service may not exceed the following:

Frequency Band (MHz)	Maximum allowable EIRP <sup>1 2</sup>	
	Fixed (dBW)	Mobile (dBW)
928.0 to 929.0 .....	+17	.....
932.0 to 932.5 .....	+17	.....
932.5 to 935.0 .....	+40	.....
941.0 to 941.5 .....	+30	.....
941.5 to 944.0 .....	+40	.....
952.0 to 960.0 <sup>2</sup> .....	+40	.....
1,850 to 1,990 .....	+45	.....
2,110 to 2,130 .....	+45	.....
2,130 to 2,150 .....	+45	.....
2,150 to 2,160 <sup>3</sup> .....	+45	.....
2,160 to 2,180 <sup>3</sup> .....	+45	.....
2,180 to 2,200 .....	+45	.....
2,450 to 2,500 .....	+45	.....
2,500 to 2,686 <sup>4</sup> .....	.....	.....
2,686 to 2,690 <sup>4</sup> .....	+45	.....
3,700 to 4,200 .....	+55	.....
5,925 to 6,425 <sup>4</sup> .....	+55	.....
6,425 to 6,525 <sup>4</sup> .....	.....	+35
6,525 to 6,875 <sup>4</sup> .....	+55	.....
10,550 to 10,680 <sup>5</sup> .....	+55	.....
10,700 to 11,700 .....	+55	.....
12,200 to 12,700 .....	+50	.....
12,700 to 13,250 <sup>4</sup> .....	+50	.....
17,700 to 18,600 .....	+55	.....
18,600 to 18,800 <sup>6</sup> .....	+35	.....
18,800 to 19,700 .....	+55	.....
21,200 to 23,600 <sup>7</sup> .....	<sup>5</sup> +55	.....
27,500 to 29,500 .....	+55	.....
31,000 to 31,300 .....	( <sup>8</sup> )	( <sup>8</sup> )
38,600 to 40,000 .....	+55	.....

<sup>1</sup> Per polarization.

<sup>2</sup> For multiple address operations, see § 101.147. Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.

<sup>3</sup> When an omnidirectional antenna is authorized in the 2150–2160 MHz band, the maximum power shall be 60 dBm.

<sup>4</sup> Also, see § 101.145.

<sup>5</sup> The output power of a DEMS System nodal transmitter shall not exceed 0.5 watts per 250 KHz. The output power of a DEMS System user transmitter shall not exceed 0.04 watts per 250 KHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port. The operating power shall not exceed the authorized power by more than 10 percent of the authorized power in watts at any time.

<sup>6</sup> Maximum power delivered to the antenna shall not exceed -3 dBW.

<sup>7</sup> Also, see § 101.147(t).

<sup>8</sup> The maximum transmit power is 0.05 watts.

(b) The power of transmitters that use Automatic Transmitter Power Control shall not exceed the power input or output specified in the instrument of station authorization. The power of non-ATPC transmitters shall be maintained as near as practicable to the power input or output specified in the instrument of station authorization.

**§ 101.115 Directional antennas.**

(a) Unless otherwise authorized upon specific request by the applicant, each station authorized under the rules of this part must employ a directional antenna adjusted with the center of the major lobe of radiation in the horizontal plane directed toward the receiving station with which it communicates: *provided, however*, where a station communicates with more than one point, a multi- or omni-directional antenna may be authorized if necessary. New Periscope antenna systems will not, under ordinary circumstances, be authorized.

(b) Stations operating below 932.5 MHz that are required to use directional antennas must employ antennas meeting the standards indicated below. (Maximum beamwidth is for the major lobe of radiation at the half power points. Suppression is the minimum attenuation required for any secondary lobe signal and is referenced to the maximum signal in the main lobe.)

Frequency range	Maximum beamwidth (degrees)	Suppression (dB)
512 to 932.5 MHz .....	20	13

(c) Fixed stations (other than temporary fixed stations and DEMS nodal stations) operating at 932.5 MHz or higher must employ transmitting and receiving antennas (excluding second receiving antennas for operations such as space diversity) meeting the appropriate performance Standard A indicated below, except that in areas not subjected to frequency congestion antennas meeting performance Standard B may be used subject to the

requirements set forth in paragraph (d) of this section.

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beam width to 3 dB points (included angles in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°*	10° to 15°*	15° to 20°*	20° to 30°*	30° to 100°*	100° to 140°*	140° to 180°*
932.5 to 935	A	14.0	N/A		6	11	14	17	20	24
	B	20.0	N/A			6	10	13	15	20
941.5 to 944	A	14.0	N/A		6	11	14	17	20	24
	B	20.0	N/A			6	10	13	15	20
952 to 960 <sup>8,9</sup>	A	14.0	N/A		6	11	14	17	20	24
	B	20.0	N/A			6	10	13	15	20
1,850 to 2,500 <sup>11</sup>	A	5.0	N/A	12	18	22	25	29	33	39
	B	8.0	N/A	5	18	20	20	25	28	36
3,700 to 4,200	A	N/A	36	23	29	33	36	42	55	55
	B	N/A	36	20	24	28	32	32	32	32
5,925 to 6,425 <sup>5</sup>	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	21	25	29	32	35	39	45
5,925 to 6,425 <sup>6</sup>	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
6,525 to 6,875 <sup>5</sup>	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	21	25	29	32	35	39	45
6,525 to 6,875 <sup>6</sup>	A	1.5	N/A	26	29	32	34	38	41	49
	B	2.0	N/A	21	25	29	32	35	39	45
10,550 to 10,680 <sup>4,5</sup>	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	35	39
10,550 to 10,680 <sup>6</sup>	A	3.4	34	20	24	28	32	35	55	55
	B	3.4	34	20	24	28	32	35	35	39
10,565 to 10,615 <sup>7</sup>	N/A	360	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,630 to 10,680 <sup>7</sup>	N/A	N/A	34	20	24	28	32	35	36	36
10,700 to 11,700 <sup>5</sup>	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
12,200 to 13,250 <sup>12</sup>	A	1.0	N/A	23	28	35	39	41	42	50
	B	2.0	N/A	20	25	28	30	32	37	47
17,700 to 18,820	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
18,920 to 19,700 <sup>1</sup>	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
21,200 to 23,600 <sup>10</sup>	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
31,000 to 31,300 <sup>2,3</sup>	N/A	4.0	38	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Above 31,300	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36

\*1 DEMS User Station antennas in this band must meet performance Standard B and have a minimum antenna gain of 34 dBi. The maximum beamwidth requirement does not apply to DEMS User Stations. DEMS Nodal Stations need not comply with these standards.

<sup>2</sup> The minimum front-to-back ratio must be 38 dBi.

<sup>3</sup> Mobile, except aeronautical mobile, stations need not comply with these standards.

<sup>4</sup> Except for antennas between 140° and 180° authorized or pending on January 1, 1989, in the band 10,550 to 10,565 MHz for which minimum radiation to suppression to angle (in degrees) from centerline of main beam is 36 decibels.

<sup>5</sup> These antenna standards apply to all point-to-point stations authorized after June 1, 1997. Existing licensees and pending applicants on that date are grandfathered and need not comply with these standards.

<sup>6</sup> These antenna standards apply to all point-to-point stations authorized on or before June 1, 1997.

<sup>7</sup> These antenna standards apply only to DEMS User Stations licensed, in operation, or applied for prior to July 15, 1993.

<sup>8</sup> Except for Multiple Address System frequencies listed in where omnidirectional antennas may be used.

<sup>9</sup> Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (i) The minimum on-beam forward gain must be at least 10 dBi; and (ii) the minimum front-to-back ratio must be at least 20 dB.

<sup>10</sup> Except as provided in §101.147(t). **Note to paragraph (10):** Stations must employ an antenna that meets the performance standards for Category A, except that in areas not subject to frequency congestion, antennas meeting standards for Category B may be employed. Note, however, that the Commission may require the use of high performance antennas where interference problems can be resolved by the use of such antennas.

<sup>11</sup> Omnidirectional antennas may be authorized in the band 2150–2160 MHz.

<sup>12</sup> Except for temporary-fixed operations in the band 13200–13250 MHz with output powers less than 250 mW and as provided in §101.147(q).

(d) The Commission shall require the replacement of any antenna or periscope antenna system of a permanent fixed station operating at 932.5 MHz or higher that does not meet performance Standard A specified in paragraph (c) of

this section, at the expense of the licensee operating such antenna, upon a showing that said antenna causes or is likely to cause interference to (or receive interference from) any other authorized or applied for station whereas a higher

performance antenna is not likely to involve such interference. Antenna performance is expected to meet the standards of paragraph (c) of this section for parallel polarization. For cases of potential interference, an antenna will

not be considered to meet Standard A unless the parallel polarization performance for the discrimination angle involved meets the requirements, even if the cross-polarization performance controls the interference.

(e) In cases where passive reflectors are employed in conjunction with transmitting antenna systems, the foregoing paragraphs of this section also will be applicable. However, in such instances, the center of the major lobe of radiation from the antenna normally must be directed at the passive reflector, and the center of the major lobe of radiation from the passive reflector directed toward the receiving station with which it communicates.

(f) Periscope antennas used at an electric power facility plant area will be excluded from the requirements of paragraph (c) of this section on a case-by-case basis where technical considerations or safety preclude the use of other types of antenna systems.

(g) In the event harmful interference is caused to the operation of other stations, the Commission may, after notice and opportunity for hearing, order changes to be made in the height, orientation, gain and radiation pattern of the antenna system.

#### **§ 101.117 Antenna polarization.**

Except as set forth herein, stations operating in the radio services included in this part are not limited as to the type of polarization of the radiated signal, provided, however, that in the event interference in excess of permissible levels is caused to the operation of other stations the Commission may, after notice and opportunity for hearing, order the licensee to change the polarization of the radiated signal. No change in polarization may be made without prior authorization from the Commission. Unless otherwise allowed, only linear polarization (horizontal or vertical) shall be used.

#### **§ 101.119 Simultaneous use of common antenna structures.**

The simultaneous use of common antenna structures by more than one radio station, or by one of more domestic public radio stations and one or more stations of any other class or service, may be authorized: provided, however, that each licensee or user of any such structure is responsible for maintaining the structure, and for painting and illuminating the structure when obstruction marking is required by the Commission. (See § 101.21(a).)

#### **§ 101.121 Marking of antenna structures.**

The owner of each antenna structure required to be painted and/or

illuminated under the provision of section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting. For complete regulations relative to antenna marking requirements, see part 17 of this chapter.

#### **§ 101.123 Quiet zones.**

Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to radio frequency interference.

(a) In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocohontas County, W. Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W. Va., any applicant for a station authorization other than temporary-fixed seeking a station license for a new station or to modify an existing station in a manner which would change either the frequency, power, antenna height or directivity, or location of such a station within the area boarded by 39°15' N. on the north, 78°30' W. on the east, 37°30' N. on the south, and 80°30' W. on the west must at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, W. Va. 24944, in writing, of the technical particulars of the proposed station. Such notification must include the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission and power. In addition, the applicant must indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(b) Protection for Table Mountain Radio Receiving Zone, Boulder County,

Colorado. Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07'50" N. Latitude, 105°14'40" W. Longitude), resulting from new assignments or from the modification or relocation of existing facilities do not exceed 1 mV/m in the authorized bandwidth of service. (A field strength of 1 mV/m is equivalent to a power flux density of 85.8 dBW/M<sup>2</sup> assuming a free-space characteristic impedance of 376.7 ohms.)

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures would be exceeded by their proposed radio facilities. In such instances, the following is a suggested guide for determining whether coordination is recommended:

- (i) All stations within 2.4 km;
- (ii) Stations within 4.8 km with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone;
- (iii) Stations within 16 km with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone; or
- (iv) Stations within 80 km with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R/E5X2, Boulder Laboratories, Boulder CO 80303; telephone (303) 497-6548, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact,

delivers a signal at the site in excess of the field strength specified herein.

(c) Protection for Federal Communications Commission monitoring stations:

(1) Applicants in the vicinity of an FCC monitoring station for a radio station authorization to operate new transmitting facilities or changed transmitting facilities which would increase the field strength produced over the monitoring station over that previously authorized are advised to give consideration, prior to filing applications, to the possible need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities which require protection are listed in § 0.121(c) of this chapter. Applications for stations (except mobile stations) which will produce on any frequency a direct wave fundamental field strength of greater than 10 mV/m in the authorized bandwidth of service ( $-65.8$  dBW/m<sup>2</sup> power flux density assuming a free space characteristic impedance of 120 ohms) at the referenced coordinates, may be examined to determine extent of possible interference. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station authorization.

(2) In the event that calculated value of expected field exceeds 10 mV/m ( $-65.8$  dBW/m<sup>2</sup>) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation with the FCC to discuss any protection necessary should be considered. Prospective applicants may communicate with: Chief, Compliance and Information Bureau, Federal Communications Commission, Washington, DC 20554, Telephone (202) 418-1100.

(3) Advance consultation is suggested particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether an applicant should coordinate:

- (i) All stations within 2.4 kilometers;
- (ii) Stations within 4.8 kilometers with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Monitoring Stations;
- (iii) Stations within 16 kilometers with 1 kW or more average ERP in the primary plane of polarization in the

azimuthal direction of the Monitoring Station; or

(iv) Stations within 80 kilometers with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in § 0.121(c) of this chapter and also meets the criteria outlined in paragraphs (c)(2) and (c)(3) of this section.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Federal Communications Commission or modification of any authorization which will cause harmful interference.

#### **§ 101.125 Temporary fixed antenna height restrictions.**

The overall antenna structure heights employed by mobile stations in the Local Television Transmission Service and by stations authorized to operate at temporary fixed locations may not exceed the height criteria set forth in § 17.7 of this chapter, unless in each instance, authorization for use of a specific maximum antenna height (above ground and above mean sea level) for each location has been obtained from the Commission prior to erection of the antenna. Requests for such authorization must show the inclusive dates of the proposed operation. (Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in part 17 of this chapter.)

#### **§ 101.127 Topographical data.**

Determining the location and height above sea level of the antenna site, the elevation or contour intervals must be taken from United States Geological Survey Topographic Quadrangle Maps, United States Army Corps of Engineers maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which such maps are available. If such maps are not published for the area in question, the next best topographic information should be used. Topographic data may sometimes be obtained from State and municipal agencies. Data from Sectional Aeronautical Charts (including bench marks) or railroad depot elevations and highway elevations from road maps may be used where no better information is

available. In cases where limited topographic data is available, use may be made of an altimeter in a car driven along roads extending generally radially from the transmitter site. If it appears necessary, additional data may be requested. United States Geological Survey Topographic Quadrangle Maps may be obtained from the Department of the Interior, Geological Survey, Washington, DC 20242. Sectional Aeronautical Charts are available from the Department of Commerce, Coast and Geodetic Survey, Washington, DC 20230.

#### **§ 101.129 Transmitter location.**

(a) The applicant must determine, prior to filing an application for a radio station authorization, that the antenna site specified therein is adequate to render the service proposed. In cases of questionable antenna locations, it is desirable to conduct propagation tests to indicate the field intensity which may be expected in the principal areas or at the fixed points of communication to be served, particularly where severe shadow problems may be expected. In considering applications proposing the use of such locations, the Commission may require site survey tests to be made pursuant to a developmental authorization in the particular service concerned. In such cases, propagation tests should be conducted in accordance with recognized engineering methods and should be made with a transmitting antenna simulating, as near as possible, the proposed antenna installation. Full data obtained from such surveys and its analysis, including a description of the methods used and the name, address and qualifications of the engineer making the survey, must be supplied to the Commission.

(b) Antenna structures should be so located and constructed as to avoid making them hazardous to air navigation. (See part 17 of this chapter for provisions relating to antenna structures.) Such installation must be maintained in good structural condition together with any required painting or lighting.

#### **§ 101.131 Transmitter construction and installation.**

(a) The equipment at the operating and transmitting positions must be so installed and protected that it is not accessible to, or capable of being operated by, persons other than those duly authorized by the licensee.

(b) In any case where the maximum modulating frequency of a transmitter is prescribed by the Commission, the transmitter must be equipped with a low-pass or band-pass modulation filter

of suitable performance characteristics. In those cases where a modulation limiter is employed, the modulation filter must be installed between the transmitter stage in which limiting is effected and the modulated stage of the transmitter.

(c) Each transmitter employed in these services must be equipped with an appropriately labeled pilot lamp or meter which will provide continuous visual indication at the transmitter when its control circuits have been placed in a condition to activate the transmitter. In addition, facilities must be provided at each transmitter to permit the transmitter to be turned on and off independently of any remote control circuits associated therewith.

(d) At each transmitter control point the following facilities must be installed:

(1) A carrier operated device which will provide continuous visual indication when the transmitter is radiating, or, in lieu thereof, a pilot lamp or meter which will provide continuous visual indication when the transmitter control circuits have been placed in a condition to activate the transmitter; and

(2) Facilities which will permit the operator to turn transmitter carrier on and off at will.

(e) Transmitter control circuits from any control point must be so installed that grounding or shorting any line in the control circuit will not cause the transmitter to radiate: provided, however, That this provision will not be applicable to control circuits of stations which normally operate with continuous radiation or to control circuits which are under the effective operational control of responsible operating personnel 24 hours per day.

**§ 101.133 Limitations on use of transmitters.**

(a) Transmitters licensed for operation in Common Carrier services may be concurrently licensed or used for non-common carrier communication purposes. Mobile units may be concurrently licensed or used for non-common carrier communication purposes provided that the transmitter is type-accepted for use in each service.

(b) Private operational fixed point-to-point microwave stations authorized in this service may communicate with associated operational-fixed stations and fixed receivers and with units of associated stations in the mobile service licensed under Private Radio Service rule parts. In addition, intercommunication is permitted with other licensed stations and with U.S. Government stations in those cases

which require cooperation or coordination of activities or when cooperative use arrangements in accordance with § 101.135 are contemplated; provided, however, that where communication is desired with stations authorized to operate under the authority of a foreign jurisdiction, prior approval of this Commission must be obtained; And provided further, That the authority under which such other stations operate does not prohibit the intercommunication.

(c) Two or more persons or governmental entities eligible for private operational fixed point-to-point microwave licenses may use the same transmitting equipment under the following terms and conditions:

(1) Each licensee complies with the general operating requirements set out in this part;

(2) Each licensee is eligible for the frequency(ies) on which the facility operates; and

(3) Each licensee must have the ability to access the transmitter(s) that it is authorized to operate under the multiple licensing arrangement.

**§ 101.135 Shared use of radio stations and the offering of private carrier service.**

Licensees of Private Operational Fixed Point-to-Point Microwave radio stations may share the use of their facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the following conditions and limitations:

(a) Persons or governmental entities licensed to operate radio systems on any of the private radio frequencies set out in § 101.101 may share such systems with, or provide private carrier service to, any eligible for licensing under this part, regardless of individual eligibility restrictions, provided that the communications being carried are permissible under § 101.603. In addition, persons or governmental entities licensed to operate low power systems under the provisions of § 101.147(r)(10) may share such systems with, or provide private carrier services to, Federal Government entities, provided the communications carried are permissible under § 101.603;

(b) The licensee must maintain access to and control over all facilities authorized under its license;

(c) All sharing and private carrier arrangements must be conducted pursuant to a written agreement to be kept as part of the station records; and

(d) The licensee must keep an up-to-date list of system sharers and private carrier subscribers and the basis of their eligibility under this part. Such records must be kept current and must be made

available upon request for inspection by the Commission.

**§ 101.137 Interconnection of private operational fixed point-to-point microwave stations.**

Private operational fixed point-to-point microwave stations may be interconnected with facilities of common carriers subject to applicable tariffs.

**§ 101.139 Authorization of transmitters.**

(a) Except for transmitters used at developmental stations or for fixed point-to-point operation pursuant to subparts H and I of this part, each transmitter must be a type which has been type accepted by the Commission for use under the applicable rules of this part. Transmitters used in the private operational fixed and common carrier fixed point-to-point microwave services under subparts H and I of this part must be of a type that has been either notified or type accepted by the Commission (see § 2.904(d) of this chapter). Effective March 5, 1984, only grants of notification will be issued for transmitters used exclusively for fixed point-to-point operation. Transmitters designed for use in the 31.0 to 31.3 GHz band will be authorized under the notification procedure.

(b) Any manufacturer of a transmitter to be produced for use under the rules of this part may request type acceptance or notification by following the applicable procedures set forth in part 2 of this chapter. Type accepted and notified transmitters are included in the Commission's Radio Equipment List. Copies of this list are available for inspection at the Commission's office in Washington, DC and at each of its field offices.

(c) Type acceptance or notification for an individual transmitter may also be requested by an applicant for a station authorization, pursuant to the procedures set forth in part 2 of this chapter. An individual transmitter will not normally be included in the Radio Equipment List but will be enumerated on the station authorization.

(d) A transmitter presently shown on an instrument of authorization, which operates on an assigned frequency in the 890-940 MHz band and has not been type accepted, may continue to be used by the licensee without type acceptance provided such transmitter continues otherwise to comply with the applicable rules and regulations of the Commission.

(e) Type acceptance or notification is not required for portable transmitters operating with peak output power not greater than 250 mW. If operation of

such equipment causes harmful interference the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(f) After July 15, 1996, the manufacture (except for export) or importation of equipment employing digital modulation techniques in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680 and 10,700–11,700 MHz bands must meet the minimum payload capacity requirements of § 101.141.

**§ 101.141 Microwave modulation.**

(a) Microwave transmitters employing digital modulation techniques and operating below 19.7 GHz must, with appropriate multiplex equipment, comply with the following additional requirements:

(1) The bit rate, in bits per second, must be equal to or greater than the bandwidth specified by the emission designator in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mb/s rate must not require a bandwidth of greater than 20 MHz),

except the bandwidth used to calculate the minimum rate may not include any authorized guard band.

Note to (a)(1): Systems authorized prior to December 1, 1988, may install equipment after that date with no minimum bit rate.

(2) Equipment to be used for voice transmission placed in service, authorized, or applied for on or before June 1, 1997 in the 2110 to 2130 and 2160 to 2180 MHz bands must be capable of satisfactory operation within the authorized bandwidth to encode at least 96 voice channels. Equipment placed in service, authorized, or applied for on or before June 1, 1997 in the 3700–4200, 5925–6425 (30 MHz bandwidth), and 10,700–11,700 MHz (30 and 40 MHz bandwidths) bands must be capable of satisfactory operation within the authorized bandwidth to encode at least 1152 voice channels. These required loading levels may be reduced by a factor of 1/N provided that N transmitters may be operated satisfactorily, over the same radio path, within an authorized

bandwidth less than, or equal to, the maximum authorizable bandwidth (e.g., the 1152 channel requirement may be reduced to 576 if two transmitters can be satisfactorily operated over the same path within the maximum bandwidth). Where type accepted equipment is designed to operate on the same frequency in a cross polarized configuration to meet the above capacity requirements, the Commission will require, at the time additional transmitters are authorized, that both polarizations of a frequency be used before a new frequency assignment is made, unless a single transmitter installation was found to be justified by the Commission at the time it authorized the first transmitter.

(3) The following capacity and loading requirements must be met for equipment applied for, authorized, and placed in service after June 1, 1997 in the 3700–4200 MHz (4 GHz), 5925–6425 and 6525–6875 MHz (6 GHz), 10,550–10,680 MHz (10 GHz), and 10,700–11,700 MHz (11 GHz) bands:

Nominal channel bandwidth (MHz)	Minimum payload capacity (Mbits/s) <sup>1</sup>	Minimum traffic loading payload (as percent of payload capacity)	Typical utilization <sup>2</sup>
0.400 .....	1.54	N/A	1 DS-1
0.800 .....	3.08	N/A	2 DS-1
1.25 .....	3.08	N/A	2 DS-1
1.60 .....	6.17	N/A	4 DS-1
2.50 .....	6.17	N/A	4 DS-1
3.75 .....	12.3	N/A	8 DS-1
5.0 .....	18.5	N/A	12 DS-1
10.0 .....	44.7	<sup>3</sup> 50	1 DS-3/STS-1
20.0 .....	89.4	<sup>3</sup> 50	2 DS-3/STS-1
30.0 (11 GHz) .....	89.4	<sup>3</sup> 50	2 DS-3/STS-1
30.0 (6 GHz) .....	134.1	<sup>3</sup> 50	3 DS-3/STS-1
40.0 .....	134.1	<sup>3</sup> 50	3 DS-3/STS-1

<sup>1</sup> Per polarization

<sup>2</sup> DS and STS refer to the number of voice circuits a channel can accommodate. 1 DS-1 = 24 voice circuits; 2 DS-1 = 48; 4 DS-1 = 96; 8 DS-1 = 192; 12 DS-1 = 288; 1 DS-3/STS-1 = 672; 2 DS-3/STS-1 = 1344; 3 DS-3/STS-1 = 2016.

<sup>3</sup> This loading requirement must be met within 30 months of licensing. If two transmitters simultaneously operate on the same frequency over the same path, the requirement is reduced to 25 percent.

(4) If a transmitter is authorized to operate in a bandwidth that is not listed in paragraph (a)(3) of this section, it must meet the minimum payload capacity and traffic loading requirements of the next largest channel bandwidth listed in the table; e.g., if the authorized bandwidth is 3.5 MHz, the minimum payload capacity must be 12.3 Mbits/s.

(5) Transmitters carrying digital motion video material are exempt from the requirements specified in paragraphs (a)(2) and (a)(3) of this section, provided that at least 50 percent

of the payload is digital video motion material and the minimum bit rate specified in paragraph (a)(1) of this section is met. In the 6, 10, and 11 GHz bands, concatenation of multiple contiguous channels is permitted for channels of equal bandwidth on center frequencies, provided no other channels are available and the minimum payload capacity requirements are met.

(6) Digital systems using bandwidths of 10 MHz or larger will be considered 50 percent loaded when the following condition is met: at least 50 percent of their total DS-1 capacity is being used.

A DS-1 channel is being used when it has been connected to a DS-0/DS-1 multiplexer. For non-DS-0 services, such as, but not limited to, video or broadband data transmission, the next largest DS-1 equivalent will be considered for the computation of a loading percentage.

(7) For digital systems, minimum payload capacities shall be expressed in numbers of DS-1s, DS-3s or STS-1s. The payload capacity required by the Commission shall correspond to commercially available equipment.

(b) For purposes of compliance with the emission limitation requirements of § 101.111(a)(2) and the requirements of paragraph (a) of this section, digital modulation techniques are considered as being employed when digital modulation occupies 50 percent or more to the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation will be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal must be determined in accordance with § 2.202(f) of this chapter.

(c) Analog Modulation. Except for video transmission, an application for an initial working channel for a given route will not be accepted for filing where the anticipated loading (within five years for voice, or other period subject to reasonable projection) is less than the minimum specified for the following frequency bands. Absent extraordinary circumstances, applications proposing additional frequencies over existing routes will not be granted unless it is shown that the traffic load will shortly exhaust the capacity of the existing equipment. Where no construction of radio facilities is requested, licensees must submit this evidence with their filing of any necessary authority required pursuant to section 214 of the Communications Act and part 63 of this chapter.

Frequency band (MHz)	Minimum number of voice channels (4 KHz or equivalent)
3700 to 4200 (20 MHz bandwidth) .....	900
5925 to 6425 (10 MHz bandwidth) .....	300
5925 to 6425 (20 MHz bandwidth) .....	600
5925 to 6425 (30 MHz bandwidth) .....	900
6525 to 6875 (10 MHz bandwidth) .....	300
10,700 to 11,700 (10 MHz bandwidth) .....	300
10,700 to 11,700 (20 MHz bandwidth) .....	600
10,700 to 11,700 (30 MHz bandwidth) .....	900
10,700 to 11,700 (40 MHz bandwidth) .....	900

**§ 101.143 Minimum path length requirements.**

(a) The distance between end points of a fixed link in the private operational fixed point-to-point and the common

carrier fixed point-to-point microwave services must equal or exceed the value set forth in the table below or the EIRP must be reduced in accordance with the equation set forth below:

Frequency band (MHz)	Minimum path length (km)
Below 1,850 .....	N/A
1,850 to 7,125 .....	17
10,550 to 13,250 .....	5
Above 17,700 .....	N/A

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation:

$$EIRP = MAX EIRP - 40 * \log(A/B) \text{ dBW}$$

Where:

EIRP=Equivalent isotropically radiated power in dBW.

A=Minimum path length from the Table for the frequency band in kilometers.

B=The actual path length in kilometers.

Note to paragraph (b): For transmitters using Automatic Transmit Power Control, EIRP that corresponds to the maximum transmitter power must satisfy this requirement.

(c) Upon an appropriate technical showing, applicants and licensees unable to meet the minimum path length requirement may be granted an exception to these requirements.

Note to paragraph (c): Links authorized prior to April 1, 1987, need not comply with this requirement.

**§ 101.145 Interference to geostationary-satellites.**

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 2655-2690 MHz, 5925-6875 MHz, and 12.7-12.75 GHz on board geostationary-space stations in the fixed-satellite service.

(a) Stations authorized prior to July 1, 1976 in the band 2655-2690 MHz, which exceed the power levels in paragraphs (a) and (b) of this section are permitted to operate indefinitely, provided that the operations of such stations does not result in harmful interference to reception in these band on board geostationary space stations.

(b) 2655 to 2690 MHz and 5925 to 6875 MHz. No directional transmitting antenna utilized by a fixed station operating in these bands may be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the

transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed:

(1) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit; or

(2) +47 to +55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(c) 12.7 to 12.75 GHz. No directional transmitting antenna utilized by a fixed station operating in this band may be aimed within 1.5 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction.

However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed +45 dBW for any antenna beam directed within 1.5 degrees of the stationary satellite orbit.

(d) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for controlled Interference With Geostationary-Satellites" by C. W. Lundgren and A. S. May, Bell System Technical Journal, Vol. 48, No. 10, pp. 3387-3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC-7201, FCC, Washington, DC, 1972. This latter report is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

**§ 101.147 Frequency assignments.**

(a) Frequencies in the following bands are available for assignment to fixed radio point-to-point microwave stations.

- 928.0-929.0 MHz (22)
- 932.0-932.5 MHz (27)
- 932.5-935 MHz (17)
- 941.0-941.5 MHz (17) (18)
- 941.5-944 MHz (27)
- 952.0-960.0 MHz (22)
- 1,850-1,990 MHz (22)
- 2,110-2,130 MHz (1) (3) (7) (20)
- 2,130-2,150 MHz (22)

2,150–2,160 MHz (22)  
 2,160–2,180 MHz (1) (2) (20) (21)  
 2,180–2,200 MHz (22)  
 2,450–2,500 MHz (22)  
 2,650–2,690 MHz (22)  
 3,700–4,200 MHz (8) (14) (25)  
 5,925–6,425 MHz (6) (14) (25)  
 6,425–6,525 MHz (24)  
 6,525–6,875 MHz (14)  
 10,550–10,680 MHz (19)  
 10,700–11,700 MHz (8) (9) (19) (25)  
 11,700–12,200 MHz (24)  
 12,200–12,500 MHz (22)  
 12,500–12,700 MHz (22)  
 12,700–13,200 MHz (22)  
 13,200–13,250 MHz (4) (24) (25)  
 14,200–14,400 MHz (24)  
 17,700–18,820 MHz (5) (10) (15)  
 18,820–18,920 MHz (22)  
 18,920–19,160 MHz (5) (10) (15)  
 19,160–19,260 MHz (22)  
 19,260–19,700 MHz (5) (10) (15)  
 21,200–22,000 MHz (4) (11) (12) (13) (24) (25) (26)  
 22,000–23,600 MHz (4) (11) (12) (24) (25) (26)  
 27,500–29,500 MHz (5)  
 31,000–31,300 MHz (16) (24)  
 38,600–40,000 MHz (4)  
 Bands Above 40,000 MHz

#### Notes

(1) Frequencies in this band are shared with control and repeater stations in the Domestic Public Land Mobile Radio Service and with stations in the International Fixed Public Radiocommunication Services located south of 25° 30' north latitude in the State of Florida and U. S. possessions in the Caribbean area. Additionally, the band 2160–2162 MHz is shared with stations in the Multipoint Distribution Service.

(2) Except upon showing that no alternative frequencies are available, no new assignments will be made in the band 2160–2162 MHz for stations located within 80.5 kilometers (50 miles) of the coordinates of the cities listed in § 21.901(c) of this chapter.

(3) Television transmission in this band is not authorized and radio frequency channel widths may not exceed 3.5 MHz.

(4) Frequencies in this band are shared with fixed and mobile stations licensed in other services.

(5) Frequencies in this band are shared with stations in the fixed-satellite service.

(6) These frequencies are not available for assignment to mobile earth stations.

(7) Frequencies in the band 2110–2120 MHz may be authorized on a case-by-case basis to Government or non-Government space research earth stations for telecommand purposes in connection with deep space research.

(8) This frequency band is shared with station(s) in the Local Television Transmission Service and, in the U.S. Possessions in the Caribbean area, with stations in the International Fixed Public Radiocommunications Services.

(9) The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.

(10) This band is co-equally shared with stations in the fixed services under parts 74, 78 and 101 of this chapter.

(11) Frequencies in this band are shared with Government stations.

(12) Assignments to common carriers in this band are normally made in the segments 21.2–21.8 GHz and 22.4–23.8 GHz and to operational fixed users in the segments 21.8–22.4 GHz and 23.0–23.6 GHz. Assignments may be made otherwise only upon a showing that no interference free frequencies are available in the appropriate band segments.

(13) Frequencies in this band are shared with stations in the earth exploration satellite service (space to earth).

(14) Frequencies in this band are shared with stations in the fixed-satellite and private operational fixed point-to-point microwave services.

(15) Stations licensed as of September 9, 1983 to use frequencies in the 17.7–19.7 GHz band may, upon proper application, continue to be authorized for such operation.

(16) Frequencies in this band are co-equally shared with stations in the Auxiliary Broadcasting, Cable Television Relay, Private Operational Fixed Point-to-Point Microwave, and General Mobile Radio Services. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

(17) Frequencies in these bands are shared with Government fixed stations and stations in the Private Operational Fixed Point-to-Point Microwave Service (part 101).

(18) Frequencies in the 942 to 944 MHz band are also shared with broadcast auxiliary stations.

(19) Frequencies in this band are shared with stations in the private-operational fixed point-to-point microwave service.

(20) New facilities in these bands will be licensed only on a secondary basis. Facilities licensed or applied before January 16, 1992, are permitted to make modifications and minor extensions and retain their primary status.

(21) Any authorization of additional stations to use the 2160–2162 MHz band for Multipoint Distribution Service applied for after January 16, 1992, will be secondary to use of the band for emerging technology services.

(22) Frequencies in these bands are for the exclusive use of Private Operational Fixed Point-to-Point Microwave Service (part 101).

(23) Frequencies in these bands are for the exclusive use of Common Carrier Fixed Point-to-Point Microwave Service (part 101).

(24) Frequencies in these bands are available for assignment to television pickup and television non-broadcast pickup stations. The maximum power for the local television transmission service in the 14.2–14.4 GHz band is +45 dBW except that operations are not permitted within 1.5 degrees of the geostationary orbit.

(25) Frequencies in these bands are available for assignment to television STL stations.

(26) Frequency pairs 21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz, and 21.975/23.175 GHz may be authorized for low power, limited coverage, systems subject to the provisions of paragraph (s) of this section.

(27) Frequencies in the 932 to 932.5 MHz and 941 to 941.5 MHz bands are shared with

Government fixed point-to-multipoint stations and point-to-multipoint stations in the Public Land Mobile Service. Frequencies in these bands are paired with one another and are available for point-to-multipoint transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

(b) Frequencies normally available for assignment in this service are set forth with applicable limitations in the following tables: *928–960 MHz* Multiple address system (MAS) frequencies are available for the point-to-multipoint transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications. The paired frequencies listed in this section are used for two-way interrogate/response communications between a master station and remote stations. Each master station operating on these frequencies is required to serve a minimum of four separate active remote stations. Ancillary one-way communications on paired frequencies are permitted on a case-by-case basis. Ancillary communications between interrelated master stations are permitted on a secondary basis. The normal channel bandwidth assigned will be 12.5 kHz. Upon adequate justification, however, channels with bandwidths up to 50 kHz may be authorized. Tables 2, 4, and 6 list frequencies with 25 kHz bandwidth channels. When licensed for a larger bandwidth, the system still is required to use equipment that meets the  $\pm 0.00015$  percent tolerance requirement. (See § 101.107). Any bandwidth (12.5 kHz, 25 kHz or greater) authorized in accordance with this section may be subdivided into narrower bandwidths to create additional (or sub) frequencies without the need to specify each discrete frequency within the specific bandwidth. Equipment that is used to create additional frequencies by narrowing bandwidth (whether authorized for a 12.5 kHz, 25 kHz or greater bandwidth) will be required to meet, at a minimum, the  $\pm 0.00015$  percent tolerance requirement so that all subfrequencies will be within the emission mask. When using subfrequencies, licensees are subject to the construction requirement of one master and four remotes per authorized bandwidth (12.5 kHz, 25 kHz or greater). Systems licensed for frequencies in these MAS bands prior to August 1, 1975, may continue to operate as authorized until June 11, 1996, at which time they must comply with current MAS operations based on the 12.5 KHz channelization set forth in this

paragraph. Systems licensed between August 1, 1975, and January 1, 1981, inclusive, are required to comply with the grandfathered 25 kHz standard bandwidth and channelization requirements set forth in this paragraph. Systems originally licensed after January 1, 1981, and on or before May 11, 1988, with bandwidths of 25 kHz and above, will be grandfathered indefinitely. (1) General Access Pool: Frequencies listed in this paragraph are available to all persons eligible under this part for use in multiple address radio systems. Except as noted, however, the frequencies may be used by eligibles in the Power Radio Service only if the frequencies in paragraph (b) (2) of this section are exhausted in the particular geographic area. The frequencies are also available for shared use by part 22 Public Land Mobile Service users if frequencies listed in § 22.50(g) of this chapter are exhausted in the particular geographic area. Applications for use of these frequencies under part 22 of this chapter are subject to part 101 requirements.

TABLE 1.—PAIRED FREQUENCIES (MHZ) [12.5 kHz bandwidth]

Remote transmit	Master transmit
928.00625	952.00625
928.01875	952.01875
928.03125	952.03125
928.04375	952.04375
928.05625	952.05625
928.06875	952.06875
928.08125	952.08125
928.09375	952.09375
928.10625	952.10625
928.11875	952.11875
928.13125	952.13125
928.14375	952.14375
928.15625	952.15625
928.16875	952.16875
928.18125	952.18125
928.19375	952.19375
928.20625	952.20625
928.21875	952.21875
928.23125	952.23125
928.24375	952.24375
928.25625	952.25625
928.26875	952.26875
928.28125	952.28125
928.29375	952.29375
928.30625	952.30625
928.31875	952.31875
928.33125	952.33125
928.34375	952.34375

UNPAIRED FREQUENCIES (MHZ) <sup>1</sup> [12.5 kHz bandwidth]

956.25625	956.33125	956.39375
956.26875	956.34375	956.40625
956.28125	956.35625	956.41875

UNPAIRED FREQUENCIES (MHZ) <sup>1</sup>—Continued [12.5 kHz bandwidth]

956.29375	956.36875	956.43125
956.30625	956.38125	956.44375
956.31875		

<sup>1</sup> Available to power eligibles regardless of whether frequencies in the power pool are exhausted.

TABLE 2.—PAIRED FREQUENCIES (MHZ) [25 kHz bandwidth]

Remote transmit	Master transmit
928.0125	952.0125
928.0375	952.0375
928.0625	952.0625
928.0875	952.0875
928.1125	952.1125
928.1375	952.1375
928.1625	952.1625
928.1875	952.1875
928.2125	952.2125
928.2375	952.2375
928.2625	952.2625
928.2875	952.2875
928.3125	952.3125
928.3375	952.3375

UNPAIRED FREQUENCIES (MHZ) <sup>1</sup> [25 kHz bandwidth]

956.2625	956.3375	956.4125
956.2875	956.3625	956.4375
956.3125	956.3875	

<sup>1</sup> Available to power eligibles regardless of whether frequencies in the power pool are exhausted.

(2) Power Pool: Frequencies listed in this paragraph are available to persons eligible under § 90.63 of this chapter for licensing in the Power Radio Service for use in multiple address radio systems. After January 1, 1992, the frequencies are also available for use by general access pool users and part 22 Public Land Mobile Service users (§ 22.501(g) of this chapter) provided frequencies listed in their respective pools are exhausted in the particular geographic area. Applications for use of these frequencies under part 22 of this chapter are subject to part 101 requirements.

TABLE 3.—PAIRED FREQUENCIES (MHZ) [12.5 kHz bandwidth]

Remote transmit	Master transmit
928.35625	952.35625
928.36875	952.36875
928.38125	952.38125
928.39375	952.39375

TABLE 3.—PAIRED FREQUENCIES (MHZ)—Continued [12.5 kHz bandwidth]

Remote transmit	Master transmit
928.40625	952.40625
928.41875	952.41875
928.43125	952.43125
928.44375	952.44375
928.45625	952.45625
928.46875	952.46875
928.48125	952.48125
928.49375	952.49375
928.50625	952.50625
928.51875	952.51875
928.53125	952.53125
928.54375	952.54375
928.55625	952.55625
928.56875	952.56875
928.58125	952.58125
928.59375	952.59375
928.60625	952.60625
928.61875	952.61875
928.63125	952.63125
928.64375	952.64375
928.65625	952.65625
928.66875	952.66875
928.68125	952.68125
928.69375	952.69375
928.70625	952.70625
928.71875	952.71875
928.73125	952.73125
928.74375	952.74375
928.75675	952.75625
928.76875	952.76875
928.78125	952.78125
928.79375	952.79375
928.80625	952.80625
928.81875	952.81875
928.83125	952.83125
928.84375	952.84375

TABLE 4.—PAIRED FREQUENCIES (MHZ) [25 kHz bandwidth]

Remote transmit	Master transmit
928.3625	952.3625
928.3875	952.3875
928.4125	952.4125
928.4375	952.4375
928.4625	952.4625
928.4875	952.4875
928.5125	952.5125
928.5375	952.5375
928.5625	952.5625
928.5875	952.5875
928.6125	952.6125
928.6375	952.6375
928.6625	952.6625
928.6875	952.6875
928.7125	952.7125
928.7375	952.7375
928.7625	952.7625
928.7875	952.7875
928.8125	952.8125
928.8375	952.8375

(3) Frequencies listed in this paragraph are available for shared use

by general access pool users for multiple address operations if frequencies listed in paragraph (b)(1) of this section are exhausted in the particular geographic area: The frequencies are also available to eligibles in the power pool provided there are no other frequencies available for the type of operation contemplated. The frequencies in this pool may be assigned for paired or unpaired operation. If paired, the corresponding lower frequency is for remote unit use. Applications for these frequencies are subject to the conditions outlined in § 22.27 of this chapter.

TABLE 5.—PUBLIC MOBILE SERVICE CATEGORY FREQUENCIES (MHZ) [12.5 kHz bandwidth]

Remote transmit	Master transmit
928.85625	959.85625
928.86875	959.86875
928.88125	959.88125
928.89375	959.89375
928.90625	959.90625
928.91875	959.91875
928.93125	959.93125
928.94375	959.94375
928.95625	959.95625
928.96875	959.96875
928.98125	959.98125
928.99375	959.99375

TABLE 6.—PUBLIC MOBILE SERVICE CATEGORY FREQUENCIES (MHZ) [25 kHz bandwidth]

Remote transmit	Master transmit
928.8625	959.8625
928.8875	959.8875
928.9125	959.9125
928.9375	959.9375
928.9625	959.9625
928.9875	959.9875

(4) Frequencies listed in this paragraph are shared with stations in the Public Land Mobile Service, part 22 of this chapter.

TABLE 7.—PAIRED FREQUENCIES [12.5 kHz bandwidth]

Remote transmit	Master transmit
932.00625	941.00625
932.01875	941.01875
932.03125	941.03125
932.04375	941.04375
932.05625	941.05625

TABLE 7.—PAIRED FREQUENCIES—Continued [12.5 kHz bandwidth]

Remote transmit	Master transmit
932.06875	941.06875
932.08125	941.08125
932.09375	941.09375
932.10625	941.10625
932.11875	941.11875
932.13125	941.13125
932.14375	941.14375
932.15625	941.15625
932.16875	941.16875
932.18125	941.18125
932.19375	941.19375
932.20625	941.20625
932.21875	941.21875
932.23125	941.23125
932.24375	941.24375
932.25625	941.25625
932.26875	941.26875
932.28125	941.28125
932.29375	941.29375
932.30625	941.30625
932.31875	941.31875
932.33125	941.33125
932.34375	941.34375
932.35625	941.35625
932.36875	941.36875
932.38125	941.38125
932.39375	941.39375
932.40625	941.40625
932.41875	941.41875
932.43125	941.43125
932.44375	941.44375
932.45625	941.45625
932.46875	941.46875
932.48125	941.48125
932.49375	941.49375

(5) Equivalent power and antenna heights for multiple address master stations:

Antenna height (AAT) in meters	Maximum effective radiated power	
	Watts	dBm
Above 305	200	53
Above 274 to 305	250	54
Above 244 to 274	315	55
Above 213 to 244	400	56
Above 182 to 213	500	57
Above 152.5 to 182	630	58
152.5 and below	1,000	60

For mobile operations the maximum ERP is 25 watts (44 dBm).

(6) Fixed point-to-point frequencies.

TABLE 8.—PAIRED FREQUENCIES

[All frequencies may be used by Common Carrier Fixed Point-to-Point and Private Operational Fixed Point-to-Point Microwave Service licensees; 25 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
932.5125	941.5125
932.5375	941.5375
932.5625	941.5625
932.5875	941.5875
932.6125	941.6125
932.6375	941.6375
932.6625	941.6625
934.8375	943.8375
934.8625	943.8625
934.8875	943.8875
934.9125	943.9125
934.9375	943.9375
934.9625	943.9625
934.9875	943.9875

TABLE 9.—PAIRED FREQUENCIES

[Frequencies may be used only by Private Operational Fixed Point-to-Point Microwave Service licensees, unless otherwise noted; 50 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
932.70 <sup>1</sup>	941.70
932.75 <sup>1</sup>	941.75
934.80 <sup>1</sup>	943.80
956.65	953.05
956.75	953.15
956.85	953.25
956.95	953.35
957.05	953.45
957.25	953.65
957.35	953.75
957.45	953.85
957.65	954.05
957.75	954.15
957.85	954.25
958.05	954.45
958.15	954.55
958.25	954.65
958.45	954.85
958.55	954.95
958.65	955.05
958.85	955.25
958.95	955.35
959.05	955.45
959.25	955.65
959.35	955.75
959.45	955.85
959.55	955.95
959.65	956.05

<sup>1</sup> These frequencies also may be used by Common Carrier Fixed Point-to-Point Microwave licensees.

TABLE 10.—PAIRED FREQUENCIES

[Frequencies may be used only by Private Operational Fixed Point-to-Point Microwave licensees, unless otherwise noted; 100 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
932.8250 <sup>1</sup>	1941.8250
932.9250 <sup>1</sup>	1941.9250
933.0250 <sup>1</sup>	1942.0250
934.5250 <sup>1</sup>	1943.5250
934.6250 <sup>1</sup>	1943.6250
934.7250 <sup>1</sup>	1943.7250
956.6	953.0
956.7	953.1
956.8	953.2
956.9	953.3
957.0	953.4
957.1	953.5
957.2	953.6
957.3	953.7
957.4	953.8
957.5	953.9
957.6	954.0
957.7	954.1
957.8	954.2
957.9	954.3
958.0	954.4
958.1	954.5
958.2	954.6
958.3	954.7
958.4	954.8
958.5	954.9
958.6	955.0
958.7	955.1
958.8	955.2
958.9	955.3
959.0	955.4
959.1	955.5
959.2	955.6
959.3	955.7
959.4	955.8
959.5	955.9
959.6	956.0
959.7	956.1

<sup>1</sup>These frequencies also may be used by Common Carrier Fixed Point-to-Point Microwave licensees.

TABLE 11.—PAIRED FREQUENCIES

[Frequencies may be used only by Private Operational Fixed Point-to-Point Microwave licensees, unless otherwise noted; 200 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
933.1750 <sup>1</sup>	1942.1750
933.3750 <sup>1</sup>	1942.3750
933.5750 <sup>1</sup>	1942.5750
933.7750 <sup>1</sup>	1942.7750
933.9750 <sup>1</sup>	1942.9750
933.1750 <sup>1</sup>	1943.1750
933.3750 <sup>1</sup>	1943.3750
957.15	953.55
957.55	953.95
957.95	954.35
958.35	954.75
958.75	955.15

TABLE 11.—PAIRED FREQUENCIES—  
Continued

[Frequencies may be used only by Private Operational Fixed Point-to-Point Microwave licensees, unless otherwise noted; 200 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
959.15	955.55

<sup>1</sup>These frequencies also may be used by Common Carrier Fixed Point-to-Point Microwave licensees.

- (c) 1850–1990 MHz.
- (1) 10 MHz maximum bandwidth.

PAIRED FREQUENCIES

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1855	1935
1865	1945
1875	1955
1885	1965
1895	1975
1905	1985

UNPAIRED FREQUENCIES

- 1915<sup>1</sup>
- 1925<sup>1</sup>

<sup>1</sup>Available for systems employing one-way transmission.

- (2) 5 MHz maximum bandwidth.

PAIRED FREQUENCIES

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1860	1940
1870	1950
1880	1960
1890	1970
1900	1980

- (d) 2130–2150 MHz; 2180–2200 MHz; 800 kHz maximum bandwidth, unless noted.

PAIRED FREQUENCIES

2130–2150		2180–2200	
Transmit (receive) (MHz)	Receive (transmit) (MHz)	Transmit (receive) (MHz)	Receive (transmit) (MHz)
2130.8	2180.8	2180.8	2180.8
2131.6	2181.6	2181.6	2181.6
2132.4	2182.4	2182.4	2182.4
2133.2	2183.2	2183.2	2183.2
2134.0	2184.0	2184.0	2184.0
2134.8	2184.8	2184.8	2184.8
2135.6	2185.6	2185.6	2185.6
2136.4	2186.4	2186.4	2186.4
2137.2	2187.2	2187.2	2187.2

Transmit (receive) (MHz)	Receive (transmit) (MHz)
2138.0	2188.0
2139.6	2189.6
2138.8	2188.8
2140.4	2190.4
2141.2	2191.2
2142.0	2192.0
2142.8	2192.8
2143.6	2193.6
2144.4	2194.4
2145.2	2195.2
2146.0	2196.0
2146.8	2196.8
2147.6	2197.6
2148.4	2198.4
2149.2	2199.2

<sup>1</sup>Consideration will be given on a case-by-case basis to assigning these frequency pairs to systems employing 1600 KHz bandwidth transmissions.

(e) 2150–2160 MHz: Specific frequency of operation to be set forth in authorization. Omnidirectional transmission only may be authorized, subject to providing protection from harmful interference to previously authorized stations in this service and in other services sharing this band.

(f) 2450–2500 MHz:

(1) This band is shared with other communications services and is not subject to protection from interference from industrial, scientific, and medical devices operating on 2450 MHz.

(2) Stations licensed in this band under this part prior to March 1, 1996, are grandfathered and may continue their authorized operations. Stations licensed in the 2483.5–2500 MHz portion of the band as of July 25, 1985, or on a subsequent date as a result of submitting an application on or before July 25, 1985, are grandfathered, and may continue operations, subject only to license renewal, on a co-primary basis with the Radiodetermination Satellite Service.

(3) 625 KHz bandwidth channels. The normal bandwidth authorized will be 625 KHz. Upon adequate justification, additional contiguous channels may be authorized to provide up to a 2500 KHz bandwidth.

PAIRED FREQUENCIES

Transmit (receive) (MHz)	Receive (transmit) (MHz)
2450.3125	2467.5625
2450.9375	2468.1875
2451.5625	2468.8125
2452.1875	2469.4375
2452.8125	2470.0625
2453.4375	2470.6875
2454.0625	2471.3125
2454.6875	2471.9375
2455.3125	2472.5625

PAIRED FREQUENCIES—Continued

Transmit (receive) (MHz)	Receive (transmit) (MHz)
2455.9375	2473.1875
2456.5625	2473.8125
2457.1875	2474.4375
2457.8125	2475.0625
2458.4375	2475.6875
2459.0625	2476.3125
2459.6875	2476.9375
2460.3125	2477.5625
2460.9375	2478.1875
2461.5625	2478.8125
2462.1875	2479.4375
2462.8125	2480.0625
2463.4375	2480.6875
2464.0625	2481.3125
2464.6875	2481.9375
2465.3125	2482.5625
2465.9375	2483.1875

(g) 2500–2690 MHz: Operational-fixed stations may be authorized on the following frequencies:

FREQUENCIES (MHz)

2686.9375
2687.9375
2688.5625
2688.6875
2688.9375
2689.5625
2689.6875

Note to (g): Operational-Fixed stations authorized in this band as of July 16, 1971, which do not comply with the provisions of this part may continue to operate on the frequencies assigned on a coequal basis with other stations operating in accordance with the Table of Frequency allocations. Requests for subsequent license renewals or modifications for such stations will be considered. However, expansion of systems comprised of such stations will not be permitted, except pursuant to the provisions of this part. No new licenses will be issued under this part until specific operating parameters are established for this band.

(h) 3,700 to 4,200 MHz: 20 MHz maximum authorized bandwidth. 20 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3710	3750
3730	3770
3790	3830
3810	3850
3870	3910
3890	3930
3950	3990
3970	4010
4030	4070
4050	4090
4110	4150
4130	4170

Transmit (receive) (MHz)	Receive (transmit) (MHz)
N/A	14190

<sup>1</sup>This frequency may be assigned for unpaired use.

(i) 5,925 to 6,425 MHz: 30 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.225	6177.100
5925.625	6177.500
5926.050	6177.925
5926.450	6178.325
5926.875	6178.750
5927.275	6179.150
5927.725	6179.600
5928.125	6180.000
5928.550	6180.425
5928.950	6180.825
5929.375	6181.250
5929.775	6181.650
6168.350	6420.225
6168.750	6420.625
6169.175	6421.050
6169.575	6421.450
6170.000	6421.875
6170.400	6422.275
6170.850	6422.725
6171.250	6423.125
6171.675	6423.550
6172.075	6423.950
6172.500	6424.375
6172.900	6424.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.425	6177.300
5926.250	6178.125
5927.075	6178.950
5927.925	6179.800
5928.750	6180.625
5929.575	6181.450
6168.550	6420.425
6169.375	6421.250
6170.200	6422.075
6171.050	6422.925
6171.875	6423.750
6172.700	6424.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.625	6177.500
5926.875	6178.750
5928.125	6180.000
5929.375	6181.250
6108.893	6360.933
6110.128	6362.168
6111.364	6363.404
6112.599	6364.639
6113.834	6365.874
6115.070	6367.110

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6116.305	6368.345
6117.541	6369.581
6118.776	6370.816
6120.011	6372.051
6121.247	6373.287
6122.482	6374.522
6123.718	6375.758
6124.953	6376.993
6126.189	6378.229
6127.424	6379.464
6128.659	6380.699
6129.895	6381.935
6131.130	6383.170
6132.366	6384.406
6133.601	6385.641
6134.836	6386.876
6136.072	6388.112
6137.307	6389.347
6138.543	6390.583
6139.778	6391.818
6141.014	6393.054
6142.249	6394.289
6143.484	6395.524
6144.720	6396.760
6145.955	6397.995
6147.191	6399.231
6148.426	6400.466
6149.661	6401.701
6150.897	6402.937
6152.132	6404.172
6153.368	6405.408
6154.603	6406.643
6155.839	6407.879
6157.074	6409.114
6158.309	6410.349
6159.545	6411.585
6160.780	6412.820
6162.016	6414.056
6163.251	6415.291
6164.486	6416.526
6165.722	6417.762
6166.957	6418.997
6168.192	6420.232
6170.000	6421.875
6171.250	6423.125
6172.500	6424.375
6173.750 <sup>1</sup>	N/A
6175.000 <sup>1</sup>	N/A
6176.250 <sup>1</sup>	N/A

<sup>1</sup>These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5926.250	6178.125
5928.750	6180.625
6109.510	6361.550
6111.981	6364.021
6114.452	6366.492
6116.923	6368.963
6119.394	6371.434
6121.865	6373.905
6124.335	6376.375
6126.806	6378.846
6129.277	6381.317
6131.748	6383.788
6134.219	6386.259
6136.690	6388.730

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6139.160	6391.200
6141.631	6393.671
6144.102	6396.142
6146.573	6398.613
6149.044	6401.084
6151.515	6403.555
6153.985	6406.025
6156.456	6408.496
6158.927	6410.967
6161.398	6413.438
6163.869	6415.909
6166.340	6418.380
6169.375	6421.250
6171.875	6423.750
6175.625 <sup>1</sup>	N/A

<sup>1</sup> This frequency may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6111.364	6363.404
6116.305	6368.345
6121.247	6373.287
6126.189	6378.229
6131.130	6383.170
6136.072	6388.112
6141.014	6393.054
6145.955	6397.995
6150.897	6402.937
6155.839	6407.879
6160.780	6412.820
6165.722	6417.762
6175.000 <sup>1</sup>	N/A

<sup>1</sup> This frequency may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6110.75	6362.79
6115.69	6367.73
6120.63	6372.67
6125.57	6377.61
6130.51	6382.55
6135.45	6387.49
6140.40	6392.44
6145.34	6397.38
6150.28	6402.32
6155.22	6407.26
6160.16	6412.20
6165.10	6417.14

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5935.32	6187.36
5945.20	6197.24
5955.08	6207.12
5964.97	6217.01
5974.85	6226.89
5984.73	6236.77
5994.62	6246.66

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6004.50	6256.54
6014.38	6266.42
6024.27	6276.31
6034.15	6286.19
6044.03	6296.07
6053.92	6305.96
6063.80	6315.84
6073.68	6325.72
6083.57	6335.61
6093.45	6345.49
6103.33	6355.37
6113.22 <sup>1</sup>	<sup>1</sup> 6365.26
6123.10 <sup>1</sup>	<sup>1</sup> 6375.14
6132.98 <sup>1</sup>	<sup>1</sup> 6385.02
6142.87 <sup>1</sup>	<sup>1</sup> 6394.91
6152.75 <sup>1</sup>	<sup>1</sup> 6404.79
6162.63 <sup>1</sup>	<sup>1</sup> 6414.67

<sup>1</sup> Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5945.20	6197.24
5974.85	6226.89
6004.50	6256.54
6034.15	6286.19
6063.80	6315.84
6093.45	6345.49
6123.10 <sup>1</sup>	<sup>1</sup> 6375.14
6152.75 <sup>1</sup>	<sup>1</sup> 6404.79

<sup>1</sup> Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(j) 6,425 to 6,525 MHz: Mobile. Paired and unpaired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to parts 21, 74, and 78 of this chapter. Stations not intended to be operated while in motion will be licensed under the provision of § 101.13(b). The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels:

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6425.5	6475.5
6450.5	6500.5

(2) 8 MHz maximum authorized bandwidth channels:

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6430.0	6480.0
6438.0	6488.0
6446.0	6596.0
6455.0	6505.0
6463.0	6513.0
6471.0	6521.0

(3) 25 MHz maximum authorized bandwidth channels:

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6437.5	6487.5
6462.5	6512.5

(k) On the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations, persons holding valid station authorizations on July 15, 1963, to provide television nonbroadcast pickup service in the 6525–6575 MHz band may be authorized to continue use of the frequencies specified in their authorization for such operations until July 15, 1968.

(l) 6,525 to 6,875 MHz. 10 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.225	6870.225
6525.625	6870.625
6526.050	6871.050
6526.450	6871.450
6526.875	6871.875
6527.275	6872.275
6527.725	6872.725
6528.125	6873.125
6528.550	6873.550
6528.950	6873.950
6529.375	6874.375
6529.775	6874.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.425	6870.425
6526.250	6871.250
6527.075	6872.075
6527.925	6872.925
6528.750	6873.750
6529.575	6874.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.625	6870.625



Transmit (receive) (MHz)	Receive (transmit) (MHz)
6550.625	6730.625
6555.625 <sup>1</sup>	6725.625 <sup>1</sup>
6560.625	6740.625
6565.625	6735.625
6585.625	6745.625
6590.625	6750.625
6595.625	6755.625
6600.625	6760.625
6605.625	6765.625
6610.625	6770.625
6615.625	6775.625
6620.625	6780.625
6625.625	6785.625
6630.625	6790.625
6635.625	6795.625
6640.625	6800.625
6645.625	6805.625
6650.625	6810.625
6655.625	6815.625
6660.625	6820.625
6665.625	6825.625
6670.625	6830.625
6675.625	6835.625
6680.625	6840.625
6685.625	6845.625
6690.625	6850.625
6695.625	6855.625
6700.625	6860.625
6705.625	6865.625
6710.625 <sup>1</sup>	6720.625

<sup>1</sup>These frequencies may be assigned for unpaired use.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 <sup>1</sup>	16715
6550	6730
6555 <sup>1</sup>	16725
6560	6740
6565	6735
6585	6745
6590	6750
6595	6755
6600	6760
6605	6765
6610	6770
6615	6775
6620	6780
6625	6785
6630	6790
6635	6795
6640	6800
6645	6805
6650	6810
6655	6815
6660	6820
6665	6825
6670	6830
6675	6835
6680	6840
6685	6845
6690	6850
6695	6855
6700	6860
6705	6865
6710 <sup>1</sup>	16720

<sup>1</sup>These frequencies may be assigned for unpaired use.

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 <sup>1</sup>	16715
6555 <sup>1</sup>	16725
6565	6735
6585	6745
6595	6755
6605	6765
6615	6775
6625	6785
6635	6795
6645	6805
6655	6815
6665	6825
6675	6835
6685	6845
6695	6855
6705	6865
6535 <sup>2</sup>	26575

<sup>1</sup>These frequencies may be assigned for unpaired use.  
<sup>2</sup>Available only for emergency restoration, maintenance bypass, or other temporary-fixed purposes. Such uses are authorized on a non-interference basis to other frequencies in this band. Interference analysis required by §101.105 does not apply to this frequency pair.

(m) 10,550 to 10,680 MHz. 5 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.225	10670.225
10605.625	10670.625
10606.050	10671.050
10606.450	10671.450
10606.875	10671.875
10607.275	10672.275
10607.725	10672.725
10608.125	10673.125
10608.550	10673.550
10608.950	10673.950
10609.375	10674.375
10609.775	10674.775
10610.225	10675.225
10610.625	10675.625
10611.050	10676.050
10611.450	10676.450
10611.875	10676.875
10612.275	10677.275
10612.725	10677.725
10613.125	10678.125
10613.550	10678.550
10613.950	10678.950
10614.375	10679.375
10614.775	10679.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.425	10670.425
10606.250	10671.250
10607.075	10672.075
10607.925	10672.925
10608.750	10673.750

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10609.575	10674.575
10610.425	10675.425
10611.250	10676.250
10612.075	10677.075
10612.925	10677.925
10613.750	10678.750
10614.575	10679.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10550.625	10615.625
10551.875	10616.875
10553.125	10618.125
10554.375	10619.375
10555.625	10620.625
10556.875	10621.875
10558.125	10623.125
10559.375	10624.375
10560.625	10625.625
10561.875	10626.875
10563.125	10628.125
10564.375	10629.375
10565.625	10630.625
10566.875	10631.875
10568.125	10633.125
10569.375	10634.375
10570.625	10635.625
10571.875	10636.875
10573.125	10638.125
10574.375	10639.375
10575.625	10640.625
10576.875	10641.875
10578.125	10643.125
10579.375	10644.375
10580.625	10645.625
10581.875	10646.875
10583.125	10648.125
10584.375	10649.375
10585.625	10650.625
10586.875	10651.875
10588.125	10653.125
10589.375	10654.375
10590.625	10655.625
10591.875	10656.875
10593.125	10658.125
10594.375	10659.375
10595.625	10660.625
10596.875	10661.875
10598.125	10663.125
10599.375	10664.375
10600.625	10665.625
10601.875	10666.875
10603.125	10668.125
10604.375	10669.375
10605.625	10670.625
10606.875	10671.875
10608.125	10673.125
10609.375	10674.375
10610.625	10675.625
10611.875	10676.875
10613.125	10678.125
10614.375	10679.375

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10616.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75
10561.25	10626.25
10563.75	10628.75
10566.25	10631.25
10568.75	10633.75
10571.25	10636.25
10573.75	10638.75
10576.25	10641.25
10578.75	10643.75
10581.25 <sup>1</sup>	<sup>1</sup> 10646.25
10583.75 <sup>1</sup>	<sup>1</sup> 10648.75
10586.25 <sup>1</sup>	<sup>1</sup> 10651.25
10588.75 <sup>1</sup>	<sup>1</sup> 10653.75
10591.25 <sup>1</sup>	<sup>1</sup> 10656.25
10593.75 <sup>1</sup>	<sup>1</sup> 10658.75
10596.25 <sup>1</sup>	<sup>1</sup> 10661.25
10598.75 <sup>1</sup>	<sup>1</sup> 10663.75
10601.25 <sup>1</sup>	<sup>1</sup> 10666.25
10603.75 <sup>1</sup>	<sup>1</sup> 10668.75
10606.25 <sup>1</sup>	<sup>1</sup> 10671.25
10608.75 <sup>1</sup>	<sup>1</sup> 10673.75
10611.25 <sup>1</sup>	<sup>1</sup> 10676.25
10613.75 <sup>1</sup>	<sup>1</sup> 10678.75

<sup>1</sup>These frequencies are also available for DEMS stations licensed, in operation, or applied for prior to July 15, 1993.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10553.125	10618.125
10558.125	10623.125
10563.125	10628.125
10568.125	10633.125
10573.125	10638.125
10578.125	10643.125
10583.125	10648.125
10588.125	10653.125
10593.125	10658.125
10598.125	10663.125
10603.125	10668.125

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10552.5	10617.5
10557.5	10622.5
10562.5	10627.5
10567.5 <sup>1</sup>	<sup>1</sup> 10632.5
10572.5 <sup>1</sup>	<sup>1</sup> 10637.5
10577.5 <sup>1</sup>	<sup>1</sup> 10642.5
10582.5 <sup>1</sup>	<sup>1</sup> 10647.5
10587.5	10652.5
10592.5	10657.5
10597.5	10662.5
10602.5	10667.5

<sup>1</sup>These frequencies are also available for DEMS stations licensed, in operation, or applied for prior to July 15, 1993.

(n) Point-to-multipoint systems licensed, in operation, or applied for in the 10,550–10,680 MHz band prior to

July 15, 1993, are permitted to use the DEMS frequencies noted above if they prior coordinate such usage with the necessary parties including 10 GHz point-to-point applicants and licensees. DEMS Nodal Stations shall use the band 10,565–10,615 MHz while DEMS User Stations shall use the band 10,630–10,680 MHz.  
 (o) 10,700 to 11,700 MHz. 40 MHz authorized bandwidth.  
 (1) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11130.625	11620.625
11131.875	11621.875
11133.125	11623.125
11134.375	11624.375
11135.625	11625.625
11136.875	11626.875
11138.125	11628.125
11139.375	11629.375
11140.625	11630.625
11141.875	11631.875
11143.125	11633.125
11144.375	11634.375
11145.625	11635.625
11146.875	11636.875
11148.125	11638.125
11149.375	11639.375
11150.625	11640.625
11151.875	11641.875
11153.125	11643.125
11154.375	11644.375
11155.625	11645.625
11156.875	11646.875
11158.125	11648.125
11159.375	11649.375
11160.625	11650.625
11161.875	11651.875
11163.125	11653.125
11164.375	11654.375
11165.625	11655.625
11166.875	11656.875
11168.125	11658.125
11169.375	11659.375
11170.625	11660.625
11171.875	11661.875
11173.125	11663.125
11174.375	11664.375
11175.625	11665.625
11176.875	11666.875
11178.125	11668.125
11179.375	11669.375
11180.625	11680.625
11181.875	11681.875
11183.125	11683.125
11184.375	11684.375
11185.625	11685.625
11186.875	11686.875
11188.125	11688.125
11189.375	11689.375
11190.625	11690.625
11191.875	11691.875
11193.125	11693.125
11194.375	11694.375
11195.625	11695.625
11196.875	11696.875
11198.125	11698.125
11199.375	11699.375

(2) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11131.25	11621.25
11133.75	11623.75
11136.25	11626.25
11138.75	11628.75
11141.25	11631.25
11143.75	11633.75
11146.25	11636.25
11148.75	11638.75
11151.25	11641.25
11153.75	11643.75
11156.25	11646.25
11158.75	11648.75
11161.25	11651.25
11163.75	11653.75
11166.25	11656.25
11168.75	11658.75
11171.25	11661.25
11173.75	11663.75
11176.25	11666.25
11178.75	11668.75
11181.25	11681.25
11183.75	11683.75
11186.25	11686.25
11188.75	11688.75
11191.25	11691.25
11193.75	11693.75
11196.25	11696.25
11198.75	11698.75

(3) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11133.125	11623.125
11138.125	11628.125
11143.125	11633.125
11148.125	11638.125
11153.125	11643.125
11158.125	11648.125
11163.125	11653.125
11168.125	11658.125
11173.125	11663.125
11178.125	11668.125
11183.125	11683.125
11188.125	11688.125
11193.125	11693.125
11198.125	11698.125

(4) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11132.5	11622.5
11137.5	11627.5
11142.5	11632.5
11147.5	11637.5
11152.5	11642.5
11157.5	11647.5
11162.5	11652.5
11167.5	11657.5
11172.5	11662.5
11177.5	11667.5
11182.5	11682.5
11187.5	11687.5
11192.5	11692.5
11197.5	11697.5

(5) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)	Transmit (receive) (MHz)	Receive (transmit) (MHz)
10705 .....	11205	11115 .....	11605
10715 .....	11215	11155 <sup>1</sup> .....	<sup>1</sup> 11645
10725 <sup>2</sup> .....	<sup>1</sup> 11675	11185 <sup>1</sup> .....	<sup>1</sup> 11685
10735 .....	11225	<sup>1</sup> Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.	
10745 .....	11235	<b>(7) 40 MHz bandwidth channels:<sup>2</sup></b>	
10755 .....	11245		
10765 .....	11255		
10775 .....	11265		
10785 .....	11275		
10795 .....	11285		
10805 .....	11295		
10815 .....	11305		
10825 .....	11315		
10835 .....	11325		
10845 .....	11335	10735 .....	11225
10855 .....	11345	10775 .....	11265
10865 .....	11355	10815 .....	11305
10875 .....	11365	10855 .....	11345
10885 .....	11375	10895 .....	11385
10895 .....	11385	10935 .....	11425
10905 .....	11395	10975 .....	11465
10915 .....	11405	11015 .....	11505
10925 .....	11415	11055 .....	11545
10935 .....	11425	11095 .....	11585
10945 .....	11435	11135 <sup>1</sup> .....	<sup>1</sup> 11625
10955 .....	11445	11175 <sup>1</sup> .....	<sup>1</sup> 11665
10965 .....	11455	<sup>1</sup> Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.	
10975 .....	11465	<sup>2</sup> In congested areas where 40 MHz channels block most 30 MHz channels, radios authorized for 30 MHz bandwidths may use the 40 MHz channels. In uncongested areas, 30 MHz channels should be used.	
10985 .....	11475	<b>(p) 12,000-12700 MHz:</b> The Commission has allocated the 12.2-12.7 GHz band for use by the broadcasting-satellite service. Private operational fixed point-to-point microwave stations authorized after September 9, 1983, will be licensed on a noninterference basis and are required to make any and all adjustments necessary to prevent interference to operating domestic broadcasting-satellite systems. Notwithstanding any other provisions, no private operational fixed point-to-point microwave stations are permitted to cause interference to broadcasting-satellite stations of other countries operating in accordance with the Region 2 plan for the broadcasting-satellite service established at the 1983 WARC.	
10995 .....	11485	<b>(q) Special provisions for low power, limited coverage systems in the band segments 12.2-12.7 GHz.</b> Notwithstanding any contrary provisions in this part the frequency pairs 12.220/12.460 GHz, 12.260/12.500 GHz, 12.300/12.540 GHz and 12.340/12.580 GHz may be authorized for low power, limited coverage systems subject to the following provisions:	
11005 .....	11495	<b>(1) Maximum equivalent isotropically radiated power (EIRP) shall be 55 dBm;</b>	
11015 .....	11505	<b>(2) The rated transmitter output power shall not exceed 0.500 watts;</b>	
11025 .....	11515		
11035 .....	11525		
11045 .....	11535		
11055 .....	11545		
11065 .....	11555		
11075 .....	11565		
11085 .....	11575		
11095 .....	11585		
11105 .....	11595		
11115 .....	11605		
11125 .....	11615		
11135 <sup>1</sup> .....	<sup>1</sup> 11625		
11145 <sup>1</sup> .....	<sup>1</sup> 11635		
11155 <sup>1</sup> .....	<sup>1</sup> 11645		
11165 <sup>1</sup> .....	<sup>1</sup> 11655		
11175 <sup>1</sup> .....	<sup>1</sup> 11665		
11185 <sup>1</sup> .....	<sup>1</sup> 11685		
11195 <sup>1</sup> .....	<sup>1</sup> 11695		

<sup>1</sup> Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

<sup>2</sup> These frequencies may be assigned for unpaired use.

**(6) 30 MHz bandwidth channels:**

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10715 .....	11215
10755 .....	11245
10795 .....	11285
10835 .....	11325
10875 .....	11365
10915 .....	11405
10955 .....	11445
10995 .....	11485
11035 .....	11525
11075 .....	11565

(3) Frequency tolerance shall be maintained to within 0.01 percent of the assigned frequency;

(4) Maximum beamwidth not to exceed 4 degrees. However, the sidelobe suppression criteria contained in § 101.115 of this part shall not apply, except that a minimum front-to-back ratio of 38 dB shall apply;

(5) Upon showing of need, a maximum bandwidth of 12 MHz may be authorized per frequency assigned;

(6) Radio systems authorized under the provisions of this section shall have no more than three hops in tandem, except upon showing of need, but in any event the maximum tandem length shall not exceed 40 km (25 miles);

(7) Interfering signals at the receiver antenna terminals of stations authorized under this section shall not exceed -90 dBm and -70 dBm respectively, for co-channel and adjacent channel interfering signals, and

(8) Stations authorized under the provisions of this section shall provide the protection from interference specified in § 101.105 to stations operating in accordance with the provisions of this part.

**(r) 17,700 to 19,700 MHz:** Applicants may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. (Note, however, that stations authorized as of September 9, 1983, to use frequencies in the band 17.7-19.7 GHz may, upon proper application, continue to be authorized for such operations.)

(1) 2 MHz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0 .....	N/A

(2) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
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**340 MHz Separation**

18762.5 .....	19102.5
18767.5 .....	19107.5
18772.5 .....	19112.5
18777.5 .....	19117.5
18782.5 .....	19122.5
18787.5 .....	19127.5
18792.5 .....	19132.5
18797.5 .....	19137.5
18802.5 .....	19142.5
18807.5 .....	19147.5
18812.5 .....	19152.5
18817.5 .....	19157.5

(3) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
<b>216 MHz Separation</b>	
18145.0 .....	N/A
18151.0 .....	18367.0
18157.0 .....	18373.0
18163.0 .....	18379.0
18169.0 .....	18385.0
18175.0 .....	18391.0
18181.0 .....	18397.0
18187.0 .....	18403.0
18193.0 .....	18409.0
18199.0 .....	18415.0
18205.0 .....	18421.0
18211.0 .....	18427.0
18217.0 .....	18433.0
18223.0 .....	18439.0
18229.0 .....	18445.0
18235.0 .....	18451.0
18241.0 .....	18457.0
18247.0 .....	18463.0
18253.0 .....	18469.0
18259.0 .....	18475.0
18265.0 .....	18481.0
18271.0 .....	18487.0
18277.0 .....	18493.0
18283.0 .....	18499.0
18289.0 .....	18505.0
18295.0 .....	18511.0
18301.0 .....	18517.0
18307.0 .....	18523.0
18313.0 .....	18529.0
18319.0 .....	18535.0
18325.0 .....	18541.0
18331.0 .....	18547.0
18337.0 .....	18553.0
18343.0 .....	18559.0
18349.0 .....	18565.0
18355.0 .....	18571.0
18361.0 .....	18577.0

(4) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
<b>1560 MHz Separation</b>	
17705.0 .....	19265.0
17715.0 .....	19275.0
17725.0 .....	19285.0
17735.0 .....	19295.0
17745.0 .....	19305.0
17755.0 .....	19315.0
17765.0 .....	19325.0
17775.0 .....	19335.0
17785.0 .....	19345.0
17795.0 .....	19355.0
17805.0 .....	19365.0
17815.0 .....	19375.0
17825.0 .....	19385.0
17835.0 .....	19395.0
17845.0 .....	19405.0
17855.0 .....	19415.0
17865.0 .....	19425.0
17875.0 .....	19435.0
17885.0 .....	19445.0
17895.0 .....	19455.0

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17905.0 .....	19465.0
17915.0 .....	19475.0
17925.0 .....	19485.0
17935.0 .....	19495.0
17945.0 .....	19505.0
17955.0 .....	19515.0
17965.0 .....	19525.0
17975.0 .....	19535.0
17985.0 .....	19545.0
17995.0 .....	19555.0
18005.0 .....	18565.0
18015.0 .....	19575.0
18025.0 .....	19585.0
18035.0 .....	19595.0
18045.0 .....	19605.0
18055.0 .....	19615.0
18065.0 .....	19625.0
18075.0 .....	19635.0
18085.0 .....	19645.0
18095.0 .....	19655.0
18105.0 .....	19665.0
18115.0 .....	19675.0
18125.0 .....	19685.0
18135.0 .....	19695.0

Transmit (receive) (MHz)	Receive (transmit) (MHz)
<b>340 MHz Separation</b>	
18585.0 .....	18925.0
18595.0 .....	18935.0
18605.0 .....	18945.0
18615.0 .....	18955.0
18625.0 .....	18965.0
18635.0 .....	18975.0
18645.0 .....	18985.0
18655.0 .....	18995.0
18665.0 .....	19005.0
18675.0 .....	19015.0
18685.0 .....	19025.0
18695.0 .....	19035.0
18705.0 .....	19045.0
18715.0 .....	19055.0
18725.0 .....	19065.0
18735.0 .....	19075.0
18745.0 .....	19085.0
18755.0 .....	19095.0
18765.0 .....	19105.0
18775.0 .....	19115.0
18785.0 .....	19125.0
18795.0 .....	19135.0
18805.0 .....	19145.0
18815.0 .....	19155.0

(5) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
<b>1560 MHz Separation</b>	
17710.0 .....	19270.0
17730.0 .....	19290.0
17750.0 .....	19310.0
17770.0 .....	19330.0
17790.0 .....	19350.0
17810.0 .....	19370.0
17830.0 .....	19390.0
17850.0 .....	19410.0
17870.0 .....	19430.0
17890.0 .....	19450.0
17910.0 .....	19470.0

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17930.0 .....	19490.0
17950.0 .....	19510.0
17970.0 .....	19530.0
17990.0 .....	19550.0
18010.0 .....	19570.0
18030.0 .....	19590.0
18050.0 .....	19610.0
18070.0 .....	19630.0
18090.0 .....	19650.0
18110.0 .....	19670.0
18130.0 .....	19690.0
18590.0 .....	18930.0

Transmit (receive) (MHz)	Receive (transmit) (MHz)
<b>340 MHz Separation</b>	
18610.0 .....	18950.0
18630.0 .....	18970.0
18650.0 .....	18990.0
18670.0 .....	19010.0
18690.0 .....	19030.0
18710.0 .....	19050.0
18730.0 .....	19070.0
18750.0 .....	19090.0
18770.0 .....	19110.0
18790.0 .....	19130.0
18810.0 .....	19150.0

(6) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
<b>1560 MHz Separation</b>	
17720.0 .....	19280.0
17760.0 .....	19320.0
17800.0 .....	19360.0
17840.0 .....	19400.0
17880.0 .....	19440.0
17920.0 .....	19480.0
17960.0 .....	19520.0
18000.0 .....	19560.0
18040.0 .....	19600.0
18080.0 .....	19640.0
18120.0 .....	19680.0

(7) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
<b>1560 MHz Separation</b>	
17740.0 .....	19300.0
17820.0 .....	19380.0
17900.0 .....	19460.0
17980.0 .....	19540.0
18060.0 .....	19620.0

(8) 220 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17810.0 .....	18470.0
18030.0 .....	19370.0
18250.0 .....	19590.0

(9) The following frequencies are available for point-to-multipoint DEMS Systems:

Channel No.	Nodal station frequency band (MHz) limits	User station frequency band (MHz) limits
25	18,820-18,830	19,160-19,170
26	18,830-18,840	19,170-19,180
27	18,840-18,850	19,180-19,190
28	18,850-18,860	19,190-19,200
29	18,860-18,870	19,200-19,210
30	18,870-18,880	19,210-19,220
31	18,880-18,890	19,220-19,230
32	18,890-18,900	19,230-19,240
33	18,900-18,910	19,240-19,250
34	18,910-18,920	19,250-19,260

(i) Each station will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 101.105 are met.

(10) Special provision for low power systems in the 17-700-19700 MHz band. Notwithstanding other provisions in this Rule part, licensees of point-to-multipoint channel pairs 25-29 may operate multiple low power transmitting devices within a defined service area. The service area will be a 28 kilometer omnidirectional radius originating from specified center reference coordinates. The specified center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such operations are subject to the following requirements on the low power transmitting devices:

(i) Power must not exceed one watt EIRP and 100 milliwatts transmitter output power.

(ii) A frequency tolerance of 0.001% must be maintained; and

(iii) The mean power of emissions shall be attenuated in accordance with the following schedule:

(A) In any 4 kHz band, the center frequency of which is removed from the center frequency of the assigned channel by more than 50 percent of the channel bandwidth and is within the bands 18,820-18870 MHz or 19,19160-19,210 MHz:  
 $A=35+.003(F-0.5B)$  dB  
 or,  
 80 dB (whichever is the lesser attenuation).

Where

A=Attenuation (in decibels) below output power level contained within the channel for a given polarization.

B=Bandwidth of channel in kHz.

F=Absolute value of the difference between the center frequency of the 4 kHz band measured at the center frequency of the channel in kHz.

(B) In any 4 kHz band the center frequency of which is outside the bands 18.820-18.870 GHz: At least  $43+10\log_{10}(\text{mean output power in watts})$  decibels.

(s) Special provisions for low power, limited coverage systems in the band segments 21.8-22.0 GHz and 23.0-23.2 GHz. Notwithstanding any contrary provisions in this part the frequency pairs 21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz and 21.975/23.175 GHz may be authorized for low power, limited coverage systems subject to the following provisions:

(1) Maximum effective radiated power (ERP) shall be 55 dBm;

(2) The rated transmitter output power shall not exceed 0.100 watts;

(3) Frequency tolerance shall be maintained to within 0.05 percent of the assigned frequency;

(4) Maximum beamwidth not to exceed 4 degrees. However, the sidelobe suppression criteria contained in § 101.115 shall not apply, except that a minimum front-to-back ratio of 38 dB shall apply;

(5) Upon showing of need, a maximum bandwidth of 50 MHz may be authorized per frequency assigned;

(6) Radio systems authorized under the provisions of this section shall have no more than five hops in tandem, except upon showing of need, but in any event the maximum tandem length shall not exceed 40 km (25 miles);

(7) Interfering signals at the antenna terminals of stations authorized under this section shall not exceed -90 dBm and -70 dBm respectively, for co-channel and adjacent channel interfering signals; and

(8) Stations authorized under the provisions of this section shall provide the protection from interference specified in § 101.105 to stations operating in accordance with the provisions of this part.

(t) 31.0 to 31.3 GHz. These frequencies are shared on a co-equal basis with other stations in the fixed and mobile services (see parts 74 of this chapter, 95 of this chapter, and this part 101). No interference protection is afforded to fixed or mobile stations operating in this band.

(1) 25 MHz authorized bandwidth channels, 150 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
31,012.5	31,162.5
31,037.5	31,187.5
31,062.5	31,212.5
31,087.5	31,237.5
31,112.5	31,262.5
31,137.5	31,287.5

(2) 50 MHz authorized bandwidth channels, 150 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
31,025.0	31,175.0
31,075.0	31,225.0
31,125.0	31,275.0

(u) Assignments in the band 38,600-40,000 MHz must be according to the following frequency plan:

Channel group A		Channel group B	
Channel No.	Frequency band limits MHz	Channel No.	Frequency Band limits MHz
1-A	38,600-38,650	1-B	39,300-39,350
2-A	38,650-38,700	1-B	39,350-39,400
3-A	38,700-38,750	3-B	39,400-39,450
4-A	38,750-38,800	4-B	39,450-39,500
5-A	38,800-38,850	5-B	39,500-39,550
6-A	38,850-38,900	6-B	39,550-39,600
7-A	38,900-38,950	7-B	39,600-39,650
8-A	38,950-39,000	8-B	39,650-39,700

Channel group A		Channel group B	
Channel No.	Frequency band limits MHz	Channel No.	Frequency Band limits MHz
9-A .....	39,000-39,050	9-B .....	39,700-39,750
10-A .....	39,050-39,100	10-B .....	39,750-39,800
11-A .....	39,100-39,150	11-B .....	39,800-39,850
12-A .....	39,150-39,200	12-B .....	39,850-39,900
13-A .....	39,200-39,250	13-B .....	39,900-39,950
14-A .....	39,250-39,300	14-B .....	39,950-40,000

Note to (u): These channels are assigned for use within a rectangular service area to be described in the application by the maximum and minimum latitudes and longitudes. Such service area must be as small as practical consistent with the local service requirements of the carrier. These frequency plans may be subdivided as desired by the licensee and used within the service area as desired without further authorization subject to the terms and conditions set forth in § 101.149. These frequencies may be assigned only where it is shown that the applicant will have reasonable projected requirements for a multiplicity of service points or transmission paths within the area.

(v) Fixed systems licensed, in operation, or applied for in the 3,700-4,200, 5925-6425, 6,525-6,875, 10,550-10,680, and 10,700-11,700 MHz bands prior to July 15, 1993, are permitted to use channel plans in effect prior to that date, including adding channels under those plans.

(w) Operations on other than the listed frequencies may be authorized where it is shown that the objectives or requirements of the interference criteria prescribed in § 101.105 could not otherwise be met to resolve the interference problems.

(x) The frequency 27.255 MHz in the 27.23-27.28 MHz band is allocated for assignment to microwave auxiliary stations in this service on a shared basis with other radio services. Assignments to stations on this frequency will not be protected from such interference as may be experienced from the emissions of industrial, scientific and medical equipment operating on 27.12 MHz in accordance with § 2.106 of this chapter.

**§ 101.149 Special requirements for operation in the band 38,600-40,000 MHz**

Assigned frequency channels in the band 38,600-40,000 MHz may be subdivided and used anywhere in the authorized service area, subject to the following terms and conditions:

(a) No interference may be caused to a previously existing station operating in another authorized service area;

(b) Each operating station must have posted a copy of the service area authorization; and

(c) The antenna structure height employed at any location may not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure for each location has been obtained from the FAA prior to the erection of the antenna.

**Subpart D—Operational Requirements**

**§ 101.201 Station inspection.**

The licensee of each station authorized in the radio services included in this part must make the station available for inspection by representatives of the Commission at any reasonable hour.

**§ 101.203 Communications concerning safety of life and property.**

(a) Handling and transmission of messages concerning the safety of life or property which is in imminent danger must be afforded priority over other messages.

(b) No person may knowingly cause to be transmitted any false or fraudulent message concerning the safety of life or property, or refuse upon demand immediately to relinquish the use of a radio circuit to enable the transmission of messages concerning the safety of life or property which is in imminent danger, or knowingly interfere or otherwise obstruct the transmission of such messages.

**§ 101.205 Operation during emergency.**

The licensee of any station in these services may, during a period of emergency in which normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, utilize such station for emergency communication service in a manner other than that specified in the instrument of authorization: Provided:

(a) That as soon as possible after the beginning of such emergency use, notice be sent to the Commission at Washington, DC stating the nature of the emergency and the use to which the station is being put;

(b) That the emergency use of the station must be discontinued as soon as substantially normal communication facilities are again available;

(c) That the Commission at Washington, DC must be notified immediately when such special use of the station is terminated;

(d) That, in no event, will any station engage in emergency transmission on frequencies other than, or with power in excess of, that specified in the instrument of authorization or as otherwise expressly provided by the Commission, or by law; and

(e) That the Commission may, at any time, order the discontinuance of any such emergency communication.

**§ 101.207 Suspension of transmission.**

Transmission must be suspended immediately upon detection by the station or operator licensee or upon notification by the Commission of a deviation from the technical requirements of the station authorization and must remain suspended until such deviation is corrected, except for transmission concerning the immediate safety of life or property, in which case transmission must be suspended immediately after the emergency is terminated.

**§ 101.209 Operation of stations at temporary fixed locations for communication between the United States and Canada or Mexico.**

Stations authorized to operate at temporary fixed locations may not be used for transmissions between the United States and Canada, or the United States and Mexico, without prior specific notification to, and authorization from, the Commission. Notification of such intended usage of the facilities should include a detailed showing of the operation proposed, including the parties involved, the nature of the communications to be handled, the terms and conditions of such operations, the time and place of operation, such other matters as the applicant deems relevant, and a showing as to how the public interest, convenience and necessity would be

served by the proposed operation. Such notification should be given sufficiently in advance of the proposed date of operation to permit any appropriate correlation with the respective foreign government involved (see §§ 101.31, 101.811, 101.813, and 101.815).

**§ 101.211 Operator requirements.**

(a) Any person, with the consent or authorization of the licensee, may employ stations in this service for the purpose of telecommunications in accordance with the conditions and limitations set forth in § 101.135.

(b) The station licensee is responsible for the proper operation of the station at all times and is expected to provide for observations, servicing and maintenance as often as may be necessary to ensure proper operation.

(c) The provisions of paragraph (a) of this section may not be construed to change or diminish in any respect the responsibility of station licensees to have and to maintain control over the stations licensed to them (including all transmitter units thereof), or for the proper functioning and operation of those stations (including all transmitter units thereof) in accordance with the terms of the licenses of those stations.

**§ 101.213 Station identification.**

Stations in these services are exempt from the requirement to identify transmissions by call sign or any other station identifier.

**§ 101.215 Posting of station authorization and transmitter identification cards, plates, or signs.**

(a) Each licensee shall post at the station the name, address and telephone number of the custodian of the station license or other authorization if such license or authorization is not maintained at the station.

(b) The requirements in paragraph (a) of this section do not apply to remote stations using frequencies listed in § 101.147(b).

**§ 101.217 Station records.**

Each licensee of a station subject to this part shall maintain records in accordance with the following:

(a) For all stations, the results and dates of transmitter measurements and the name of the person or persons making the measurements;

(b) For all stations, when service or maintenance duties are performed, which may affect their proper operation, the responsible operator shall sign and date an entry in the station record concerned, giving:

(1) Pertinent details of all transmitter adjustments performed by him or under his supervision; and

(2) His name and address, provided that this information, so long as it remains unchanged, is not required to be repeated in the case of a person who is regularly employed as operator on a full-time basis at the station.

(c) The records shall be kept in an orderly manner, and in such detail that the data required are readily available. Key letters or abbreviations may be used if proper meaning or explanation is set forth in the record.

(d) Each entry in the records of each station shall be signed by a person qualified to do so, having actual knowledge of the facts to be recorded.

(e) No record or portion thereof shall be erased, obliterated, or willfully destroyed within the required retention period. Any necessary correction may be made only by the person originating the entry, who shall strike out the erroneous portion, initial the correction made and indicate the date of correction.

(f) Records required by this part shall be retained by the licensee for a period of at least one year.

**Subpart E—Miscellaneous Common Carrier Provisions**

**§ 101.301 National defense; free service.**

Any common carrier authorized under the rules of this part may render to any agency of the United States Government free service in connection with the preparation for the national defense. Every such carrier rendering any such free service must make and file, in duplicate, with the Commission, on or before the 31st of July and on or before the 31st day of January in each year, reports covering the periods of 6 months ending on the 30th of June and the 31st of December, respectively, next prior to said dates. These reports must show the names of the agencies to which free service was rendered pursuant to this rule, the general character of the communications handled for each agency, and the charges in dollars which would have accrued to the carrier for such service rendered to each agency if charges for such communications had been collected at the published tariff rates.

**§ 101.303 Answers to notices of violation.**

Any person receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any other Federal statute or Executive Order pertaining to radio or wire communications or any international radio or wire communications treaty or convention, or regulations annexed thereto to which the United States is a party, or the rules

and regulations of the Federal Communications Commission, must, within 10 days from such receipt, send a written answer to the office of the Commission originating the official notice. If an answer cannot be sent or an acknowledgment made within such 10-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer must be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice must be complete in itself and may not be abbreviated by reference to other communications or answers to other notices. If the notice relates to some violation that may be due to the physical or electrical characteristics of transmitting apparatus, the answer must state fully what steps have been taken to prevent future violations, and, if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application must be given or, if a file number has not been assigned by the Commission, such identification as will permit ready reference thereto. If the notice of violation relates to inadequate maintenance resulting in improper operation of the transmitter, the name and license number of the operator performing the maintenance must be given. If the notice of violation relates to some lack of attention to, or improper operation of, the transmitter by other employees, the reply must enumerate the steps taken to prevent a recurrence of such lack of attention or improper operation.

**§ 101.305 Discontinuance, reduction or impairment of service.**

(a) If the public communication service provided by a station in the Common Carrier Radio Services is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee must promptly notify the Commission, in writing, at Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325. In every such case, the licensee must furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof must be given in writing to the Federal Communications Commission, Common Carrier Radio Services, 1270

Fairfield Road, Gettysburg, Pennsylvania 17325.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee must promptly send the station license to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation.

(c) Any common carrier station licensee, not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community must give written notification to the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station licensee must promptly send the station license to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation.

(d) If any common carrier radio frequency should not be used to render any service as authorized during a consecutive period of twelve months at any time after construction is completed under circumstances that do not fall within the provisions of paragraph (a), (b), or (c) of this section, or, if removal of equipment or facilities has rendered the station not operational, the licensee must, within thirty days of the end of such period of nonuse:

(1) Submit for cancellation the station license (or licenses) to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation;

(2) File an application for modification of the license (or licenses) to delete the unused frequency (or frequencies); or

(3) Request waiver of this rule and demonstrate either that the frequency will be used (as evidenced by appropriate requests for service, etc.) within six months of the end of the initial period of nonuse, or that the frequency will be converted to allow rendition of other authorized public services within one year of the end of the initial period of nonuse by the filing of appropriate applications within six

months of the end of the period of nonuse.

**§ 101.307 Tariffs, reports, and other material required to be submitted to the Commission.**

Sections 1.771 through 1.815 of this chapter contain summaries of certain materials and reports, including schedule of charges and accounting and financial reports, which, when applicable, must be filed with the Commission.

**§ 101.309 Requirement that licensees respond to official communications.**

All licensees in these services are required to respond to official communications from the Commission with reasonable dispatch and according to the tenor of such communications. Failure to do so will be given appropriate consideration in connection with any subsequent applications which the offending party may file and may result in the designation of such applications for hearing, or in appropriate cases, the institution of proceedings looking to the modification or revocation of the pertinent authorizations.

**§ 101.311 Equal employment opportunities.**

Equal opportunities in employment must be afforded by all common carrier licensees in accordance with the provisions of § 21.307 of this chapter.

**Subpart F—Developmental Authorizations**

**§ 101.401 Eligibility.**

Developmental authorizations for stations in the radio services included in this part will be issued only to existing and proposed licensees who are legally, financially and otherwise qualified to conduct experimentation for the development of engineering or operational data, or techniques, directly related to a proposed radio service or to a regularly established radio service regulated by the rules of this part.

**§ 101.403 Scope of service.**

Developmental authorizations may be issued for:

(a) Field strength surveys relative to or precedent to the filing of applications for licenses, in connection with the selection of suitable locations for stations proposed to be established in any of the regularly established radio services regulated by the rules of this part; or

(b) The testing of existing or authorized antennas, wave guides, paths, or other equipment used in a system subject to this part.

**§ 101.405 Adherence to program of research and development.**

The program of research and development, as stated by an applicant in the application for license or stated in the instrument of station authorization, must be substantially adhered to unless the licensee is otherwise authorized by the Commission.

**§ 101.407 Special procedure for the development of a new service or for the use of frequencies not in accordance with the provisions of the rules in this part.**

(a) An authorization for the development of a new service not in accordance with the provisions of the rules in this part may be granted for a limited time, but only after the Commission has made a preliminary determination with respect to the factors set forth in this paragraph, as each case may require. This procedure also applies to any application that involves use of a frequency which is not in accordance with the provisions of the rules in this part, although in accordance with the Table of Frequency Allocations contained in part 2 of this chapter. (An application which involves use of a frequency which is not in accordance with the Table of Frequency Allocations in part 2 of this chapter should be filed in accordance with the provisions of part 5 of this chapter, Experimental Radio Services.) The factors with respect to which the Commission will make a preliminary determination before acting on an application filed under this paragraph are as follows:

(1) That the public interest, convenience or necessity warrants consideration of the establishment of the proposed service or the use of the proposed frequency;

(2) That the proposed operation appears to warrant consideration to effect a change in the provisions of the rules in this part; and/or

(3) That some operational data should be developed for consideration in any rule making proceeding which may be initiated.

(b) Applications for stations that are intended to be used in the development of a proposed service must be accompanied by a petition to amend the Commission's rules with respect to frequencies and such other items as may be necessary to provide for the regular establishment of the proposed service.

**§ 101.409 Terms of grant; general limitations.**

(a) Developmental authorizations normally will be issued for one year, or such shorter term as the Commission

may deem appropriate in any particular case, and will be subject to cancellation without hearing by the Commission at any time upon notice to the licensee.

(b) Where some phases of the developmental program are not covered by the general rules of the Commission or by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as it may deem necessary in the public interest, convenience or necessity.

(c) Frequencies allocated to the service toward which such development is directed will be assigned for developmental operation on the basis that no interference will be caused to the regular services of stations operating in accordance with the Commission's Table of Frequency Allocations (§ 2.106 of this chapter).

(d) The rendition of communication service for hire is not permitted under any developmental authorizations unless specifically authorized by the Commission.

(e) The grant of a developmental authorization carries with it no assurance that the developmental program, if successful, will be authorized on a permanent basis either as to the service involved or the use of the frequencies assigned or any other frequencies.

**§ 101.411 Supplementary showing required.**

(a) Authorizations for development of a proposed radio service in the services included in this part will be issued only upon a showing that the applicant has a definite program of research and development, the details of which must be set forth, which has reasonable promise of substantial contribution to these services within the term of such authorization. A specific showing should be made as to the factors which qualify the applicant technically to conduct the research and development program, including a description of the nature and extent of engineering facilities that the applicant has available for such purposes.

(b) Expiring developmental authorizations may be renewed only upon the applicant's compliance with the applicable requirements of § 101.413 (a) and (b) relative to the authorization sought to be renewed and upon a factual showing that further progress in the program of research and development requires further radio transmission and that the public interest, convenience or necessity would be served by renewal of such authorization.

**§ 101.413 Developmental report required.**

(a) Upon completion of the program of research and development, or, in any event, upon the expiration of the instrument of station authorization under which such investigations were permitted, or at such times during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the developmental program, the licensee must submit, in duplicate, a comprehensive report on the following items, in the order designated:

- (1) Report on the various phases of the project which were investigated;
- (2) Total number of hours of operation on each frequency assigned;
- (3) Copies of any publication on the project;
- (4) Detailed analysis of the result obtained; and
- (5) Any other pertinent information.

(b) In addition to the information required by paragraph (a) of this section, the developmental report of a station authorized for the development of a proposed radio service must include comprehensive information on the following items:

- (1) Probable public support and methods of its determination;
- (2) Practicability of service operations;
- (3) Interference encountered;
- (4) Pertinent information relative to merits of the proposed service;
- (5) Propagation characteristics of frequencies used, particularly with respect to the service objective;
- (6) Frequencies believed to be more suitable and reasons therefor; and
- (7) Type of signals or communications employed in the experimental work.

(c) Developmental reports will be made a part of the Commission's public records, except upon the applicant's specific request for confidentiality and Commission approval in accordance with § 0.459 of this chapter. Information determined confidential by the Commission will not be publicly disclosed.

**Subpart G—Digital Electronic Message Service**

**§ 101.501 Eligibility.**

Applications will be granted only in cases in which the applicant establishes it is legally, technically, financially and otherwise qualified to render the services proposed and that the public interest, convenience and necessity would be served by such a grant. Each application will identify the Standard Metropolitan Statistical Area (SMSA) within which boundaries the Digital Electronic Message Service (DEMS) nodal station will be constructed and which the facility will serve.

**§ 101.503 Digital Electronic Message Service Nodal Stations.**

DEMS Nodal Stations may be authorized only as a part of an integrated communication system wherein DEMS User Stations associated therewith also are licensed to the DEMS Nodal Station licensee. Applications for DEMS Nodal Station licenses should specify the maximum number of DEMS User Stations to be served by that nodal station. Any increase in that number must be applied for pursuant to § 101.15.

**§ 101.505 Frequencies.**

(a) Frequencies in the 17,700–19,700 MHz band are available for assignment for all DEMS applicants. Assignment will consist of a pair of channels as set out in paragraph (c) of this section plus internodal channels as set out in paragraph (d) of this section.

(b) Licensees may apply for an additional channel pair in an SMSA only when it is operating its previously authorized DEMS at or near the expected capacity and the service to be provided will fully utilize all spectrum requested.

(c) DEMS assignments will be made according to the following plan, except that systems licensed, in operation, or applied for in the 10,565–10,615 and 10,630–10,680 MHz bands prior to July 15, 1993 are permitted to use frequencies in those bands if they prior coordinate with 10 GHz point-to-point licensees:

Channel No	Nodal station frequency band (MHz)	User station frequency band (MHz)
30 .....	18,870–18,880	19,210–19,220
31 .....	18,880–18,890	19,220–19,230
32 .....	18,890–18,900	19,230–19,240
33 .....	18,900–18,910	19,240–19,250
34 .....	18,910–18,920	19,250–19,260

Note to (c): These channel pairs will be assigned in each SMSA and may be subdivided as desired by the licensee.

(d) Internodal link assignments are to be made in accordance with the provisions of Subpart I of this part, applying to point-to-point operations.

**§ 101.507 Frequency stability.**

The frequency stability of each DEMS Nodal Station transmitter authorized for this service in the 17,700–19,700 MHz band must be ±0.001%. The frequency stability of each DEMS User Station transmitter authorized for this service in this band must be ±0.003%.

**§ 101.509 Interference protection criteria.**

(a) All harmful interference to other users and blocking of adjacent channel

use in the same city and cochannel use in nearby Standard Metropolitan Statistical Areas is prohibited. In areas where SMSA's are in close proximity, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting antenna. Licensees and applicants are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(b) As a condition for use of frequencies in this service each carrier is required to:

- (1) Engineer the system to be reasonably compatible with adjacent channel operations in the same city; and
- (2) Cooperate fully and in good faith to resolve whatever potential interference and transmission security problems may be present in adjacent channel operation.

(c) The following interference studies, as appropriate, must be included with each application for a new or major modification in a DEMS Nodal Station:

- (1) An analysis of the potential for harmful interference with other stations if the coordinates of any proposed station are located within 80 kilometers (50 miles) of the coordinates of any authorized, or previously proposed station(s) that utilizes, or would utilize, the same frequency or an adjacent potentially interfering frequency; and
- (2) An analysis concerning possible adverse impact upon Canadian communications if the station's transmitting antenna is to be located within 55 kilometers (35 miles) of the Canadian border.

(d) In addition a copy of the interference analysis submitted in response to paragraph (c)(1) of this section must be served on all applicants and/or grantees concerned within 5 days of its submission to the Commission.

**§ 101.511 Purpose and permissible service.**

(a) The DEMS is intended to provide for the exchange of digital information among and between subscribers using one or more DEMS Systems.

(b) Unless otherwise directed or conditioned in the applicable instrument of authorization, DEMS may be used to exchange any type of digital information consistent with the Commission's Rules and the applicable tariff of the carrier.

(c) The carrier's tariff must fully describe the parameters of the service to be provided, including the degree of communications security a subscriber can expect in ordinary service.

**§ 101.513 Transmitter power.**

The transmitter power will be governed by § 101.113. Further, each application must contain an analysis demonstrating compliance with § 101.113(a).

**§ 101.515 Emissions and bandwidth.**

Different types of emissions may be authorized if the applicant describes fully the modulation and bandwidth desired, and demonstrates that the bandwidth desired is no wider than needed to provide the intended service. In no event, however, may the necessary or occupied bandwidth exceed the specified channel width of the assigned pair.

**§ 101.517 Antennas.**

(a) Transmitting antennas may be omnidirectional or directional, consistent with coverage and interference requirements.

(b) The use of horizontal or vertical plane wave polarization, or right hand or left hand rotating elliptical polarization must be used to minimize harmful interference between stations.

(c) Directive antennas must be used at all DEMS User Stations and may be elevated no higher than necessary to assure adequate service. Antenna structures requiring FAA notification under part 17 of this chapter must be registered with the Commission. The structure owner is responsible for registering, painting, and lighting the structure if applicable. Requests for such authorization must show the inclusive dates of the proposed operation.

**§ 101.519 Interconnection.**

(a) All DEMS licensees must make available to the public all information necessary to allow the manufacture of user equipment that will be compatible with the licensee's network.

(b) All DEMS licensees must make available to the public all information necessary to allow interconnection of DEMS networks.

**§ 101.521 Spectrum utilization.**

All applicants for DEMS frequencies must submit as part of the original application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughput capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency

including both information bits per unit bandwidth and the total bits per unit bandwidth.

**Subpart H—Private Operational Fixed Point-to-Point Microwave Service**

**§ 101.601 Eligibility**

Any person, or any governmental entity or agency, eligible for licensing in a radio service under parts 80, 87, or 90 of this chapter or any person proposing to provide communications service to such persons, governmental entities or agencies is eligible to hold a license under this subpart.

**§ 101.603 Permissible communications.**

(a) Except as provided in paragraph (b) of this section, stations in this radio service may transmit communications as follows:

(1) On frequencies below 21,200 MHz, licensees may transmit their own communications, including the transmission of their products and information services, to their customers except that the distribution of video entertainment material to customers is permitted only as indicated in § 101.101 and paragraph (a)(2) of this section.

(2) In the frequency bands 6425–6525 MHz, 18,142–18,580 MHz and on frequencies above 21,200 MHz, licensees may deliver any of their own products and services to any receiving location;

(3) Licensees may transmit the communications of their parent corporation, or of another subsidiary of the same parent, or their own subsidiary where the party to be served is regularly engaged in any of the activities that constitute the basis for eligibility to use the frequencies assigned;

(4) Licensees may transmit the communications of other parties in accordance with § 101.135;

(5) Licensees may transmit emergency communications unrelated to their activities in accordance with § 101.205;

(6) Licensees may transmit communications on a commercial basis to eligible users, among different premises of a single eligible user, or from one eligible user to another as part of transmissions by Digital Electronic Message Service systems on the frequencies provided for this purpose;

(7) Licensees may transmit program material from one location to another, provided that the frequencies do not serve as the final RF link in the chain of distribution of the program material to broadcast stations;

(b) Stations licensed in this radio service shall not:

- (1) Render a common carrier communications service of any kind;

(2) Transmit program material for use in connection with broadcasting, except as provided in paragraphs (a)(2), and (a)(7) of this section; and/or

(3) Be used to provide the final RF link in the chain of transmission of program material to cable television systems, multipoint distribution systems or master antenna TV systems, except in the frequency bands 6425–6525 and 18,142–18,580 MHz and on frequencies above 21,200 MHz.

### Subpart I—Common Carrier Fixed Point-to-Point Microwave Service

#### § 101.701 Eligibility.

(a) Authorizations for stations in this service will be issued to existing and proposed common carriers.

Applications will be granted only in cases in which it is shown that:

(1) The applicant is legally, technically, financially and otherwise qualified to render the proposed service;

(2) There are frequencies available to enable the applicant to render a satisfactory service; and

(3) The public interest, convenience, and necessity would be served by a grant thereof.

(b) If the content is originated, selected, controlled, or otherwise substantively influenced by the applicant, licensee, or a closely affiliated entity, no station or radio frequency in this service will be authorized, or may be utilized, to transmit any closed circuit television signals or television signals other than broadcast television signals, unless:

(1) Such service is otherwise permitted for a specific length of time by grant of an acceptable petition for waiver of this rule; or

(2) Such service is otherwise permitted by a condition in the applicable instrument of authorization; or

(3) Such service is provided pursuant to applicable FCC tariff and is temporary and occasional intra-company television communication for management, network supervision, or other internal carrier functions. For purposes of this paragraph, an entity will be considered to be "closely affiliated" with an applicant if it is in a parent-subsidiary relationship, or both are commonly controlled, or they have any common officers or management employees.

(c) Applications for stations or frequencies that will be used primarily to relay broadcast television signals must include a demonstration (including appropriate system diagrams and tables) that at least fifty percent of the customers (or points of service) on

the microwave system involved, including those served through an interconnecting carrier(s), receiving applicant's service, will not be related or affiliated in any degree with the applicant, and that the proposed usage by such customers, in terms of hours of use and channels delivered, must constitute at least fifty percent of the usage of the applicant's microwave service.

Applications that do not contain these demonstrations will be returned as unacceptable for filing.

#### § 101.703 Permissible communications.

Stations in this service are authorized to render any kind of communication service provided for in the legally applicable tariffs of the carrier, unless otherwise directed in the applicable instrument of authorization or limited by § 101.147 or §§ 101.111 and 101.113.

#### § 101.705 Renewal of station licenses.

(a) An application for renewal of a station license in the Common Carrier Fixed Point-to-Point Microwave Service primarily used to relay television signals must contain:

(1) A statement that such use complies with § 101.701(b); and

(2) The demonstration required by § 101.701(c). Applications that do not contain these items as appropriate will be returned as unacceptable for filing.

(b) Any application for renewal of license, for a term commencing January 1, 1975, or after, involving facilities utilizing frequency diversity must contain a statement showing compliance with § 101.103(c) or the exceptions recognized in paragraph 141 of the "First Report and Order" in Docket No. 18920 (29 FCC 2d 870). (This document is available at: Federal Communications Commission, Library (Room 639), 1919 M Street, NW., Washington, DC.) If not in compliance, a complete statement with the reasons therefor must be submitted.

### Subpart J—Local Television Transmission Service

#### § 101.801 Eligibility.

Authorizations for stations in this service will be granted to existing and proposed communication common carriers. Applications will be granted only in cases where it is shown that:

(a) The applicant is legally, financially, technically and otherwise qualified to render the proposed service;

(b) There are frequencies available to enable the applicant to render a satisfactory service; and

(c) The public interest, convenience or necessity would be served by a grant thereof.

#### § 101.803 Frequencies.

(a) Frequencies in the following bands are available for assignment to television pickup and television non-broadcast pickup stations in this service:

6,425 to 6,525 MHz. (6)

11,700 to 12,200 MHz. (3)

13,200 to 13,250 MHz. (1)

14,200 to 14,400 MHz.

21,200 to 22,000 MHz. (1), (2), (4), (5)

22,000 to 23,600 MHz. (1), (2), (5)

31,000 to 31,300 MHz. (7)

#### Notes

(1) This frequency band is shared with fixed and mobile stations licensed under this and other parts of the Commission's Rules.

(2) This frequency band is shared with Government stations.

(3) This frequency band is shared, on a secondary basis, with stations in the broadcasting-satellite and fixed-satellite services.

(4) This frequency band is shared with stations in the earth-exploration satellite service.

(5) Assignments to common carriers in this band are normally made in the segments 21,200–21,800 MHz and 22,400–23,800 MHz and to operational fixed users in the segments 21,800–22,400 MHz and 23,000–23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the normally assigned band segments. The maximum power for the local television transmission service in the 14.2–14.4 GHz band is +45 dBW except that operations are not permitted within 1.5 degrees of the geostationary orbit.

(6) This band is co-equally shared with mobile stations licensed pursuant to parts 74 and 78 of this chapter, and subpart H of this part.

(7) Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

(b) Communications common carriers in the Local Television Transmission Service may be assigned frequencies listed in §§ 74.602(a), 78.18(a)(7) and 78.18(a)(8) of this chapter to provide service to television broadcast stations, television broadcast network-entities, cable system operators and cable network-entities. Frequency availability is subject to the provisions of § 74.604 of this chapter and the use of the facility is limited to the permissible uses described in §§ 74.631 and 78.11 of this chapter. Operations on these frequencies are subject to the technical provisions of part 74, subpart F, and part 78, subpart D of this chapter.

(c) [Reserved]

(d) Frequencies in the following bands are available for assignment to television STL stations in this service:

3,700 to 4,200 MHz (1)

5,925 to 6,425 MHz (1),(5)

- 10,700 to 11,700 MHz (1),(6)
- 13,200 to 13,250 MHz (2)
- 21,200 to 22,000 MHz (2),(4),(7),(8)
- 22,000 to 23,600 MHz (2),(6),(8)
- 31,000 to 31,300 MHz (9)

Notes

- (1) This frequency band is shared with stations in the Point to Point Microwave Radio Service and, in United States Possessions in the Caribbean area, with stations in the International Fixed Radiocommunications Services.
- (2) This frequency band is shared with fixed and mobile stations licensed under this and other parts of the Commission's rules.
- (3) This frequency band is shared with space stations (space to earth) in the fixed-satellite service.
- (4) This frequency band is shared with Government stations.
- (5) This frequency band is shared with earth stations (earth to space) in the fixed-satellite services.
- (6) The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.
- (7) This frequency band is shared with space stations (space to earth) in the earth exploration satellite service.
- (8) Assignments to common carriers in this band are normally made in the segments 21,200–21,800 MHz and 22,400–23,000 MHz and to operational fixed users in the segments 21,800–22,400 MHz and 23,000–23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the appropriate band segments.
- (9) Frequencies in this band are co-equally shared with stations in the Auxiliary Broadcasting (part 74) of this chapter, Cable Television Relay (part 78) of this chapter, Private Operational-Fixed Microwave (subpart H) of this part, and General Mobile Radio Services (part 95) of this chapter.

(e) 31.0 to 31.3 GHz. These frequencies are shared on a co-equal basis with other stations in the fixed and mobile services (see parts 74, 78, and 95 of this chapter, and subpart H of this part). No interference protection is afforded to fixed or mobile stations operating in this band.

(1) 25 MHz authorized bandwidth channels, 150 MHz separation.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
31,012.5 .....	31,162.5
31,037.5 .....	31,187.5
31,062.5 .....	31,212.5
31,087.5 .....	31,237.5
31,112.5 .....	31,262.5
31,137.5 .....	31,287.5

(2) 50 MHz authorized bandwidth channels, 150 MHz separation.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
31,025.0 .....	31,175.0
31,075.0 .....	31,225.0
31,125.0 .....	31,275.0

(f) On the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations, persons holding valid station authorizations on July 15, 1963, to provide television nonbroadcast pickup service in the 6525–6575 MHz band may be authorized to continue use of the frequencies specified in their authorization for such operations until July 15, 1968.

(g) 6425 to 6525 MHz—Mobile Only. Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or for multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to parts 74 and 78 of this chapter. The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6425.5 .....	6475.5
6450.5 .....	6500.5

(2) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6430.0 .....	6480.0
6438.0 .....	6488.0
6446.0 .....	6596.0
6455.0 .....	6505.0
6463.0 .....	6513.0
6471.0 .....	6521.0

(3) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6437.5 .....	6487.5
6462.5 .....	6512.5

(h) The frequency 27.255 MHz in the 27.23–27.28 MHz band is allocated for assignment to microwave auxiliary stations in this service on a shared basis with other radio services. Assignments to stations on this frequency will not be protected from such interference as may be experienced from the emissions of

industrial, scientific and medical equipment operating on 27.12 MHz in accordance with § 2.106 of this chapter.

**§ 101.805 Assignment of frequencies to mobile stations.**

The assignment of frequencies to mobile stations in this service will not be limited to a single licensee within any area. However, geographical limits within which mobile units may operate may be imposed by the Commission.

**§ 101.807 Transmitter power.**

Stations in this service will not be authorized to use transmitters having a rated power output in excess of the limits set forth in § 101.113(b) and a standby transmitter having a rated power output in excess of that of the main transmitter with which it is associated will not be authorized.

**§ 101.809 Bandwidth and emission limitations.**

(a) Stations in this service operating on frequencies in the 27.23–27.28 MHz band will be authorized to employ only amplitude modulated or frequency modulated emission for radiotelephony. The authorization to use such emissions will be construed to include authority to employ unmodulated emission only for temporary or short periods necessary for equipment testing incident to the construction and maintenance of the station.

(b) Stations in the service operating on frequencies above 940 MHz may be authorized to use amplitude modulated, frequency modulated or pulse type of emission for radiotelephony and television. In addition, the use of unmodulated emission may be authorized in appropriate cases.

(c) The maximum bandwidths which will normally be authorized for single channel operation on frequencies below 500 MHz in this service must not exceed the limits set forth below:

Type of emission	Authorized bandwidth (kHz)
A3E .....	8
F3E or (G3E) .....	40

(d) Maximum bandwidths in the following frequency bands must not exceed the limits set forth below:

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
3,700 to 4,200 .....	20
5,925 to 6,425 .....	30
6,425 to 6,525 .....	25
10,700 to 12,200 .....	40
13,200 to 13,250 .....	25

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
22,000 to 23,600 .....	100

(e) The bandwidths authorized on frequencies above 500 MHz must be appropriate to the type of operation in any particular case. An application requesting such authorization must fully describe the modulation, emission, and bandwidth desired and must specify the bandwidth to be occupied.

**§ 101.811 Modulation requirements.**

(a) The use of modulating frequencies higher than 3000 hertz for single channel radiotelephony or tone signaling on frequencies below 500 MHz is not authorized.

(b) When amplitude modulation is used, the modulation percentage must be sufficient to provide efficient communication and must normally be maintained above 70 percent on positive peaks, but may not exceed 100 percent on negative peaks.

(c) When phase or frequency modulation is used for single channel radiotelephony on frequencies below 500 MHz, the deviation arising from modulation may not exceed plus or minus 15 kHz from the unmodulated carrier.

(d) Each unmultiplexed radiotelephone transmitter having more than 3 watts plate power input to the final radio frequency stage and initially installed at the station in this service after September 4, 1956, must be provided with a device that will automatically prevent modulation in excess of that specified in paragraphs (b) and (c) of this section which may be caused by greater than normal audio level.

**§ 101.813 Remote control operation of mobile television pickup stations.**

(a) Mobile television pickup stations (including nonbroadcast) may be operated by remote control from the fixed locations for periods not to exceed 6 months.

(b) The Commission may, upon adequate showing by the licensee as to why the television pickup operations should not be conducted under a fixed station authorization, renew the authority granted under the provisions of paragraph (a) of this section.

(c) Reference should be made to § 101.125 concerning mobile station antenna height restrictions and to paragraphs (c) and (f) of § 101.131 concerning control points.

**§ 101.815 Stations at temporary fixed locations.**

(a) Authorizations may be issued upon proper application for the use of frequencies listed in § 101.803 by stations in the Local Television Transmission Service for rendition of temporary service to subscribers under the following conditions:

(1) When a fixed station is to remain at a single location for less than 6 months, the location is considered to be temporary. Services that are initially known to be of longer than 6 months' duration may not be provided under a temporary fixed authorization but rendered pursuant to a regular license.

(2) When a fixed station authorized to operate at temporary locations is installed and it subsequently becomes necessary for the station to operate from such location for more than six months, application FCC Form 494 for a station authorization to specify the permanent location must be filed at least thirty days prior to the expiration of the six month period.

(3) The station must be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable.

(4) The antenna structure height employed at any location may not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See § 101.125.

(5) Applications for such stations must comply with the provisions of § 101.713.

(b) Applications for authorizations to operate stations at temporary locations under the provisions of this section may be made upon FCC Form 494. Blanket applications may be submitted for the required number of transmitters.

(c) Prior coordination of mobile assignments will be in accordance with the procedures in § 101.103(d) except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

**§ 101.817 Notification of station operation at temporary locations.**

(a) The licensee of stations authorized pursuant to § 101.813 must notify the Commission prior to each period of operation. This notification may be oral or written and must include:

(1) The call sign, manufacturer's name, type or model number, output

power and specific location of the transmitter(s);

(2) The maintenance location for the transmitter;

(3) The location of the transmitting or receiving station with which it will communicate and the identity of the correspondent operating such facilities;

(4) The exact frequency or frequencies to be used;

(5) The public interest, convenience and necessity to be served by operation of the proposed installation;

(6) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly must be given to the Commission;

(7) Where the notification contemplates initially a service that is to be rendered for a period longer than 90 days, the notification must contain a showing as to why application should not be made for regular authorization; and

(8) A notification must include compliance with the provisions of § 101.813(c).

(b) A copy of the notification must be kept with the station license.

**§ 101.819 Stations affected by coordination contour procedures.**

In frequency bands shared with the communication-satellite service, applicants must also comply with the requirements of § 101.21.

Note: This attachment will not be published in the Code of Federal Regulations.

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21.7 .....	101.15
21.11 .....	101.15
21.13 .....	101.19
21.15 .....	101.21
21.19 .....	101.23
21.20 .....	101.35
21.21 .....	101.25
21.22 .....	101.27
21.23 .....	101.29
21.25 .....	101.31
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ATTACHMENT—CROSS REFERENCE TABLE—Continued

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21.32 .....	101.47
21.33 .....	101.49
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21.38 .....	101.53
21.39 .....	101.55
21.40 .....	101.57
21.41 .....	101.59
21.42 .....	101.61
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<b>Subpart C—Technical Standards</b>	
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21.108(e) .....	101.145
21.110 .....	101.117
21.111 .....	101.119
21.112 .....	101.121
21.113 .....	101.123
21.114 .....	101.125
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21.120 .....	101.139
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<b>Subpart D—Technical Operations</b>	
21.200 .....	101.201
21.201 .....	101.215
21.209 .....	101.205
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<b>Subpart E—Miscellaneous</b>	
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21.303 .....	101.305
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<b>Subpart F—Developmental Authorizations</b>	
21.400 .....	101.401
21.401 .....	101.403
21.402 .....	101.405
21.403 .....	101.407
21.404 .....	101.409
21.405 .....	101.411
21.406 .....	101.413
<b>Subpart G—Digital Electronic Message Service</b>	
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21.501 .....	101.503

ATTACHMENT—CROSS REFERENCE TABLE—Continued

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21.505 .....	101.511
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21.507 .....	101.113
21.508 .....	101.515
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<b>Subpart H—[Reserved]</b>	
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21.701 .....	101.147
21.702 .....	101.113
21.703 .....	101.109 and 101.111
21.704 .....	101.141
21.705 .....	101.703
21.706 .....	101.21
21.707 .....	101.31
21.708 .....	101.31
21.709 .....	101.705
21.710 .....	101.145 (a) through (c)
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21.801 .....	101.803
21.802 .....	101.805
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21.805 .....	101.811
21.806 .....	101.813
21.807 .....	101.815
21.808 .....	101.817
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<b>Subpart K—Multipoint Distribution Service</b>	
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<b>Part 94—</b>	
<b>Subpart A—General Information</b>	
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94.3 .....	101.3
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94.15(a) .....	101.103(a)
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ATTACHMENT—CROSS REFERENCE TABLE—Continued

Present section	Final section
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94.25(f) .....	101.123(a)
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94.25(i) .....	101.123(c)
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94.27 .....	101.13
94.29 .....	101.33
94.31(a) .....	101.19
94.31(d) .....	101.411
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94.31(f) .....	101.19
94.31(h) .....	101.121
94.31(i) .....	101.5(c)
94.31(k) .....	101.147
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94.39(a) .....	101.67(d)
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<b>Subpart C—Technical Standards</b>	
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94.65 .....	101.147
94.67 .....	101.107
94.69 .....	101.109(b)
94.71(a) .....	101.109(a)
94.71(b) .....	101.109(c)
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94.75 .....	101.115 (d) through (f)
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94.77(a) .....	101.145
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<b>Subpart D—Station Operating Requirements</b>	
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ATTACHMENT—CROSS REFERENCE  
TABLE—Continued

Present section	Final section
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94.113 .....	101.217

**Subpart E—Developmental Operation**

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94.159 .....	101.409(b)
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[FR Doc. 96-12942 Filed 5-24-96; 8:45 am]

BILLING CODE 6712-01-P

# Federal Register

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Tuesday  
May 28, 1996

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## Part IV

### Department of Education

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**Comprehensive Local Reform Assistance;  
Notice Inviting Applications for New  
Awards with Fiscal Year (FY) 1995  
Funds; Notice**

**DEPARTMENT OF EDUCATION**

[CFDA No.: 84.317]

**Comprehensive Local Reform Assistance; Notice Inviting Applications for New Awards With Fiscal Year (FY) 1995 Funds**

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under these competitions.

*Purpose of Program:* To assist local educational agencies (LEAs) in the development and implementation of comprehensive local improvement plans directed at enabling all children to reach challenging academic standards.

*Eligible Applicants:* LEAs in Montana and Oklahoma are eligible to apply for grants. The Secretary is especially interested in receiving applications from consortia of LEAs in these States.

Note: By statute, the Secretary may award direct grants to LEAs in a State that was not participating in Goals 2000 as of October 20, 1995, if the State educational agency (SEA) approves LEA participation in the program. Five States—Alabama, Montana, New Hampshire, Oklahoma, and Virginia—were not participating in Goals 2000 as of October 20, 1995. By the date this application notice was submitted to the Federal Register, the Montana and Oklahoma SEAs had approved LEA participation in this direct grant program. If timely approval is received from one or more of the other SEAs, the Secretary will publish in the Federal Register a notice inviting applications for FY 1995 funds from LEAs in the other State(s).

*Deadline for Transmittal of Applications:* July 15, 1996.

*Deadline for Intergovernmental Review:* August 1, 1996.

*Available Funds:* The amount of funds available to LEAs in Montana is \$1,560,150. The amount of funds available to LEAs in Oklahoma is \$4,396,613. These amounts are based on each State's FY 1995 Goals 2000 allotment.

In accordance with section 402 of the Department of Education Organization Act, 20 USC 3462, the Secretary may use up to 1% of the funds from each State's allotment to pay the expenses and fees of non-Federal experts necessary to review the applications submitted in response to this notice.

In the event that there are an insufficient number of funded applications from LEAs in either State to use all of the State's allotment, the Secretary may reallocate the remaining funds consistent with the Act.

The Secretary does not intend to conduct competitions for FY 1996 funds. Instead, pursuant to 34 CFR 75.253, the Secretary intends to make continuation awards from each State's FY 1996 allotment to successful applicants under this notice. The Secretary expects to conduct new competitions when FY 1997 funds become available.

*Estimated Range of Awards:* \$20,000–\$100,000 annually. (The Secretary estimates that both the initial FY 1995 awards and the continuation awards from the FY 1996 allotments will fall within this range.)

*Estimated Average Size of Awards:* \$40,000 annually. (The Secretary estimates that both the initial FY 1995 awards and the continuation awards from the FY 1996 allotments will average \$40,000.)

*Estimated Numbers of Awards:* The estimated number of awards to LEAs in Montana is 39. The estimated number of awards to LEAs in Oklahoma is 110.

(Note: These estimates are projections for the guidance of potential applicants. The Department of Education and applicants are not bound by any estimates in this notice.)

*Project Period:* Up to 24 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) as follows:

- (1) 34 CFR Part 75 (Direct Grant Programs).
- (2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).
- (3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).
- (4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
- (5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).
- (6) 34 CFR Part 82 (New Restrictions on Lobbying).
- (7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

**SUPPLEMENTARY INFORMATION:**

## (a) Background

Section 304(e) of the Goals 2000: Educate America Act (Pub. L. 103–227) (20 USC 5801 *et seq.*) (the Act), which was added to the Act as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, authorizes the Secretary to award direct grants to LEAs in States that were not participating in Goals 2000 as of October 20, 1995, if the applicable SEA

approves the LEAs' participation in the program. Alabama, Montana, New Hampshire, Oklahoma and Virginia were not participating in Goals 2000 as of that date. By the date this application notice was submitted to the Federal Register, the Montana and Oklahoma SEAs had approved LEA participation in this direct grant program.

Under Section 304(e), the Secretary may award grants for purposes consistent with the provisions of the Act. The Goals 2000 Act is designed to help States and communities develop and implement their own education reforms focused on challenging academic standards in order to increase student academic achievement. With broad-based, grassroots involvement, LEAs participating in Goals 2000 develop comprehensive strategies for helping all students reach challenging academic standards, such as through upgrading assessments and curriculum to reflect high standards, improving the quality of teaching, expanding the use of technology, strengthening accountability for teaching and learning, and building strong partnerships among schools and families, employers, and others in the community.

The Secretary has determined that grants awarded under Section 304(e) will be used to support the development and implementation of comprehensive local improvement plans designed to help all children reach challenging academic standards. In particular, the Secretary encourages LEAs to address in their applications how their reform strategies might include enhanced preservice teacher education and professional development activities of educators that are directly connected to challenging standards.

Where appropriate, LEAs should use funds awarded under this notice to build upon comprehensive reform strategies that have already been initiated. An LEA that has not yet developed or completed a comprehensive local improvement plan consistent with the statutory provisions referenced in this notice may seek FY 1995 funds to do so. An LEA that has already developed such a plan may seek funds to implement the plan.

LEAs are not required or expected to submit their local improvement plans to the U.S. Department of Education for review and approval, whether or not those plans are developed or implemented with funds awarded under this notice. Local plans that have been or are being developed pursuant to State requirements, and that also receive funding under Goals 2000, would only remain subject to any State review processes that may exist.

Pursuant to 34 CFR 75.253, the Secretary intends to make available to successful applicants continuation awards from their States' FY 1996 allotments.

**Application Requirements:** The authorizing statute—section 304(e) of the Act—permits the Secretary to fund LEA applications that are consistent with the provisions of Goals 2000. The Secretary has determined that grants under this competition must be used for the development or implementation of comprehensive local improvement plans to help all students reach challenging academic standards. In particular, a local improvement plan that is developed or implemented with funds awarded under section 304(e) must be consistent with the requirements in sections 309(a)(3)(B) through (E) of the Act. Adapted to this direct grant program, these requirements specify that local plans—

(1) Describe a process of broad-based community participation in the development, implementation, and evaluation of the local improvement plan;

(2) Address districtwide education improvement, directed at enabling all students to meet the State content standards and State student performance standards (or local standards, if there are no State standards), including specific goals and benchmarks; reflect the priority of the State improvement plan (if there is a comprehensive State improvement plan) and include a strategy for—

(a) Improving teaching and learning, with strategies such as enhanced professional development and preservice education activities aligned to the standards;

(b) Improving governance, management, and accountability for performance; and

(c) Generating, maintaining, and strengthening parental and community involvement.

(3) Promote the flexibility of local schools in developing plans that address the particular needs of their school and community and are consistent with the local improvement plan; and

(4) Describe how the LEA will encourage and assist schools to develop and implement comprehensive school improvement plans that focus on helping all students reach State (or local) content standards and student performance standards.

**Selection Criteria:** The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The maximum score for all of the criteria is 100 points. The maximum score for each criterion is

indicated in parenthesis with the criterion.

(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the authorizing statute, including consideration of:

(i) The objectives of the project; and  
(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (24 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of:

(i) The needs addressed by the project;  
(ii) How the applicant identified those needs;  
(iii) How those needs will be met by the project; and  
(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (18 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including:

(i) The quality of the design of the project;  
(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;  
(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) 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.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including:

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(ii) To determine personnel qualifications under paragraphs (4)(i)(A) and (B), the Secretary considers:

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which:

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (13 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation:

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

**Intergovernmental Review of Federal Programs:** This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed Federal financial assistance.

Montana and Oklahoma have not adopted State intergovernmental review processes. Therefore, State, areawide, regional, and local entities may submit comments directly to the Department.

Any comments submitted pursuant to the executive order must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.317, U.S. Department of Education, Room 6300, 600 Independence Avenue, S.W., Washington, D.C. 20202.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address. Instructions for transmittal of applications:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.317), Washington, D.C. 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.317), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing: (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.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant *must* indicate on the envelope and in Item 10 of the Application

for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted (CFDA# 84.317).

**Application Instructions and Forms:**

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

**Additional Materials:** Estimated Public Reporting Burden; Assurances—Non-Construction Programs (Standard Form 424B); Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions. (NOTE: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

**Notice to All Applicants**

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Fagan, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202-2110, Telephone: (202) 401-0039, FAX: (202) 205-0303. 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.

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: Section 304(e) of the Goals 2000: Educate America Act, 20 U.S.C. 5884(b).

Dated: May 21, 1996.

Gerald N. Tirozzi,

*Assistant Secretary Elementary and Secondary Education.*

**BILLING CODE 4000-01-P**

Appendix

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> <i>Application</i> <input type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction  <i>Preapplication</i> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier
		<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier
		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier
<b>5. APPLICANT INFORMATION</b>			
Legal Name:		Organizational Unit:	
Address (give city, county, state, and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code)	
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/> A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____	
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award    B. Decrease Award    C. Increase Duration D. Decrease Duration    Other (specify): _____		<b>9. NAME OF FEDERAL AGENCY:</b> U.S. Department of Education	
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> [ 8 ] [ 4 ] - [ 3 ] [ 1 ] [ 7 ] TITLE: Comprehensive Local Reform Assistance		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>	
<b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):</b>			
<b>13. PROPOSED PROJECT:</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>	
Start Date	Ending Date	a. Applicant	b. Project
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>	
a. Federal	\$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____	
b. Applicant	\$ .00	b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372	
c. State	\$ .00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
d. Local	\$ .00		
e. Other	\$ .00		
f. Program Income	\$ .00	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b>	
g. TOTAL	\$ .00	<input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No	
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED</b>			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV 4-88)  
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

### INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.  |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.  |       |  |

 <p><b>U.S. DEPARTMENT OF EDUCATION</b> <b>BUDGET INFORMATION</b></p>		<p><b>OMB Control No. 1875-0102</b></p>				
<p><b>NON-CONSTRUCTION PROGRAMS</b></p>		<p><b>Expiration Date: 9/30/98</b></p>				
<p>Name of Institution/Organization</p>		<p>Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.</p>				
<p><b>SECTION A - BUDGET SUMMARY</b> <b>U.S. DEPARTMENT OF EDUCATION FUNDS</b></p>						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS						
Name of Institution/Organization						
Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

## INSTRUCTIONS FOR ED FORM NO. 524

### General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

### Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):

Show the total budget request for each project year for which funding is requested.

Line 12, column (f):

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

**Instructions for ED Form 524 (cont.)****Section B - Budget Summary**  
**Non-Federal Funds**

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):

Show the total matching or other contribution for each project year.

Line 12, column (f):

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

**Section C - Other Budget Information**

Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

## Instructions for Part III Application Narrative

Before preparing the Application Narrative an applicant should read the information in this notice, including the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of your proposal;
2. Describe the proposal in light of each of the selection criteria in the order in which the criteria are listed in this application; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

## Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0594 (Expiration date: August 31, 1996). The time required to complete this information collection is estimated to average 50 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Thomas Fagan, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202-2110.*

BILLING CODE 4000-01-P

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check  if there are workplaces on file that are not identified here.

#### DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
- ~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~
- ~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~
- ~~13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~
- ~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~
- ~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 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. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

### Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

#### *To Whom Does This Provision Apply?*

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

#### *What Does This Provision Require?*

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may

prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

#### *What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?*

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on

audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

#### Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 96-13291 Filed 5-24-96; 8:45 am]  
BILLING CODE 4000-01-P

**Federal Register**

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Tuesday  
May 28, 1996

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**Part V**

**Department of  
Transportation**

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**Research and Special Programs  
Administration**

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**49 CFR Parts 171 and 173  
Periodic Inspection and Testing of  
Cylinders; Final Rule**

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Parts 171 and 173**

[Docket No. HM-220A, Amdt Nos. 171-143, 173-251]

RIN 2137-AC59

**Periodic Inspection and Testing of Cylinders****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

**SUMMARY:** RSPA is amending the requirements contained in the Hazardous Materials Regulations pertaining to the maintenance and requalification of DOT specification and exemption cylinders used for transportation of compressed gases in commerce. These changes clarify current inspection and retest requirements, incorporate certain regulatory interpretations, and add new provisions. The intent of these changes is to enhance public safety by clarifying the regulations for those persons who perform periodic inspection and testing of cylinders.

**DATES:** *Effective date:* The effective date of these amendments is October 1, 1996.

*Compliance date:* Voluntary compliance with the regulations is authorized immediately.

*Incorporation by reference date:* The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register to be effective on October 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Theresa Gwynn or Hattie L. Mitchell, telephone (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington DC 20590-0001.

**SUPPLEMENTARY INFORMATION:****I. Background**

On October 18, 1995, RSPA published a notice of proposed rulemaking (NPRM; Notice No. 95-13; 60 FR 54008) under Docket HM-220A proposing to amend the requirements contained in the Hazardous Materials Regulations pertaining to the maintenance and requalification of DOT specification and exemption cylinders used for transportation of compressed gases in commerce. Comments were due by December 15, 1995. RSPA received several requests to extend the comment

period and, although RSPA did not extend the comment period, it did consider late-filed comments.

RSPA received more than 30 comments, and several commenters filed supplements to their initial comments. These comments represent the views of various trade associations, cylinder manufacturers and owners, compressed gas suppliers, fire safety equipment suppliers, independent hydrostatic retest operators and manufacturers of hydrostatic retest equipment and cylinder relief valves. All of the commenters were in general agreement with the NPRM's clarification goal, but many expressed concerns about specific proposals and suggested that RSPA make additional changes.

A number of commenters requested that RSPA delay this rulemaking and incorporate it into a future rulemaking in which RSPA will propose the revision and reorganization of all cylinder specifications in Part 178 (Docket HM-220, Regulation Identification Number 2137-AA92; See DOT Semiannual Regulatory Agenda, 60 FR 60296, 60434, November 28, 1995). RSPA also intends to propose that all requirements applicable to the inspection, retest, repair and continuing requalification of cylinders be moved from section 173.34 to part 180. However, RSPA believes that some of the regulatory requirements in section 173.34(e) are not sufficiently clear and, based on safety concerns regarding retest and condemnation procedures, are in need of immediate clarification. Therefore, this final rule is being issued now to address the persistent questions and problems that the regulated community experiences in this area.

Some comments were beyond the scope of this rulemaking and thus, not addressed in this rule; however, RSPA will, where feasible, consider incorporating these comments in the future rulemaking. In addition, the reorganization of section 173.34(e) will require the correction of the section references contained in the Guidelines for Civil Penalties (Appendix A to Subpart D of Part 107). RSPA intends to accomplish this editorial correction in a future rulemaking.

**II. Discussion of Comments***Section 173.34(e)***Revision of Retest Table**

A number of commenters noted that the section references contained in the proposed Retest and Inspection of Cylinders table (NPRM, pages 54013-14) were incorrect. The table has been revised to list the correct section references. In addition, RSPA

incorporated two requirements previously found in section 173.34(e) (7) and (12) as footnotes to the retest table.

In the NPRM, RSPA invited comments on whether table entries were needed to specify retest pressure or frequency for any specification, exemption or special permit cylinder. Although most comments supported such a change, RSPA has not included those entries in the table at this time. RSPA is considering, as a part of HM-220, how to provide this information for the specification cylinders to retesters while not expanding the table to an unmanageable size. RSPA agrees with those commenters who recommended that the table contain a generic entry that refers to a copy of the current exemption for the exemption cylinders. This final rule revises the table to include such an entry.

Another commenter suggested that the following note be placed at the end of the retest table: "Foreign acetylene cylinders must be tested in accordance with the same requirements as those of DOT 8, 8AL." This suggestion has not been adopted in this final rule because there has not been an adequate opportunity for the public to comment on this proposed revision. However, RSPA will consider this comment in a future rulemaking.

**General Requirements and Retester Authorization**

RSPA proposed amending section 173.34(e)(1)(ii) to prohibit the use, for transportation of a hazardous material in commerce, of a DOT specification or exemption cylinder that is required to be periodically inspected or tested unless the cylinder is marked with an inspection or test date indicating that it is qualified for use. Several commenters pointed out what they perceived as an apparent conflict between the language proposed in section 173.34(e)(1)(ii) and the language found in section 173.34(a)(1). Section 173.34(a)(1) prohibits a person from charging or filling a DOT specification cylinder with a hazardous material when the cylinder's retest date has expired, but permits the shipment of an "out-of-test date" cylinder which was charged or filled prior to the test date. The commenters stated that the proposed language represented dramatic change to the current application of the regulations. RSPA did not intend to change the current application of section 173.34(e)(1)(ii), and the proposed language has been reworded to clarify that the prohibition is against charging or filling a DOT specification cylinder after the cylinder's retest date has expired.

A commenter suggested that RSPA add a new paragraph in section 173.34(e) to explicitly recognize that there are certain conditions (e.g., corrosion or dents) that would require a cylinder to be removed from service prior to the scheduled retest date. RSPA has not adopted this comment because this situation is addressed adequately in section 173.34(a)(1), which states: "A cylinder that leaks, is bulged, has defective valves or safety devices, bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, must not be used unless it is properly repaired \* \* \*."

Proposed section 173.34(e)(2) sets forth the procedure to obtain retester authorization, in the form of a retester identification number (RIN), and to renew that authorization. A commenter stated that the proposed section does not specify from whom the retester is to obtain a RIN application. RSPA agrees and has revised the regulatory language to include this information.

A commenter requested that RSPA revise section 173.34(e)(2) to specifically prohibit a retester from being authorized to perform retests in mobile operated stations such as vans. RSPA has not incorporated this comment because it is outside the scope of this rulemaking. In addition, RSPA has no information that would demonstrate that a retester could not comply with the applicable requirements of the HMR using a mobile station.

Several commenters requested that RSPA clarify whether persons who only perform visual inspections on DOT specification or exemption cylinders need a RIN. RSPA has revised section 173.34(e)(2)(i) to clarify that a person is not required to obtain a RIN, if the person only performs visual inspections on DOT specification or exemption cylinders.

In sections 173.34(e)(2)(i), (2)(iv) and (2)(v), RSPA proposed three new requirements. First, a retester's authority to mark a cylinder with a RIN and an inspection or test date would be contingent on the retester operating in compliance with the terms of the RIN issuance letter. Second, a retester would be required to inform RSPA in writing of any change in the company's address, cylinder qualification personnel or testing equipment within 20 days. (RSPA now imposes these two requirements under the terms of the RIN issuance letter.) Third, a retester would be required to maintain, at each facility where inspection and retesting is performed, the relevant parts of 49 CFR; copies of the current exemptions for all exemption cylinders inspected, retested

or marked; and all Compressed Gas Association (CGA) pamphlets incorporated by reference in section 171.7 that apply to the retester's activities.

A commenter stated that the requirement in proposed section 173.34(e)(2)(v) that a retester maintain "current copies" of certain CGA publications was confusing. The commenter indicated that it was unclear whether "current" referred to the most recent edition published by the CGA or the edition incorporated in the HMR. A retester must maintain, at each location where it inspects, retests or marks cylinders, the edition of each CGA publication incorporated by reference in section 171.7 that applies to retester's cylinder inspection, retesting and marking activities. To eliminate ambiguity, RSPA has clarified the language of this section.

Another commenter suggested that, instead of referring to a specific CGA publication, RSPA add the language "or a more current edition." RSPA has not adopted this suggestion. Regulations of the Office of the Federal Register require that materials incorporated by reference must be identified by title, date, edition, author, publisher and identification number of the publication (see 1 CFR Part 51).

#### Visual Inspection

Several commenters requested that additional language be added to section 173.34(e)(3) to clarify that a visual inspection is required each time a cylinder is retested. RSPA agrees with this comment and has inserted additional language to clarify this existing requirement. In addition, RSPA has added language to section 173.34(e)(2)(i) to clarify that a person who only performs a visual inspection and marks the cylinder with the inspection date does not need a RIN. However, CGA petitioned RSPA (P-1090) to add the requirement that such persons obtain a RIN. RSPA will consider this issue in the future rulemaking.

#### Retesting

RSPA received numerous comments concerning the retest requirements proposed in section 173.34(e)(4). A commenter requested that RSPA revise this section to reflect that expanding the calibrated cylinder to the prescribed level and then checking the pressure gauge provides the most precise indication of test system accuracy and, therefore, is the preferred method. RSPA has not adopted this comment. There are a number of acceptable methods that indicate test system accuracy, and RSPA

believes this choice is best left to the individual retest operator.

Several commenters suggested revisions concerning proposed section 173.34(e)(4)(ii). One commenter stated that it is not feasible to allow a 1 percent accuracy on the pressure-indicating device and a 1 percent accuracy on the expansion-indicating device and achieve a 1 percent accuracy for the total test system. The commenter stated that either the accuracy requirements for the two components of the test system must be reduced or the overall test system accuracy must be increased to account for both components of the test system being at the maximum allowable accuracy limit.

In the NPRM, RSPA was attempting to clarify two key concepts: device *accuracy* (i.e., how truthfully the system displays, or records, the actual pressure or expansion being measured) and device *resolution* (i.e., the smallest incremental unit at which a measuring instrument or system must be capable of being read, or recorded, so as to meet or exceed the measurement accuracy requirement). RSPA proposed that a retester compare the pressure- and expansion-indicating devices against a calibrated standard daily to check their accuracy. However, if the scale of the indicating device does not show the proper resolution, the accuracy of the reading is not assured. Thus, section 173.34(e)(4)(ii) in the NPRM proposed resolution standards for both pressure- and expansion-indicating devices, while section 173.34(e)(4)(iii) proposed accuracy standards for both.

The commenter has combined these two concepts and suggested that there must be a larger range for total test system accuracy. RSPA proposed that the pressure-indicating device and the expansion-indicating device each have an accuracy of  $\pm 0.5\%$  and the total test system accuracy be  $\pm 1.0\%$ . In order to achieve a 1% system accuracy, the pressure-indicating device (gauge or digital equivalent) and the expansion-indicating device (burette or load cell) each must be calibrated to  $\frac{1}{2}$  of 1% within the usable range. RSPA proposed this accuracy standard because when the system is being tested against a known benchmark (i.e., a calibrated cylinder), the standard is readily achievable and allows the retester to verify the structural integrity of the cylinder.

As previously stated, this accuracy standard is separate and distinct from the resolution standard. In a system using pressure gauges, for example, if a pressure gauge reads only in increments of 50 psi, and the minimum prescribed test pressure for a cylinder to be tested

is 1000 psi, the gauge would show insufficient resolution to determine accuracy. A gauge with a finer scale is needed. To achieve the required resolution, the gauge divisions should permit reading of pressures to within 10 psi, which is 1% of the cylinder's minimum prescribed test pressure (1000 psi). Because mid-point interpolation is permissible and 10 psi is one-half of 20 psi, a gauge of no greater than 20 psi increments can be used for this example. Thus, whether the pressure-indicating device meets the resolution standard is separate from whether the device meets the accuracy standard.

In addition, RSPA proposed at section 173.34(e)(4)(iii)(A) that "[t]he pressure indicating device \* \* \* must permit readings of pressure from 90%–120% of the minimum prescribed test pressure of the cylinder to be tested." Several commenters opposed this requirement and stated that the requirement should specify a range of 90%–110% of test pressure. The commenters maintained that the NPRM's requirement would impose a financial burden on the industry without a safety benefit. The commenter stated that the current industry standard (CGA Pamphlet C-1) prohibits pressuring a cylinder above 110% of the specified test pressure. In addition, the commenter estimated that there were approximately 1,000 test systems equipped with gauges capable of reading 110% of the specified test pressure. The commenter estimated the cost of replacement at \$450 per gauge and the total cost to industry of complying with this proposal to be in excess of \$500,000. Because the main goal of this rule is clarification, not substantive change, RSPA is revising the proposed requirement and is specifying a 90%–110% range.

RSPA requested comments on whether calibration should be required more or less frequently than the proposed daily calibration, and whether, for example, it is appropriate to require a calibration check at the beginning of each shift (for those facilities operating more than one shift per day), for each change in retest operator, or at some other frequency. Most commenters supported the daily calibration requirement proposed in section 173.34(e)(4)(iii). Two commenters suggested that calibration be required at the beginning of each shift. Another commenter indicated that it is important for each retest operator to have actual knowledge that the retest equipment is accurate. After reviewing the comments, RSPA has decided that the appropriate calibration verification interval is daily and thus, when conducting hydrostatic retests, a retest

operator must verify the calibration of the equipment at least once each 24-hour period.

In addition, one commenter suggested that proposed section 173.34(e)(4)(iv) be revised to read: "The test equipment must be verified to be accurate within  $\pm 1\%$  of the calibrated cylinder's pressure \* \* \*." RSPA agrees that this language clarifies the requirement and has incorporated this language into the rule.

RSPA proposed in section 173.34(e)(4)(iii) to allow a retester to use a method other than a calibrated cylinder if the retester receives written authorization from the Associate Administrator for Hazardous Materials Safety. One commenter inquired whether RSPA would grant this authorization to each individual retest facility or whether the authorization could be in the form of a more general notice. A retester who seeks to use a method not specifically recognized by the HMR must request written authorization to use that method. RSPA would review each request and, if it found the method acceptable, grant written authorization only to each specific retest facility requesting approval. If RSPA found that it was receiving and authorizing numerous requests for one particular alternative method, it would initiate a rulemaking to incorporate the alternative method into the HMR.

Proposed section 173.34(e)(4)(v) restates the current requirements for cylinder retesting, including the requirement to hold minimum test pressure for at least 30 seconds and as long as necessary for full cylinder expansion, and the prohibition on pressurizing a cylinder above 90 percent of test pressure before a retest. When the system apparatus fails to hold pressure after test pressure has been reached, retest is authorized at a pressure increased by 10 percent or 100 psi, whichever is less.

The NPRM invited comments on whether RSPA should: (1) Specify the period of time a retest operator must wait, after applying more than 90 percent of test pressure, before a second retest, (2) limit the number of permissible retests after apparatus failure, and (3) specify a standard for condemnation in the event of overpressurization. Most commenters opposed RSPA specifying requirements in any of these areas. They cited a wide range of reasons for opposing these requirements. Among those commenters who supported RSPA establishing standards in these areas, there was no consensus as to what the standards should be. After reviewing the

comments, RSPA believes further evaluation is required and is not adopting any of these standards in this rulemaking.

One commenter asked if there was a time frame between retests that would negate the requirement to increase the retest pressure and if a cylinder would still have to be tested at a higher test pressure if repairs to the retest equipment took several days. At this time, RSPA is unable to cite a specific time frame between retests that would negate the requirement to increase the retest pressure following an equipment failure. However, a brief passage of time, for example, where repairs to the retest equipment take several days, would not negate the requirement to increase the test pressure following an equipment failure.

The commenter also asked how many times a retest could be performed before the cylinder must be condemned due to excessive pressurization. A cylinder must be condemned when the retest results exceed the permanent expansion limit. Thus, once this limit is exceeded, a retester must condemn the cylinder and no further retesting is permitted. This final rule contains language emphasizing that a second retest is authorized only when the testing apparatus has failed to hold test pressure.

One commenter requested that RSPA expand the conditions under which a second retest is permitted. The commenter requested that RSPA add "improper procedure" and "operator error" as conditions under which a retester could repeat a retest at a higher test pressure. The commenter stated that equipment malfunction is not the only potential cause of an invalid test. RSPA has not adopted this comment. Such a revision would allow a retest operator to repeat a test under any condition by simply attributing it to "operator error" and to retest until the desired results were obtained.

In addition, one commenter suggested that, at least every six months, retest operators be required to use a dead weight or master gauge to recalibrate the pressure gauge used for retesting. RSPA did not propose this standard in the NPRM and questions whether a six-month interval is the proper frequency for recalibrating the pressure gauge when compared to the additional costs. Because the proposal exceeds the scope of this rulemaking, and there was no opportunity for public comment on its additional costs, RSPA is not adopting this comment.

One commenter suggested revisions to proposed section 173.34(e)(11) (paragraph (e)(10) in this rule.) The

commenter inquired whether the requirements of pressure gauge accuracy, readability and daily verification were applicable to the "modified hydrostatic test." The commenter stated that because there is only one calibration device in the modified hydrostatic test system, there is no reason to verify the device's accuracy on a daily basis. The fact that the modified hydrostatic test system has only one calibration device increases, not decreases, the need for daily verification. Therefore, RSPA is not adopting this comment.

The commenter also requested that RSPA clarify the system requirements for the modified hydrostatic test. RSPA has added language to clarify that an external visual inspection is part of the modified hydrostatic retest. In addition, as stated in section 173.34(e)(11), the system requirements for the modified hydrostatic retest are the same as the hydrostatic retest with the exception of the water jacket and the determination of the cylinder's total and permanent expansions.

#### Marking

RSPA proposed several changes to the marking requirements contained in section 173.34(e)(7). RSPA received a number of comments concerning these proposed changes. One commenter stated that, as proposed, the requirement for marking a cylinder with a RIN remains confusing and needs to be rewritten for clarification. RSPA has reviewed the language in proposed section 173.34(e)(7) and has made minor modifications to improve the section's clarity.

One commenter suggested that RSPA require a retester to mark its RIN on a cylinder regardless of the test method used. RSPA has not adopted this comment, because this change in marking procedures was not proposed in the NPRM and there has not been an opportunity to comment on this additional marking burden. In addition, the commenter requested that the marking concepts of DOT Exemption E-11372 be incorporated into this rulemaking. RSPA has not had an opportunity to evaluate all the effects of this comment and therefore, will consider this comment in a future rulemaking.

#### Cylinder Rejection/Condemnation

RSPA received a number of comments on the proposed requirements, in sections 173.34(e) (5) and (6).

One commenter suggested that RSPA revise the proposed language of section 173.34(e)(5) to stress that a cylinder that has been rejected may be requalified by

repairing the defect (e.g., bad foot ring or damaged collar). RSPA agrees and has revised this section to clarify that a cylinder that has been rejected may be requalified by repairing the defect.

Several commenters noted that the preamble language described the proposed rule as requiring a condemned cylinder to be stamped with a series of X's over the DOT specification number and service pressure or with the word "CONDEMNED" on the shoulder, top head, or neck of the cylinder was inconsistent with the regulatory language requiring a retester to apply both markings. The proposed regulatory language was incorrect and should have tracked the preamble language. RSPA is revising this rule to allow the retester to decide whether to stamp a condemned cylinder with a series of X's or the word "CONDEMNED."

A commenter requested that RSPA revise proposed section 173.34(e)(6)(ii) to shorten the word "CONDEMNED" to "CNDMD." The commenter stated that such a revision would save the retester time and expense. RSPA recognizes that the proposed requirement will require more time than stamping "CNDMD". However, the proposed language is a better method to communicate to the public that the cylinder is not qualified to be used for the transportation of hazardous materials and is a better method to prevent condemned cylinders from being used to transport hazardous materials. Within the general public, there could be confusion concerning the meaning of "CNDMD." In addition, as stated above, the retester has the option of stamping a condemned cylinder with a series of X's over the DOT specification number and service pressure. However, if stamping the word "CONDEMNED" or a series of X's over the DOT specification number and service pressure would create an undue burden on a retester, then under section 173.34(e)(7), the retester can make a written request for a variation to the marking requirement.

Another commenter inquired as to how to stamp a fully-wrapped cylinder with the word "CONDEMNED" if there is not sufficient space on the neck of the cylinder. If there is not sufficient space to stamp the cylinder with the word "CONDEMNED" then, under this rule, a retester can exercise the option of stamping a series of X's over the DOT specification number and service pressure.

Several commenters suggested that a retester be required to mark its RIN on a condemned cylinder. One commenter stated: "Otherwise, a person wishing to claim a steel cylinder for scrap metal could simply 'X' out the DOT

specifications." RSPA is not aware that such a practice has become a problem, and RSPA does not believe the addition of a RIN would discourage or prevent such a practice. RSPA has not adopted this comment because this additional step would increase the cost of condemnation without any offsetting benefit.

One commenter stated that the CGA pamphlets cited in proposed section 173.34(e)(6)(i)(A) do not provide sufficient information for the retester to make an objective determination as to what would "appreciably weaken" a given cylinder. RSPA has reviewed each of the CGA pamphlets incorporated by reference in section 173.34(e)(6)(i)(A) and finds that they provide a safe minimum standard for condemnation procedures.

RSPA received only one comment opposing the written notification requirement for rejected and condemned cylinders in proposed sections 173.34 (e)(5)(ii) and (e)(6)(ii) (sections 173.34 (e)(5)(iii) and (e)(6)(iii) of this rule). The commenter stated that this requirement "would generate unnecessary paperwork and would not improve the chances that a condemned cylinder will not be refilled." This written requirement gives the cylinder's owner actual notice that the cylinder can no longer be used to transport hazardous materials. In light of the potential civil liability considerations, this additional step will increase the likelihood that the cylinder owner will promptly remove the cylinder from service involving hazardous materials.

Proposed section 173.34(e)(6)(ii) would allow a retester, at the direction of the owner, to render the cylinder incapable of holding pressure in some fashion (e.g., by damaging the cylinder threads or drilling through the cylinder wall). Several commenters suggested that RSPA add regulatory language authorizing the retester, without the permission of the owner, to render a condemned cylinder unserviceable by "drilling a hole in the side or by damaging the threads." These commenters stated that simply marking the cylinders with a series of X's is not sufficient to ensure a condemned cylinder is not returned to service.

RSPA must balance the commenters' concerns against the property interests of the cylinder's owner. Because the cylinder in most cases is not the property of the retester and a condemned cylinder may be used for purposes other than the transportation of hazardous materials in commerce, RSPA is not authorizing the retester to "render the cylinder incapable of holding pressure" unless the cylinder's

owner has given permission to the retester.

One commenter requested that RSPA further clarify the phrase "render the cylinder incapable of holding pressure." The commenter indicated that it knew of instances "in which cylinders that had holes drilled in them by owners or retesters \* \* \* were 'repaired' using auto body filler or similar material." The commenter recommended that the HMR specify three actions a retester could take that would render a condemned cylinder incapable of holding pressure. RSPA has not adopted this comment. There are numerous actions a retester may take that would render a cylinder incapable of holding pressure. RSPA is not mandating any particular action but instead leaves this decision to the discretion of the cylinder's owner or, with the permission of the owner, the retester.

#### Recordkeeping

RSPA received a number of comments concerning the recordkeeping requirements proposed in section 173.34(e)(8). RSPA proposed that the retest record contain those entries previously required, as well as the cylinder manufacturer's name or symbol, cylinder dimensions and identification of the retest operator. One commenter requested that the language proposed in section 173.34(e)(8)(ii)(B) be revised to indicate that a retester is required to record only the information that is marked on the cylinder. The commenter stated that millions of cylinders are marked with only an owner's mark and are not marked with the manufacturer's name or symbol. Another commenter requested that the regulation allow a retester to use a code or symbol to represent the cylinder's dimensions. The commenter also requested that RSPA add the word "actual" prior to "test pressure" to avoid any confusion as to whether the retest operator should record the actual test pressure or the specified test pressure. Additionally, to clarify the recordkeeping procedures, the commenter requested that RSPA delete the phrase "disposition, with reason for retest" and insert "disposition, with reason for any repeated test." RSPA agrees with each of these comments and has made the appropriate changes.

One commenter was opposed to a requirement that retest operators record a cylinder's dimensions. This rule does not adopt this comment because an entry on dimensions can help distinguish between cylinders that have the same serial numbers and capacities.

Another commenter recommended that RSPA revise the NPRM language

concerning the length of time a retester must maintain its hydrostatic retest records. The commenter noted that RSPA proposed that records be maintained for five years, but some cylinders have retest periods in excess of five years. The commenter recommended retaining the current requirement that requires retention of the records until the expiration of the retest period or until the cylinder is reinspected or retested, whichever occurs first. RSPA agrees with this comment and has retained the current requirement in this final rule.

One commenter requested that RSPA change the word "sheets" in section 173.34(e)(8)(ii)(A) to "log." The relevant proposed language is: "Calibrations must be recorded on the same sheets as, and in chronological order with, retest records for that date;". The commenter stated that the word "sheets" could be interpreted to mean that each time a retester began recording retest information on a new sheet, it must verify the calibration of its retest equipment. RSPA has not adopted this comment because it believes the likelihood of such a misunderstanding is small. The provision does not require a retester to verify calibration each time it begins recording retest information on a new retest sheet.

In addition, RSPA has modified its proposal to reduce the paperwork burden on retest operators. First, as quoted above, RSPA proposed that calibrations be recorded on the same sheets as the retest records for that date. The rule now requires only that the retest operator be able to demonstrate that the results of the daily calibration verification correspond to the hydrostatic retests that were performed on that day.

Second, RSPA proposed that calibration runs be recorded, in chronological order, with the retest records for that day. Several commenters opposed this requirement. One commenter stated that this requirement "would substantially increase our expense due to lost production and would only serve to meet the regulation." Another commenter stated that it maintained its retest records according to the name of each customer and the proposed requirement would drastically alter its filing system.

CGA Pamphlet C-1, which is not incorporated by reference in section 171.7, recommends that retesters record calibrated cylinder expansions used to confirm retest apparatus calibration. Calibration checks must be recorded as a means of demonstrating that the test apparatus was accurate on any given

day. However, RSPA did not intend to significantly increase the recordkeeping burden for retester operators, and therefore, RSPA has not adopted the proposed requirement that a retester maintain its retest records in chronological order. The recordkeeping requirement now requires a retest operator to be able to associate the daily verification(s) of calibration with the hydrostatic retests performed on that date.

One commenter was opposed to the proposed revision of section 173.34(e)(8)(ii)(B) because it interpreted the NPRM as requiring the retest operator to sign the retest sheet each time the retest operator recorded the results of a hydrostatic retest. This section does not require a retest operator to sign the retest sheet each time the retest operator records the results of a hydrostatic retest. RSPA agrees with the commenter that such a requirement would be "a waste of time and paper space." Section 173.34(e)(8)(ii)(B) requires that, for each cylinder retested or visually inspected, the retest record must contain a legible identification of test operator. Thus, if the retest operator performed all the retests recorded on a particular retest sheet, this section requires a retest operator to be legibly identified only once on the retest sheet. There is no requirement that the retest operator sign the sheet each time a retest is completed.

Proposed section 173.34(e)(8)(i) requires each retester to maintain at its facility its RIN issuance letter from RSPA, a copy of its renewal request if the request is pending, copies of notifications to RSPA of changes in its name, address, personnel or equipment which occurred after issuance of the most recent RIN letter, and the most recent certificates of calibration for all calibrated cylinders.

One commenter stated that the requirement "to maintain specific documentation is unnecessary so long as the retester can provide equivalent documentation \* \* \*." RSPA has not adopted this comment because section 173.34(e)(8) provides that a person shall maintain its RIN issuance letter, request for renewal if pending, copies of notifications to RSPA of changes in its name, address, personnel or equipment which occurred after issuance of the most recent RIN letter, and the most recent certificates of calibration for all calibrated cylinders in paper form "or in a form from which a paper copy can be produced on request." Thus, a person can maintain this documentation in an electronic medium (e.g., computer records) provided the person can produce a paper copy upon request. In

addition, it is unclear what specific items would serve as the "equivalent documentation." This phrase is subject to broad interpretation and lacks definition. RSPA's retester inspections indicate that maintenance of these documents is standard retester operating practice because of the requirement presently found in the RIN issuance letter. Furthermore, this requirement facilitates a prompt determination whether the retester is complying with the HMR.

#### DOT 4-series Cylinders

One commenter recommended three revisions to proposed section 173.34(e)(10). First, the commenter requested a revision to clarify that all DOT 4L cylinders are excluded from the requirements of this paragraph because these cylinders are excluded from requalification requirements. RSPA agrees and has adopted this comment. The revised language now appears in section 173.34(e)(9) of this rule.

Second, the commenter recommended that RSPA add a sentence to proposed paragraph (e)(10) that would prohibit the removal of a DOT 4L cylinder's original stamped tare weight. The commenter stated that if the original stamped tare weight is removed and then there is a series of tare weight changes, it is difficult to determine if the cylinder has lost 10 percent of its original weight (rejection criterion for DOT-4 series cylinders). This was not suggested in the NPRM and is not adopted in this rulemaking because RSPA requires additional time to study the merits of the proposal. RSPA will consider this proposal in a future rulemaking.

Third, this commenter suggested that for inspection of DOT 4L cylinders, a more appropriate CGA reference for proposed paragraph (e)(10) is CGA Pamphlet C-6.3 and not C-6.1 as proposed in the NPRM. RSPA agrees and has revised the CGA reference which now appears in section 173.34(e)(9) of this rule.

Another commenter suggested that a number of hazardous materials be added to the materials listed in proposed paragraphs (e) (12) and (13). This was not suggested in the NPRM and is not adopted in this rulemaking because RSPA requires additional time to study the merits of the proposal.

Two commenters stated that the proposed language in section 173.34(e)(18)(iv) provides a "loophole" wherein certain cylinders that exceed the wall stress limitation in section 173.302(c)(3), but subsequently confined to a specified noncorrosive gas service, would be allowed a ten year

requalification. RSPA agrees and this result was not the intent of the proposed rule. Thus, RSPA has revised the rule to clarify that, in addition to other requirements, a cylinder that is not used exclusively in specific noncorrosive gas services must be retested and examined in accordance with the requirements of section 173.302(c) (2), (3) and (4), before the periodic retest interval can be extended from five to ten years. In addition, the tested cylinder must be confined to specified noncorrosive gas services in order to qualify for the ten year retest cycle. The revised language now appears in section 173.34(e)(16) of this rule.

#### Section 173.301

##### Foreign Cylinders for Export

Several commenters suggested that markings on foreign cylinders contain the RIN. RSPA has not adopted this comment because the marking of a RIN on these cylinders could lead to confusion between these foreign cylinders and those authorized for use in domestic hazardous materials transportation.

One commenter requested that RSPA revise the language proposed in section 173.301(j)(2) to require that the bill of lading or other shipping paper, "when possible," identify the cylinder. RSPA has not adopted this comment, because it would create a loophole that would allow a person to ship cylinders for export without the cylinders being identified on an accompanying shipping paper. This lack of documentation would make it difficult to determine whether the shipment of cylinders complied with the HMR export requirements. In addition, such a provision would render the certification that the cylinders were retested and refilled in accordance with the HMR requirements meaningless. A person could simply state that "it was not possible" to identify a particular cylinder on the shipping paper and thus, the certification could not be associated with the particular cylinder.

The commenter also requested that RSPA revise section 173.301(j) to allow cylinders currently retested, but not marked, to continue in service without being returned for re-marking. According to the commenter, without this revision, cylinders meeting the other requirements in this section, but not marked, would not be allowed to continue in service. RSPA recognizes that this rule would require some cylinders previously tested to be retested. This requirement may cause practical problems for certain members of the regulated community. Therefore,

RSPA has revised the proposed language. If the previous testing can be verified, then the person can utilize the language in section 173.301(j)(1)(i) which allows, on a case-by-case basis, for authorization of an alternative method of qualification by Associate Administrator for Hazardous Materials Safety.

#### Section 173.302

##### Computing Wall Stress for Overfill Authorization

RSPA proposed requiring a retester to compute both a cylinder's average and maximum wall stress prior to overfilling the cylinder. Several commenters opposed the proposed change stating that there is no need to make both calculations and that one calculation, as presently required, is sufficient. RSPA agrees with the commenters and is not adopting this change.

In the NPRM, RSPA invited comments on whether other methods not presently authorized by paragraph (c)(3) may be used to compute accurately the average or maximum wall stress (60 FR 54011). One commenter requested that language be added to paragraph (c)(3) to permit the person computing the wall stress to rely, if present, on the Rejection Elastic Expansion (REE) values stamped on the cylinder. The commenter stated: "It is now common practice for manufacturers to include stamped REE values on new cylinders \* \* \*." RSPA has not had an opportunity to consider all the possible effects that might result from the adoption of this proposal. Therefore, RSPA will consider this comment in a future rulemaking.

#### Section 173.309

##### Retest Requirements for Fire Extinguishers

Current section 173.309 prescribes DOT specification cylinders authorized for transportation under the description "Fire extinguishers containing compressed or liquefied gas, 2.2, UN1044" when certain conditions are met. Section 173.309(b)(1) states that the cylinder must be used exclusively for fire extinguishing agents such as ammonium phosphate, sodium bicarbonate, potassium bicarbonate, potassium imido dicarboxamide and bromochlorodifluoromethane or bromotrifluoromethane, which are commercially free from corroding components. In the NPRM, RSPA proposed to move section 173.309(b)(1) to section 173.34(e)(21). The proposed change was in response to a petition for rulemaking (P-1216) submitted by the Fire Equipment Manufacturers'

Association, Inc. (FEMAI) requesting that RSPA move the retest conditions to section 173.34(e). FEMAI stated this change would clarify that fire extinguishers charged with carbon dioxide only do not qualify for the special retest provisions in current section 173.34(e)(18). RSPA also proposed to remove from section 173.309(b)(2) a limitation on the dew point for propellant gases.

In this final rule, RSPA has removed section 173.309(b)(4), containing a reference to the retest provisions in section 173.34, but is not adopting the other proposed changes to section 173.309(b). The conditions identifying the contents authorized for fire extinguishers are shipper requirements rather than retest requirements and, therefore, are retained in section 173.309(b). However, paragraph (b)(1) is revised to permit the use of any fire extinguishing medium that is non-flammable, non-poisonous, and commercially free from corroding components. Any fire extinguisher containing a fire extinguishing medium or propellant gas not meeting the requirements in paragraphs (b) (1) and (2) may not be shipped under these provisions.

Several commenters to the NPRM noted that proposed section 173.34(e)(21) does not allow a 12-year retest period for cylinders having a water capacity of 12 lbs. or less regardless of the retest method. The commenters requested that RSPA revise the paragraph to add this provision. RSPA inadvertently omitted the language from the NPRM. In this final rule, RSPA has added the 12-year retest period and moved the fire extinguisher retest provisions to section 173.34(e)(19).

In the NPRM, reference to DOT 3A, 3AA and 3AL cylinders were not included in the fire extinguisher retest provisions in proposed section 173.34(e)(21). RSPA has added the retest provision for these cylinders in section 173.34(e)(19)(ii) of this final rule. These cylinders may be hydrostatically retested using the water jacket method at 12-year intervals.

#### *Miscellaneous Technical Revisions to Part 173*

The NPRM proposed a provision encouraging voluntary compliance with CGA Pamphlet S-1.1.1, paragraph 9.1.1.1, which specifies the replacement or requalification of pressure relief valves, on certain DOT cylinders every 10 years. The National Propane Gas Association (NPGA) submitted comments stating that the propane industry has experienced no problems

with these pressure relief valves and that RSPA should not "encourage" the replacement of these pressure relief valves. In addition, NPGA opposed this proposal, despite its permissive nature, because NPGA believes that State and local enforcement officials would attempt to enforce this permissive standard and this result along with liability costs would make this a "de facto mandate." NPGA also stated that its analysis indicates that the periodic replacement of these pressure relief valves would cost the industry in excess of \$60 million per year.

RSPA proposed this permissive standard in order to encourage the periodic replacement of pressure relief valves. One commenter agreed with RSPA's efforts to encourage the practice and suggested RSPA make it a mandatory requirement. The commenter cited a Canadian standard as precedent. RSPA believes a number of pressure relief valves deteriorate over time-in-service and that most members of the regulated community recognize the need for periodic replacement of these valves. RSPA does not believe that State and local enforcement officials would attempt to enforce this permissive standard. However, based on NPGA's concerns about the effect this permissive standard would have on the issue of liability, the amount of time required to gather and analyze incident data and the time required to verify NPGA's cost estimates, RSPA is deleting the permissive reference to CGA Pamphlet S-1.1.1, paragraph 9.1.1.1. RSPA will consider this issue in a future rulemaking.

In addition, one commenter proposed that throughout section 173.34(d) the phrase "safety relief devices" be revised to read "pressure relief devices." The commenter stated: "The use of the word 'pressure' in lieu of the word 'safety' is preferred because 'pressure relief' describes the function of the device." RSPA agrees with this editorial amendment and has made the appropriate changes. In addition, the commenter suggested adding the metric equivalents to the English measurements in the paragraph. RSPA will consider this comment in a future rulemaking.

The same commenter also suggested several amendments that in RSPA's view were more than editorial comments and thus, beyond the scope of the present rulemaking. These include suggestions that RSPA add a sentence to section 173.34(d) that would require that selection of pressure relief devices for cylinders containing compressed gas mixtures be made in accordance with CGA Pamphlet S-7;

add "flammable, liquefied compressed gases" to section 173.34(d)(7), and add a new paragraph allowing Classes 3 or 8 materials to be transported in cylinders that are not under pressure and not equipped with pressure relief devices. CGA Pamphlet S-7 has not been incorporated by reference and RSPA is uncertain of the impact of such an amendment. In addition, RSPA needs additional time to review those materials in Classes 3 and 8 which have a high vapor pressure at temperatures normally related to transportation and therefore, may require a pressure relief device. Moreover, these proposals were not suggested in the NPRM and are not adopted in this rulemaking because there has been no opportunity for public comment on them.

Another commenter stated that "[a]n effort should be made to use the same terminology between the DOT regulations and the CGA Pamphlets referenced therein." RSPA agrees and has made an effort to harmonize the terminology.

### III. Rulemaking Analyses and Notices

#### *1. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

#### *2. Executive Order 12612*

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not "substantively the same" as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

- (A) the designation, description, and classification of hazardous material;
- (B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, contents, and placement of those documents;
- (D) the written notification, recording, and reporting of the unintentional

release in transportation of hazardous material; and

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rulemaking addresses the maintenance and testing of a packaging represented as qualified for use in the transportation of hazardous material. Therefore, the rule preempts State, local and Indian tribe requirements that are not "substantively the same" as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule is October 1, 1996. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

**3. Regulatory Flexibility Act**

I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies to persons who inspect, retest and certify cylinders used

to transport hazardous materials. These persons include a number of small businesses; however, the economic impact on any small business affected by the rule is expected to be minimal. There are no direct or indirect adverse economic impacts for small units of government or other organizations.

**4. Paperwork Reduction Act**

This final rule changes information collection requirements in section 173.34 pertaining to testing, inspecting and marking of cylinders which were previously approved by the Office of Management and Budget under OMB control number 2137-0022. RSPA is requesting reinstatement and revision of this approval from OMB and will display the control number, through publication in the Federal Register, when it is approved by OMB. Public comment on this request was invited through publication of a Federal Register notice on March 5, 1996 (61 FR 8706). Under the Paperwork Reduction Act of 1995, no person is generally required to respond to a requirement for collection of information unless the requirement displays a valid OMB control number.

**5. Regulation Identifier Number**

A regulation identifier number is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The regulation identifier number contained in the heading of this

document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects**

**49 CFR Part 171**

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

**49 CFR Part 173**

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR parts 171 and 173 are amended as follows:

**PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

2. In § 171.7, in the Table in paragraph (a)(3), under the entry *Compressed Gas Association, Inc.*, the entries for CGA Pamphlets C-6, C-13, and S-1.1 are revised and four new entries are added in alpha-numerical order, to read as follows:

**§ 171.7 Reference material.**

(a) \* \* \*

(3) *Table of material incorporated by reference.* \* \* \*

Source and name of material	49 CFR reference
* * * * *	
<i>Compressed Gas Association, Inc.</i> ,	
* * * * *	
CGA Pamphlet C-5, Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991 .....	173.302
CGA Pamphlet C-6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 1993 .....	173.34; 180.519
CGA Pamphlet C-6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 1995 .....	173.34
CGA Pamphlet C-6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1988.	173.34
CGA Pamphlet C-6.3, Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, 1991.	173.34
* * * * *	
CGA Pamphlet C-13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 1992 .....	173.34; 173.303
* * * * *	
CGA Pamphlet S-1.1., Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 1994 (with the exception of paragraph 9.1.1.1).	173.34
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\* \* \* \* \*

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 173.23, paragraphs (c), (d), and (e) are revised to read as follows:

**§ 173.23 Previously authorized packaging.**

\* \* \* \* \*

(c) After July 2, 1982, a seamless aluminum cylinder manufactured in conformance with and for use under DOT special permit (SP) or exemption (E) 6498, 7042, 8107, 8364 or 8422 may be continued in use if marked before or at the time of the next retest with either the specification identification “3AL” immediately above the special permit or exemption number, or the DOT mark (e.g., DOT 3AL 1800) in proximity to the special permit or exemption marking.

(d) Cylinders (spheres) manufactured and marked under DOT special permit (SP) or exemption (E) 6616 prior to January 1, 1983, may be continued in use if marked before or at the time of the next retest with the specification identification “4BA” near the special permit or exemption marking.

(e) After October 1, 1984, cylinders manufactured for use under special permit (SP) or exemption (E) 6668 or 8404 may be continued in use, and must be marked “DOT-4LXXXYY” (XXX to be replaced by the service pressure, YY to be replaced by the letters “AL”, if

applicable) in compliance with Specification 4L (§ 178.57 of this subchapter) on or before January 1, 1986. The “DOT-4LXXXYY” must appear in proximity to other required special permit or exemption markings.

\* \* \* \* \*

5. In § 173.34, paragraph (d)(7) is removed, the first sentence of the introductory text of paragraph (d), paragraphs (d)(1) through (d)(5) and paragraph (e) are revised, and paragraph (d)(6) is added to read as follows:

**§ 173.34 Qualification, maintenance and use of cylinders.**

\* \* \* \* \*

(d) *Pressure relief device systems.* No person may offer a cylinder charged with a compressed gas for transportation in commerce unless the cylinder is equipped with one or more pressure relief devices sized and selected as to type, location, and quantity and tested in accordance with CGA Pamphlet S-1.1 (compliance with paragraph 9.1.1.1 of CGA Pamphlet S-1.1 is not required).

\* \* \*

(1) Except as provided in paragraphs (d)(1) (i) through (iii) of this section, a pressure relief device is not required on a cylinder 12 inches or less in length, exclusive of neck, and 4½ inches or less in outside diameter.

(i) A pressure relief device is required on a specification 9, 39 (§ 178.65 of this subchapter), 40, or 41 cylinder. A metal pressure relief valve is required on a specification 39 cylinder used for a liquefied flammable gas. A fusible pressure relief device is not authorized

on a specification 39 cylinder containing a liquefied compressed gas.

(ii) A pressure relief device is required on a cylinder charged with a liquefied gas for which this part requires a service pressure of 1800 psi or higher.

(iii) A pressure relief device is required on a cylinder charged with a nonliquefied gas to a pressure of 1,800 psi or higher at 70 °F.

(2) Except for a specification 39 cylinder and a cylinder used for acetylene in solution, a pressure relief device is not required on a cylinder charged with a nonliquefied gas under pressure of 300 psi or less at 70 °F.

(3) A pressure relief device is prohibited on a cylinder charged with a Division 2.3 or Division 6.1 material in Hazard Zone A.

(4) A pressure relief device is prohibited on a cylinder charged with fluorine.

(5) A pressure relief device is not required on a cylinder charged with methyl mercaptan; with mono-, di-, or trimethylamine, anhydrous; with not over 10 pounds of nitrosyl chloride; or with less than 165 pounds of anhydrous ammonia.

(6) Pressure relief devices, if used, must be in the vapor space of cylinders containing pyroforic liquids, inorganic or organic, n.o.s., covered by § 173.124.

(e) *Periodic qualification and marking of cylinders.* Each cylinder that becomes due for periodic retest as specified in the following table must be retested and marked in conformance with the requirements of this paragraph (e):

RETEST AND INSPECTION OF CYLINDERS <sup>1</sup>

Specification under which cylinder was made <sup>2</sup>	Minimum retest pressure (p.s.i.) <sup>3</sup>	Retest period (years)
DOT-3 .....	3,000 p.s.i. ....	5.
DOT-3A, 3AA .....	5/3 times service pressure, except non-corrosive service (see § 173.34(e)(13))	5, 10, or 12 (see § 173.34 (e)(14), (e)(12), (e)(16), and (e)(19)).
DOT-3AL .....	5/3 times service pressure .....	5 or 12 (see (e)(19)).
DOT-3AX, 3AAX .....	5/3 times service pressure .....	5.
3B, 3BN .....	2 times service pressure (see § 173.34(e)(13)) .....	5 or 10 (see § 173.34(e)(12)).
3C .....	Retest not required.	
3D .....	5/3 times service pressure .....	5.
3E .....	Retest not required.	
3HT .....	5/3 times service pressure .....	3 (see § 173.34(e)(15)).
3T .....	5/3 times service pressure .....	5.
4 .....	700 p.s.i. ....	10.
4A .....	5/3 times service pressure (see § 173.34(e)(13)) .....	5 or 10 (see § 173.34(e)(12)).
4AA480 .....	2 times service pressure (see § 173.34(e)(13)) .....	5 or 10 (see § 173.34(e)(14)).
4B, 4BA, 4BW, 4B-240ET .....	2 times service pressure, except non-corrosive service (see § 173.34(e)(13)) ...	5, 10 or 12 (see § 173.34 (e)(11), (e)(12) and (e)(19)).
4C .....	Retest not required.	
4D, 4DA, 4DS .....	2 times service pressure .....	5.
DOT-4E .....	2 times service pressure, except non-corrosive service (see § 173.34(e)(13)) ...	5.
4L .....	Retest not required.	
8, 8AL .....	.....	10 or 20 (see § 173.34(e)(18)).
DOT-9 .....	400 p.s.i. (maximum 600 p.s.i.) .....	5.

RETEST AND INSPECTION OF CYLINDERS <sup>1</sup>—Continued

Specification under which cylinder was made <sup>2</sup>	Minimum retest pressure (p.s.i.) <sup>3</sup>	Retest period (years)
25 .....	500 p.s.i. ....	5.
26 for filling at over 450 p.s.i. ....	5/3 times service pressure .....	5.
26 for filling at 450 p.s.i. and below.	2 times service pressure, except non-corrosive service (see § 173.34(e)(13)) ...	5 or 10 (see § 173.34(e)(11)).
33 .....	800 p.s.i. ....	5.
38 .....	500 p.s.i. ....	5.
Exemption cylinder .....	See current exemption .....	See current exemption.
Foreign cylinder (see § 173.301(j) for restrictions on use).	As marked on the cylinder, but not less than 5/3 of any service or working pressure marking.	5.

<sup>1</sup> Any cylinder not exceeding two inches outside diameter and less than two feet in length is excepted from hydrostatic retest.

<sup>2</sup> A cylinder in chlorine or sulfur dioxide service made before April 20, 1915, must be retested at 500 psi.

<sup>3</sup> For cylinders not marked with a service pressure, see § 173.301(e)(1).

(1) *General requirements.* (i) Each cylinder bearing a DOT specification marking (including a cylinder remarked in conformance with § 173.23) must be inspected, retested and marked in conformance with this section, at the frequency specified in the Retest and Inspection of Cylinders Table in this paragraph (e). Each cylinder bearing a DOT exemption number must be inspected, retested and marked in conformance with this section and the terms of the applicable exemption, at the frequency specified in the exemption.

(ii) No cylinder required to be retested by paragraph (e)(1)(i) of this section may be charged or filled with a hazardous material and transported in commerce unless that cylinder has been inspected and retested in accordance with this section and the retester has marked the cylinder by stamping the date of retest, the cylinder retester identification number unless excepted under this section, and any other marking required by this section. No person may mark a test date or a retester identification number on a DOT specification or exemption cylinder unless all applicable requirements of this section have been met.

(2) *Retester authorization.* (i) No person may mark a cylinder with a test date or retester identification number, or otherwise represent that a DOT specification or exemption cylinder has been retested under this section, unless that person holds a current retester identification number issued by the Associate Administrator for Hazardous Material Safety and operates in compliance with the terms of the retester identification number issuance letter. With the exception of visual inspections, all functions under this section must be performed or supervised by an individual named as qualified in the retester identification number application or a notification

pursuant to paragraph (e)(2)(iv) of this section. A person is not required to obtain a retester identification number, if the person only performs visual inspections on DOT specification or exemption cylinders.

(ii) Any person seeking approval as a cylinder retester shall arrange for an independent inspection agency, approved by the Associate Administrator for Hazardous Material Safety pursuant to § 173.300a, to inspect its retest facility. The person seeking approval shall bear the cost of the inspection. Independent inspection agencies are not RSPA agents or representatives. A list of approved independent inspection agencies is available from the Associate Administrator for Hazardous Materials Safety, Office of Hazardous Materials Exemptions and Approvals (DHM-32), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Assistance in obtaining an approval may be requested from the same address.

(A) After the inspection, the person seeking approval must submit a letter of recommendation and inspection report from the independent inspection agency and a completed request for approval to the Associate Administrator for Hazardous Materials Safety at the address listed in this paragraph (e)(2)(ii). An applicant must include the following information: company name; facility location; mailing address (if different from location of facility); business telephone number; name of facility manager; the DOT specification/exemption cylinders that will be tested at the facility; a certification that the facility will operate in compliance with the applicable requirements of this subchapter, the date and an authorized signature.

(B) The Associate Administrator for Hazardous Materials Safety reviews the

application, the inspection report and recommendation submitted by the independent inspection agency, and other available information. The Associate Administrator for Hazardous Materials Safety issues a retester identification number upon a finding that the applicant's facility and qualifications are adequate to properly inspect, test and mark cylinders under this section. Unless otherwise provided in the retester identification number issuance letter, a retester identification number expires five years from the date of issuance.

(iii) An approved retester shall apply for retester identification number renewal in a timely manner. A new inspection report and recommendation of an independent inspection agency are required for each renewal. If the Associate Administrator for Hazardous Materials Safety receives a renewal application with the accompanying inspection report and recommendation at least 50 days before expiration of the retester identification number, the retester identification number remains in effect until the Associate Administrator for Hazardous Materials Safety issues a renewal or notifies the retester that its request for renewal of the retester identification number is denied. The Associate Administrator for Hazardous Materials Safety considers renewal of a retester identification number in accordance with the standard in paragraph (e)(2)(ii)(B) of this section.

(iv) The retester identification number holder shall report in writing any change in its name, address, ownership, testing equipment, or management or personnel performing any function under this section, to the Associate Administrator for Hazardous Materials Safety (DHM-32) within 20 days of the change. A retester identification number remains valid only if the retester's facility and qualifications are maintained at or above the level

observed at the time of inspection by the independent inspection agency.

(v) A retester shall maintain, at each location at which it inspects, retests or marks cylinders under this section:

(A) Current copies of those portions of this subchapter that apply to its cylinder inspection, retesting and marking activities at that location.

(B) Current copies of all exemptions governing exemption cylinders inspected, retested or marked by the retester at that location.

(C) Copies of each CGA pamphlet incorporated by reference in § 171.7 of this subchapter that applies to the retester's cylinder inspection, retesting and marking activities at that location. The publication maintained must be the edition incorporated by reference in § 171.7 of this subchapter.

(3) *Visual inspection.* Except as otherwise provided in this section, each time a cylinder is retested, it must be visually inspected, internally and externally, in accordance with CGA Pamphlets C-6, C-6.1, C-6.2, or C-6.3, as applicable. The cylinder must be approved, rejected or condemned according to the criteria in the applicable CGA pamphlet. Internal inspection may be omitted for cylinders of the type and in the service described under paragraph (e)(13) of this section. DOT 3BN cylinders must be inspected in accordance with CGA Pamphlet C-6.

(4) *Pressure retest.* (i) Unless otherwise provided, each cylinder required to be retested under this section must be retested by means suitable for measuring the expansion of the cylinder under pressure. Bands and other removable attachments must be loosened or removed before testing so that the cylinder is free to expand in all directions.

(ii) The pressure-indicating device of the testing apparatus must permit reading of pressures to within 1% of the minimum prescribed test pressure of each cylinder tested, except that for an analog device, interpolation to 1/2 of the marked gauge divisions is acceptable. The expansion-indicating device of the testing apparatus must also permit incremental reading of the cylinder expansion to 1% of the total expansion of each cylinder tested or 0.1 cubic centimeter, whichever is larger. Midpoint visual interpolation is permitted.

(iii) Each day before retesting, the retester shall confirm, by using a calibrated cylinder or other method authorized in writing by the Associate Administrator for Hazardous Materials Safety that:

(A) The pressure-indicating device, as part of the retest apparatus, is accurate

within  $\pm 1.0\%$  of the prescribed test pressure of any cylinder tested that day. The pressure indicating device, itself, must be certified as having an accuracy of  $\pm 0.5\%$ , or better, of its full range, and must permit readings of pressure from 90%–110% of the minimum prescribed test pressure of the cylinder to be tested. The accuracy of the pressure indicating device within the test system can be demonstrated at any point within 500 psi of the actual test pressure for test pressures at or above 3000 psi, or 10% of the actual test pressure for test pressures below 3000 psi; and

(B) The expansion-indicating device, as part of the retest apparatus, gives a stable reading of expansion and is accurate to  $\pm 1.0\%$  of the total expansion of any cylinder tested or 0.1 cubic centimeter, whichever is larger. The expansion-indicating device itself must have an accuracy of  $\pm 0.5\%$ , or better, of its full scale.

(iv) The test equipment must be verified to be accurate within  $\pm 1.0\%$  of the calibrated cylinder's pressure and corresponding expansion values. This may be accomplished by bringing the pressure to a value shown on the calibration certificate for the calibrated cylinder used and verifying that the resulting total expansion is within  $\pm 1.0\%$  of the total expansion shown on the calibration certificate. Alternatively, calibration may be demonstrated by bringing the total expansion to a known value on the calibration certificate for the calibrated cylinder used and verifying that the resulting pressure is within  $\pm 1.0\%$  of the pressure shown on the calibration certificate. The calibrated cylinder must show no permanent expansion. The retester shall demonstrate calibration in conformance with this paragraph (e)(4) to an authorized inspector on any day that it retests cylinders. A retester shall maintain calibrated cylinder certificates in conformance with paragraph (e)(8)(iii) of this section.

(v) Minimum test pressure must be maintained for at least 30 seconds, and as long as necessary for complete expansion of the cylinder. A system check may be performed at or below 90% of test pressure prior to the retest. In the case of a malfunction of the test equipment, the test may be repeated at a pressure increased by 10 percent or 100 psi, whichever is less. This paragraph (e)(4) does not authorize retest of a cylinder otherwise required to be condemned under paragraph (e)(6) of this section.

(5) *Cylinder rejection.* (i) A retester shall reject a cylinder when on visual inspection, it meets a rejection standard

in CGA Pamphlets C-6, C-6.1, C-6.2, or C-6.3, as applicable.

(ii) Except as provided in paragraph (e)(5)(iv) of this section, a cylinder that is rejected may not be marked as meeting the requirements of this section.

(iii) When a cylinder is rejected, the retester shall notify the cylinder owner, in writing, that the cylinder has been rejected and, unless requalified as provided in paragraph (e)(5)(iv) of this section, may not be filled with a hazardous material for transportation in commerce where use of a specification packaging is required.

(iv) A rejected cylinder with a service pressure of less than 900 psig may be requalified and marked if the cylinder is repaired or rebuilt and subsequently reinspected and retested in conformance with—

(A) CGA Pamphlets C-6, C-6.1, C-6.2, or C-6.3, as applicable;

(B) Parts 173 and 178 of this subchapter;

(C) Any exemption specific to that cylinder; and

(D) Any approval required under paragraphs (i) and (l) of this section.

(6) *Cylinder condemnation.* (i) A cylinder must be condemned when—

(A) On inspection, it meets a condition for condemnation in CGA Pamphlets C-6, C-6.1, C-6.2, or C-6.3, as applicable;

(B) The cylinder leaks through its wall;

(C) Evidence of cracking exists to the extent that the cylinder is likely to be weakened appreciably;

(D) For a DOT specification cylinder other than a DOT 4E aluminum cylinder, permanent expansion exceeds 10 percent of total expansion;

(E) For a DOT 4E aluminum cylinder, permanent expansion exceeds 12 percent of total expansion;

(F) For a DOT exemption cylinder, permanent expansion exceeds the limit in the applicable exemption, or the cylinder meets another criterion for condemnation in the applicable exemption; or

(G) For a DOT specification 3HT cylinder, elastic expansion exceeds the marked rejection elastic expansion.

(ii) When a cylinder is required to be condemned, the retester shall stamp a series of X's over the DOT specification number and the marked service pressure or stamp "CONDEMNED" on the shoulder, top head, or neck using a steel stamp. Alternatively, at the direction of the owner, the retester may render the cylinder incapable of holding pressure.

(iii) When a cylinder is required to be condemned, the retester shall notify the cylinder owner, in writing, that the

cylinder is condemned and may not be filled with hazardous material for transportation in commerce where use of a specification packaging is required.

(iv) A cylinder that is condemned may not be filled with hazardous material for transportation in commerce where use of a specification packaging is required and may not be marked as meeting the requirements of this section or any DOT exemption. No person may remove or obliterate the "CONDEMNED" marking.

(7) *Retester markings.* (i) Each cylinder passing retest must be marked with the retester's identification number set in a square pattern, between the month and year of the retest date, in characters not less than 1/8-inch high. The first character of the retester identification number must appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right, and the fourth in the lower left. Example: A cylinder retested in May 1994, and approved by a person who has been issued retester identification number "A123", would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (c) of this section:

	A	1	
5			94
	3	2	

(ii) Markings of previous tests may not be obliterated. A cylinder that is subject to the requirements of paragraph (e) (10), (11) (modified hydrostatic test only), (13) or (14) of this section is not required to be marked with a retester identification number. A cylinder requalified by the modified hydrostatic test method or external inspection must be marked after a retest or an inspection by stamping the date of retest or reinspection on the cylinder followed by the symbol "E" (external inspection) or "S" (modified hydrostatic test method) as appropriate. However, a cylinder subject to the requirements of § 173.301(j) may not be marked with a retester identification number. Variation from the marking requirement may be approved on written request to the Associate Administrator for Hazardous Materials Safety.

(8) *Recordkeeping.* A retester shall maintain the following records at the retesting location, on paper or in a form from which a paper copy can be produced on request.

(i) Records of authority to inspect, retest and mark must be maintained, as follows:

(A) Current retester identification number issuance letter;

(B) If the retester identification number has expired and renewal is pending, a copy of the renewal request; and

(C) Copies of notifications to Associate Administrator for Hazardous Materials Safety required under paragraph (e)(2)(iv) of this section.

(ii) Daily records of visual inspection and hydrostatic retest must be maintained until either the expiration of the retest period or until the cylinder is again reinspected or retested, whichever occurs first. A single date may be used for each retest sheet, provided each retest on the sheet was conducted on that date. Ditto marks or a solid vertical line may be used to indicate repetition of the preceding entry for the following entries: date; actual dimensions or a symbol; if present, manufacturer's name or symbol; if present, owner's name or symbol and retest operator. Blank spaces may not be used to indicate repetition of a prior entry. Records must include—

(A) For each test to demonstrate calibration, the date; serial number of the calibrated cylinder; calibration test pressure; total, elastic and permanent expansions; and legible identification of retest operator. The retest operator must be able to demonstrate that the results of the daily calibration verification correspond to the hydrostatic retests that were performed on that day. The daily verification of calibration(s) may be recorded on the same sheets as, and with, retest records for that date;

(B) For each cylinder retested or visually inspected, records containing the date; serial number; ICC/DOT specification or exemption number; service pressure; actual dimensions or a symbol; if present, manufacturer's name or symbol; if present, owner's name or symbol; result of visual inspection; actual test pressure; total, elastic and permanent expansions; percent permanent expansion; disposition, with reason for any repeated retest, rejection or condemnation; and legible identification of test operator. For each cylinder marked pursuant to § 173.302(c)(5), the retest sheet must indicate the method by which any average or maximum wall stress was computed. Records must be kept for all completed retests, as well as unsuccessful retests under paragraph (e)(4)(v) of this section. The entry for a later retest under paragraph (e)(4)(v) of this section after a failure to hold test pressure, or retest of a cylinder

requalified after rejection, must indicate the date of the earlier inspection or retest; and

(C) Calculations of average and maximum wall stress pursuant to § 173.302(c)(3), if performed.

(iii) The most recent certificate of calibration must be maintained for each calibrated cylinder used by the retester.

(9) *DOT 4-series cylinders.* A DOT 4-series cylinder, except 4L cylinders, that at any time shows evidence of a leak or of internal or external corrosion, denting, bulging or rough usage to the extent that it is likely to be weakened appreciably; or that has lost five percent or more of its official tare weight must be retested before being recharged and shipped. (Refer to CGA Pamphlet C-6 or C-6.3, as applicable, regarding cylinder weakening.) After retest, the actual tare weight must be recorded as the new tare weight.

(10) *Cylinders 12 pounds or less with service pressures of 300 psi or less.* A cylinder of 12 pounds or less water capacity authorized for service pressure of 300 psi or less must be given a complete external visual inspection at the time periodic retest becomes due. External visual inspection must be in accordance with CGA Pamphlet C-6 or C-6.1. The cylinder may be hydrostatically retested without a water jacket and without determining total and permanent expansions. The retest is successful if the cylinder, when examined under test pressure, does not display a defect described in paragraph (e)(6)(i) (B) or (C) of this section.

(11) *Modified hydrostatic retest.* A cylinder made in compliance with specification DOT 4B, DOT 4BA, DOT 4BW, DOT 4E or ICC-26-300<sup>2</sup> (§§ 178.50, 178.51, 178.61, 178.68 of this subchapter) that is used exclusively for anhydrous dimethylamine; anhydrous methylamine; anhydrous trimethylamine; methyl chloride; liquefied petroleum gas; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluorochloroethane, chlorodifluoromethane, chlorotetrafluoroethane, trifluorochloroethylene, or mixture thereof, or mixtures of one or more with trichlorofluoromethane; and that is commercially free from corroding components and protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting) may be given a hydrostatic retest every 12 years instead of every five years. Alternatively, the cylinder may be

<sup>2</sup> For filling at 450 p.s.i. and below. Use of existing cylinders authorized; new construction not authorized.

subjected to internal hydrostatic pressure of at least two times the marked service pressure without determination of expansions, but this latter type of test must be repeated every seven years after expiration of the first 12-year period. When subjected to the latter test, the cylinder must be carefully examined under test pressure and removed from service if a leak or other harmful defect exists. A cylinder requalified by the modified hydrostatic test method must be marked after a retest or an inspection by stamping the date of retest or reinspection on the cylinder followed by a "S".

(12) A cylinder made in conformance with specification DOT-3A, DOT-3AA, DOT-3B, DOT-4BA or DOT-4BW (§§ 178.36, 178.37, 178.38, 178.51, 178.61 of this subchapter) having a service pressure of 300 psi or less that is used exclusively for methyl bromide, liquid; mixtures of methyl bromide and ethylene dibromide, liquid; mixtures of methyl bromide and chlorpicrin, liquid; mixtures of methyl bromide and petroleum solvents, liquid; or methyl bromide and nonflammable,

nonliquefied compressed gas mixtures, liquid; that is commercially free of corroding components, and that is protected externally by a suitable corrosion resistant coating (such as galvanizing or painting) and internally by a suitable corrosion resistant lining (such as galvanizing) may be tested every 10 years instead of every five years, provided that a visual internal and external examination of the cylinder is conducted every five years in accordance with CGA Pamphlet C-6. The cylinder must be examined at each filling, and rejected if a dent, corroded area, leak or other condition indicates possible weakness.

(13) A cylinder made in conformance with a specification listed in the table in this paragraph (e)(13) and used exclusively in the service indicated may, instead of a periodic hydrostatic retest, be given a complete external visual inspection at the time periodic retest becomes due. External visual inspection must be in accordance with CGA Pamphlets C-6 or C-6.1. When this inspection is used instead of hydrostatic retesting, subsequent

inspections are required at five-year intervals after the first inspection. Inspections must be made only by competent persons and the results recorded and maintained in accordance with paragraph (e)(8) of this section. Records shall include: date of inspection (month and year); DOT specification number; cylinder identification (registered symbol and serial number, date of manufacture, and owner); type of cylinder protective coating (including statement as to need of refinishing or recoating); conditions checked (e.g., leakage, corrosion, gouges, dents or digs in shell or heads, broken or damaged footing or protective ring or fire damage); disposition of cylinder (returned to service, returned to cylinder manufacturer for repairs or scrapped). A cylinder that passes inspection shall be marked with the date in accordance with paragraph (e)(7) of this section. An "E" after the date indicates requalification by the external inspection method. Specification cylinders must be in exclusive service as follows:

Cylinders made in compliance with—	Used exclusively for—
DOT-4, DOT-3A, DOT-3AA, DOT-3A480X, DOT-4A, DOT-4AA480, DOT-3A, DOT-3AA, DOT-3A480X, DOT-3B, DOT-4B, DOT-4BA, DOT-4BW, ICC-26-240, <sup>1</sup> ICC-26-300 <sup>1</sup> .	Anhydrous ammonia of at least 99.95% purity. Butadiene, inhibited, which is commercially free from corroding components. Cyclopropane which is commercially free from corroding components.
DOT-3A, DOT-3A480X, DOT-3AA, DOT-3B, DOT-4A, DOT-4AA480, DOT-4B, DOT-4BA, DOT-4BW.	Fluorinated hydrocarbons and mixtures thereof which are commercially free from corroding components.
DOT-3A, DOT-3AA, DOT-3A480X, DOT-4B, DOT-4BA, DOT-4BW, DOT-4E.	Liquefied hydrocarbon gas which is commercially free from corroding components.
DOT-3A, DOT-3AA, DOT-3A480X, DOT-3B, DOT-4B, DOT-4BA, DOT-4BW, DOT-4E, ICC-26-240, <sup>1</sup> ICC-26-300 <sup>1</sup> .	Liquefied petroleum gas which is commercially free from corroding components.
DOT-3A, DOT-3AA, DOT-3A480X, DOT-3B, DOT-4B, DOT-4BA, DOT-4BW, DOT-4E, ICC-26-240 <sup>1</sup> , ICC-26-300 <sup>1</sup> .	Methylacetylene-propadiene, stabilized, which is commercially free from corroding components.
DOT-3A, DOT-3AA, DOT-3B, DOT-4B, DOT-4BA, DOT-4BW, DOT-4E.	Anhydrous mono, di, trimethylamines which are commercially free from corroding components.
DOT-3A, DOT-3AA, DOT-3B, DOT-4B, DOT-4BA, DOT-4BW .....	Ethyleneimine, inhibited.
DOT-4B240, DOT-4BW240 .....	

<sup>1</sup> Use of existing cylinders authorized; new construction not authorized.

(14) *Cylinders containing anhydrous ammonia.* A cylinder made in compliance with specification DOT-3A, DOT-3A 480X, or DOT-4AA480 used exclusively for anhydrous ammonia, commercially free from corroding components, and protected externally by a suitable corrosion-resistant coating (such as painting) may be retested every 10 years instead of every five years.

(15) *3HT cylinders.* (i) In addition to the other requirements of this section, a cylinder marked DOT-3HT must be requalified in accordance with CGA Pamphlet C-8.

(ii) The cylinder must be condemned:

(A) If elastic expansion exceeds the marked rejection elastic expansion. A cylinder made before January 17, 1978,

and not marked with a rejection elastic expansion in cubic centimeters near the marked original elastic expansion must be so marked before the next retest date. The rejection elastic expansion for a cylinder is 1.05 times its original elastic expansion.

(B) If there is evidence of denting or bulging.

(C) Twenty-four years after the date of the original test or after 4,380 pressurizations, whichever occurs first. If a cylinder is recharged, on average, more than once every other day, an accurate record of the number of rechargings must be maintained by the cylinder owner or his/her agent.

(iii) The retest date and retester identification number must be applied

by low-stress steel stamp to a depth no greater than that of the marking at the time of manufacture. Stamping on the sidewall is not authorized.

(16) *DOT-3A or 3AA cylinders.* (i) A cylinder made in conformance with specification DOT-3A or 3AA with a water capacity of 125 pounds or less that is removed from any cluster, bank, group, rack or vehicle each time it is filled, may be retested every ten years instead of every five years, provided the cylinder complies with all of the following—

(A) The cylinder was manufactured after December 31, 1945;

(B) The cylinder is used exclusively for air, argon, cyclopropane, ethylene, helium, hydrogen, krypton, neon,

nitrogen, nitrous oxide, oxygen, sulfur hexafluoride, xenon, permitted mixtures of these gases (see § 173.301(a)) and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide, provided that the gas has a dew point at or below minus 52° F at 1 atmosphere;

(C) Before each refill, the cylinder passes the hammer test specified in CGA Pamphlet C-6;

(D) The cylinder is dried immediately after hydrostatic testing to remove all traces of free water;

(E) The cylinder is not used for underwater breathing; and

(F) Each cylinder is stamped with a five-point star at least one-fourth of an inch high immediately following the test date.

(ii) If, since the last required hydrostatic retest, a cylinder has not been used exclusively as specified in paragraph (e)(16)(i)(B) of this section, but currently conforms with all other provisions of paragraph (e)(16)(i) of this section, it may be retested every 10 years instead of every five years, provided it is first retested and

examined as prescribed by § 173.302(c)(2), (3) and (4).

(iii) Except as specified in paragraph (e)(16)(ii) of this section, if a cylinder marked with a star is charged with a compressed gas other than as specified in this paragraph (e)(16), the star following the most recent test date must be obliterated. The cylinder must be retested five years from the marked retest date, or prior to the first charging with a compressed gas, if the required five-year retest period has passed.

(17) *Cylinders containing corrosive materials.* (i) A cylinder that previously contained a Class 8 (corrosive) material may not be used to transport a compressed gas in commerce unless the following requirements are met—

(A) The cylinder is visually inspected, internally and externally, in accordance with CGA Pamphlet C-6;

(B) Regardless of the date of previous retest, the cylinder is subjected to and passes inspection and hydrostatic retest in accordance with this section; and

(C) The record prescribed in paragraph (e)(8) of this section includes: the month and year of inspection and test; the cylinder identification

(including ICC or DOT specification number, registered symbol, serial number, date of manufacture and owner); the conditions checked (e.g., leakage, corrosion, gouges, dents, or digs in shell or heads, broken or damaged footings, fire damage) and the disposition of the cylinder (returned to service, returned to the manufacturer for repairs, or scrapped).

(ii) A cylinder requalified for compressed gas service in accordance with this paragraph (e)(17) may have its next retest and inspection scheduled from the date of the inspection and retest prescribed in this paragraph (e). If decontamination cannot remove all significant residue or impregnation by the Class 8 material, the cylinder may not be used to transport compressed gas in commerce.

(18) *DOT 8 and 8AL cylinders.* (i) Each owner of a DOT 8 or 8AL cylinder used to transport acetylene must have the cylinder shell and the porous filler requalified in accordance with CGA Pamphlet C-13. Requalification must be performed in accordance with the following schedule:

Date of cylinder manufacture	Shell (visual inspection) requalification		Porous filler requalification	
	Initial	Subsequent	Initial	Subsequent
Before January 1, 1991 .....	Before January 1, 2001 .....	10 yrs .....	Before January 1, 2001 .....	Not required.
On or after January 1, 1991 .....	10 yrs <sup>1</sup> .....	10 yrs .....	3 to 30 yrs <sup>2</sup> .....	Not required.

<sup>1</sup> Years from date of cylinder manufacture.

<sup>2</sup> For a cylinder manufactured on or after January 1, 1991, requalification of the porous filler must be performed no sooner than 3 years, and no later than 20 years, from the date of manufacture.

(ii) Unless requalified and marked in accordance with CGA Pamphlet C-13 before October 1, 1994, an acetylene cylinder must be requalified by a person who holds a valid retester identification number. Each cylinder successfully passing a shell or filler requalification must be marked with the retester's identification number in accordance with paragraph (e)(7) of this section. In addition, the cylinder must be marked to identify the type of requalification performed in accordance with paragraph 5.6 of CGA Pamphlet C-13. For example, the letter "S" must be used for a shell requalification and the letter "F" for a porous filler requalification.

(iii) If a cylinder valve is replaced, a cylinder valve of the same weight must be used or the tare weight of the cylinder must be adjusted to compensate for valve weight differential.

(19) *Cylinders used as a fire extinguisher.* A DOT specification cylinder used as a fire extinguisher in compliance with § 173.309 may be

retested in accordance with this paragraph (e)(19).

(i) A DOT specification 4B, 4BA, 4B240ET or 4BW (§§ 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinder may be retested as follows:

(A) For a cylinder with a water capacity of 12 pounds or less by hydrostatic test using the water jacket method or by hydrostatic test without determination of expansion (modified hydrostatic test method). A retest must be performed 12 years after the original test date and at 12-year intervals thereafter.

(B) For a cylinder having a water capacity over 12 pounds—

(1) By hydrostatic test without determination of expansion (modified hydrostatic test method). A retest must be performed 12 years after the original test date and at 7-year intervals; or

(2) By hydrostatic test using the water jacket method. A retest must be performed 12 years after the original test date and at 12-year intervals thereafter.

(ii) A DOT specification 3A, 3AA, or 3AL (§§ 173.36, 178.37 and 178.46 of

this subchapter) cylinder may be retested by hydrostatic test using the water jacket method. A retest must be performed 12 years after the original test date and at 12-year intervals thereafter.

**§ 173.163 [Amended]**

6. In § 173.163, the reference "§ 173.34(e)(5)" is revised to read "§ 173.34(e)(8)".

7. In § 173.301, the section heading and paragraph (j) are revised to read as follows:

**§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.**

\* \* \* \* \*

(j) *Charging of foreign cylinders for export.* (1) A cylinder manufactured outside the United States that has not been manufactured, inspected, tested and marked in accordance with part 178 of this subchapter may be charged with compressed gas in the United States, and shipped solely for export if it meets

the following requirements, in addition to other requirements of the subchapter:

(i) It has been inspected, tested and marked (with only the month and year of retest) in conformance with the procedures and requirements of § 173.34(e) or the Associate Administrator for Hazardous Materials Safety has authorized the charging company to fill foreign cylinders under an alternative method of qualification; and

(ii) It meets the maximum filling density and service pressure requirements of this part.

(2) The bill of lading or other shipping paper must identify the cylinder and carry the following certification: "This cylinder has [These cylinders have] been retested and refilled in accordance with DOT requirements for export."

\* \* \* \* \*

**§ 173.301 [Amended]**

8. In addition, in § 173.301, in paragraph (a), the reference to "§ 173.34(e)(16)" is revised to read "§ 173.34(e)(17)".

9. In § 173.302, in paragraph (c)(3), the text preceding the table and the value for "K" in Note 1 following the

table are revised, and Note 3 is added after Note 2, to read as follows:

**§ 173.302 Charging of cylinders with non-liquefied compressed gases.**

\* \* \* \* \*

(c) \* \* \*

(3) That either the average wall stress or the maximum wall stress does not exceed the wall stress limitation shown in the following table (see Notes 1, 2 and 3):

\* \* \* \* \*

Note 1: \* \* \*

\* \* \* \* \*

K=factor $\times 10^{-7}$ , experimentally determined for the particular type of cylinder being tested, or derived in accordance with CGA Pamphlet C-5;

\* \* \* \* \*

Note 3: Compliance with average wall stress limitation may be determined through computation of the elastic expansion rejection limit in accordance with CGA Pamphlet C-5.

\* \* \* \* \*

10. In § 173.309, paragraph (b) is revised to read as follows:

**§ 173.309 Fire extinguishers.**

\* \* \* \* \*

(b) Specification 3A, 3AA, 3E, 3AL, 4B, 4BA, 4B240ET or 4BW (§§ 178.36, 178.37, 178.42, 178.46, 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinders are authorized for use as fire extinguishers subject to the following conditions:

(1) Each fire extinguisher may only have extinguishing contents that are nonflammable, non-poisonous, non-corrosive and commercially free from corroding components.

(2) Each fire extinguisher must be charged with a nonflammable, non-poisonous, dry gas that has a dew-point at or below minus 46.7 °C (minus 52 °F) at 101 kPa (1 atmosphere) and is free of corroding components, to not more than the service pressure of the cylinder.

(3) Each fire extinguisher must be protected externally by suitable corrosion-resisting coating.

Issued in Washington, DC on May 16, 1996, under authority delegated in 49 CFR part 1.

Rose A. McMurray,  
*Acting Deputy Administrator, Research and Special Programs Administration.*

[FR Doc. 96-12838 Filed 5-24-96; 8:45 am]

BILLING CODE 4910-60-P

**Federal Register**

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Tuesday  
May 28, 1996

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**Part VI**

**Department of Defense  
General Services  
Administration  
National Aeronautics and  
Space Administration**

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**48 CFR Parts 42 and 52  
Federal Acquisition Regulation; Final  
Indirect Cost Rates; Proposed Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAR Case 95-018]

RIN 9000-AG88

Federal Acquisition Regulation; Final Indirect Cost Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to revise the procedures relating to final indirect cost rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before July 29, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 95-018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 95-018.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR Subpart 42.7 to permit, with certain restrictions, increased interim payments to contractors under certain circumstances. FAR 42.704 is amended to permit, with certain restrictions, contractor use of billing rates contained in certified final indirect cost rate proposals. The clauses at FAR 52.216-7 and 52.216-13 are revised to establish a timeframe for contractor submission of final vouchers. The clauses at 52.216-8 through 52.216-10 are revised to require release of 75 percent of all fee withholds

under physically completed cost-type contracts, and to permit release of 90 percent of all withholds in certain circumstances.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because most contracts awarded to small business are awarded on the basis of firm-fixed-price, and settlement of final indirect cost rates is, therefore, not an issue. Furthermore, any impact of this rule would be to reduce cost and administrative burdens on both contractors and Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 et seq. (FAR case 95-018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: May 21, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 42 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 42—CONTRACTOR ADMINISTRATION

2. Section 42.704 is amended by adding paragraph (e) to read as follows:

42.704 Billing rates.

\* \* \* \* \*

(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal in accordance with 42.705-1(b) or 42.705-2(b), the contractor may bill the proposed indirect cost rates, as

approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant contracting officer (42.705-1(b)) or the cognizant auditor (42.705-2(b)).

3. Section 42.705 is revised to read as follows:

42.705 Final indirect cost rates.

(a) Final indirect cost rates shall be established on the basis of—

- (1) Contracting officer determination procedure (see 42.705-1) or
(2) Auditor determination procedure (see 42.705-2).

(b) Within 120 days after settlement of the final indirect cost rates, the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates on all contracts physically completed in the year covered by the proposal.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.216-7 is amended by revising the date of the clause; redesignating paragraph (d)(4) as (d)(5) and adding a new paragraph (d)(4); and revising paragraph (h)(1) to read as follows:

52.216-7 Allowable Cost and Payment.

\* \* \* \* \*

Allowable Cost and Payment (Date)

(d) \* \* \*

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

\* \* \* \* \*

(h) Final payment. (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

\* \* \* \* \*

5. Section 52.216-8 is amended by revising the date and paragraph (b) of the clause to read as follows:

52.216-8 Fixed fee.

\* \* \* \* \*

Fixed-Fee (Date)

\* \* \* \* \*

(b) The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions,

including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

6. Section 52.216-9 is amended by revising the date and paragraph (c) of the clause to read as follows:

**52.216-9 Fixed-Fee—Construction.**

\* \* \* \* \*

Fixed-Fee—Construction (Date)

\* \* \* \* \*

(c) The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission

and settlement of final indirect cost rate proposals.

7. Section 52.216-10 is amended by revising the date of the clause; and adding two sentences to the end of paragraph (c); to read as follows:

**52.216-10 Incentive Fee.**

\* \* \* \* \*

Incentive Fee (Date)

\* \* \* \* \*

(c) \* \* \* The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

\* \* \* \* \*

(End of clause)

8. Section 52.216-13 is amended by revising the date of the clause; redesignating paragraph (c)(4) as (c)(5)

and adding a new paragraph (c)(4); and by revising the date and paragraph (h) of Alternate I to read as follows:

**52.216-13 Allowable Cost and Payment—Facilities.**

\* \* \* \* \*

Allowable Cost and Payment—Facilities (Date)

\* \* \* \* \*

(c) \* \* \*

(4) Within 120 days after settlement of the final indirect cost rate covering the year in which this contract is physically complete, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

\* \* \* \* \*

(End of clause)

Alternate I (Date) \* \* \*

\* \* \* \* \*

(h) *Final payment.* Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (c)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

[FR Doc. 96-13247 Filed 5-24-96; 8:45 am]

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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.

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## CFR CHECKLIST

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An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
<b>1, 2 (2 Reserved)</b> .....	(869-028-00001-1) .....	\$4.25	Feb. 1, 1996
<b>*3</b> (1995 Compilation and Parts 100 and 101) .....	(869-028-00002-9) .....	22.00	<sup>1</sup> Jan. 1, 1996
<b>4</b> .....	(869-028-00003-7) .....	5.50	Jan. 1, 1996
<b>5 Parts:</b>			
1-699 .....	(869-028-00004-5) .....	26.00	Jan. 1, 1996
700-1199 .....	(869-028-00005-3) .....	20.00	Jan. 1, 1996
1200-End, 6 (6 Reserved) .....	(869-028-00006-1) .....	25.00	Jan. 1, 1996
<b>7 Parts:</b>			
*0-26 .....	(869-028-00007-0) .....	22.00	Jan. 1, 1996
27-45 .....	(869-026-00008-5) .....	14.00	Jan. 1, 1995
46-51 .....	(869-028-00009-6) .....	13.00	Jan. 1, 1996
52 .....	(869-028-00010-0) .....	5.00	Jan. 1, 1996
53-209 .....	(869-028-00011-8) .....	17.00	Jan. 1, 1996
210-299 .....	(869-028-00012-6) .....	35.00	Jan. 1, 1996
*300-399 .....	(869-028-00013-4) .....	17.00	Jan. 1, 1996
400-699 .....	(869-028-00014-2) .....	22.00	Jan. 1, 1996
700-899 .....	(869-026-00015-8) .....	23.00	Jan. 1, 1995
900-999 .....	(869-028-00016-9) .....	30.00	Jan. 1, 1996
1000-1059 .....	(869-026-00017-4) .....	23.00	Jan. 1, 1995
1060-1119 .....	(869-026-00018-2) .....	15.00	Jan. 1, 1995
1120-1199 .....	(869-026-00019-1) .....	12.00	Jan. 1, 1995
1200-1499 .....	(869-028-00018-5) .....	29.00	Jan. 1, 1996
1500-1899 .....	(869-026-00019-3) .....	41.00	Jan. 1, 1996
1900-1939 .....	(869-028-00020-7) .....	16.00	Jan. 1, 1996
1940-1949 .....	(869-026-00023-9) .....	30.00	Jan. 1, 1995
1950-1999 .....	(869-028-00022-3) .....	39.00	Jan. 1, 1996
2000-End .....	(869-028-00023-1) .....	15.00	Jan. 1, 1996
<b>8</b> .....	(869-028-00024-0) .....	23.00	Jan. 1, 1996
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200-End .....	(869-026-00028-0) .....	23.00	Jan. 1, 1995
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200-399 .....	(869-028-00029-1) .....	5.00	Jan. 1, 1996
400-499 .....	(869-028-00030-4) .....	21.00	Jan. 1, 1996
500-End .....	(869-028-00031-2) .....	34.00	Jan. 1, 1996
<b>*11</b> .....	(869-028-00032-1) .....	15.00	Jan. 1, 1996
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220-299 .....	(869-028-00035-5) .....	29.00	Jan. 1, 1996
300-499 .....	(869-026-00038-7) .....	23.00	Jan. 1, 1995
*500-599 .....	(869-028-00037-1) .....	20.00	Jan. 1, 1996
600-End .....	(869-028-00038-0) .....	31.00	Jan. 1, 1996
<b>*13</b> .....	(869-028-00039-8) .....	18.00	Mar. 1, 1996

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140-199 .....	(869-028-00042-8) .....	13.00	Jan. 1, 1996
200-1199 .....	(869-026-00045-0) .....	23.00	Jan. 1, 1995
1200-End .....	(869-028-00044-4) .....	16.00	Jan. 1, 1996
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150-999 .....	(869-028-00049-5) .....	19.00	Jan. 1, 1996
1000-End .....	(869-028-00050-9) .....	26.00	Jan. 1, 1996
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240-End .....	(869-026-00056-5) .....	30.00	Apr. 1, 1995
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280-399 .....	(869-026-00059-0) .....	13.00	Apr. 1, 1995
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141-199 .....	(869-026-00062-0) .....	21.00	Apr. 1, 1995
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<b>20 Parts:</b>			
1-399 .....	(869-026-00064-6) .....	20.00	Apr. 1, 1995
400-499 .....	(869-026-00065-4) .....	34.00	Apr. 1, 1995
500-End .....	(869-026-00066-2) .....	34.00	Apr. 1, 1995
<b>21 Parts:</b>			
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100-169 .....	(869-026-00068-9) .....	21.00	Apr. 1, 1995
170-199 .....	(869-026-00069-7) .....	22.00	Apr. 1, 1995
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300-End .....	(869-026-00077-8) .....	24.00	Apr. 1, 1995
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Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
50-299	(869-026-00102-2)	14.00	Apr. 1, 1995	400-424	(869-026-00155-3)	26.00	July 1, 1995
300-499	(869-026-00103-1)	24.00	Apr. 1, 1995	425-699	(869-026-00156-1)	30.00	July 1, 1995
500-599	(869-026-00104-9)	6.00	<sup>4</sup> Apr. 1, 1990	700-789	(869-026-00157-0)	25.00	July 1, 1995
600-End	(869-026-00105-7)	8.00	Apr. 1, 1995	790-End	(869-026-00158-8)	15.00	July 1, 1995
<b>27 Parts:</b>				<b>41 Chapters:</b>			
1-199	(869-026-00106-5)	37.00	Apr. 1, 1995	1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
200-End	(869-026-00107-3)	13.00	<sup>6</sup> Apr. 1, 1994	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
<b>28 Parts:</b>				3-6		14.00	<sup>3</sup> July 1, 1984
1-42	(869-026-00108-1)	27.00	July 1, 1995	7		6.00	<sup>3</sup> July 1, 1984
43-end	(869-026-00109-0)	22.00	July 1, 1995	8		4.50	<sup>3</sup> July 1, 1984
<b>29 Parts:</b>				9		13.00	<sup>3</sup> July 1, 1984
0-99	(869-026-00110-3)	21.00	July 1, 1995	10-17		9.50	<sup>3</sup> July 1, 1984
100-499	(869-026-00111-1)	9.50	July 1, 1995	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
500-899	(869-026-00112-0)	36.00	July 1, 1995	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
900-1899	(869-026-00113-8)	17.00	July 1, 1995	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995	19-100		13.00	<sup>3</sup> July 1, 1984
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995	1-100	(869-026-00159-6)	9.50	July 1, 1995
1911-1925	(869-026-00116-2)	27.00	July 1, 1995	101	(869-026-00160-0)	29.00	July 1, 1995
1926	(869-026-00117-1)	35.00	July 1, 1995	102-200	(869-026-00161-8)	15.00	July 1, 1995
1927-End	(869-026-00118-9)	36.00	July 1, 1995	201-End	(869-026-00162-6)	13.00	July 1, 1995
<b>30 Parts:</b>				<b>42 Parts:</b>			
1-199	(869-026-00119-7)	25.00	July 1, 1995	1-399	(869-026-00163-4)	26.00	Oct. 1, 1995
200-699	(869-026-00120-1)	20.00	July 1, 1995	400-429	(869-026-00164-2)	26.00	Oct. 1, 1995
700-End	(869-026-00121-9)	30.00	July 1, 1995	430-End	(869-026-00165-1)	39.00	Oct. 1, 1995
<b>31 Parts:</b>				<b>43 Parts:</b>			
0-199	(869-026-00122-7)	15.00	July 1, 1995	1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
200-End	(869-026-00123-5)	25.00	July 1, 1995	1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
<b>32 Parts:</b>				4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	<b>44</b>			
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	(869-026-00169-3)			
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	<b>45 Parts:</b>			
1-190	(869-026-00124-3)	32.00	July 1, 1995	1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
191-399	(869-026-00125-1)	38.00	July 1, 1995	200-499	(869-026-00171-5)	14.00	Oct. 1, 1995
400-629	(869-026-00126-0)	26.00	July 1, 1995	500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
630-699	(869-026-00127-8)	14.00	<sup>5</sup> July 1, 1991	1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
700-799	(869-026-00128-6)	21.00	July 1, 1995	<b>46 Parts:</b>			
800-End	(869-026-00129-4)	22.00	July 1, 1995	1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
<b>33 Parts:</b>				41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
1-124	(869-026-00130-8)	20.00	July 1, 1995	70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995	90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995	140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
<b>34 Parts:</b>				156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
1-299	(869-026-00133-2)	25.00	July 1, 1995	166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
300-399	(869-026-00134-1)	21.00	July 1, 1995	200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995	500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
<b>35</b>				<b>47 Parts:</b>			
(869-026-00136-7)				0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
<b>36 Parts</b>				20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
1-199	(869-026-00137-5)	15.00	July 1, 1995	40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995	70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
<b>37</b>				80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
(869-026-00139-1)				<b>48 Chapters:</b>			
<b>38 Parts:</b>				1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
0-17	(869-026-00140-5)	30.00	July 1, 1995	1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995	2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
<b>39</b>				2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
(869-026-00142-1)				3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
<b>40 Parts:</b>				7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
1-51	(869-026-00143-0)	40.00	July 1, 1995	15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995	29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995	<b>49 Parts:</b>			
60	(869-026-00146-4)	36.00	July 1, 1995	1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
61-71	(869-026-00147-2)	36.00	July 1, 1995	100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
72-85	(869-026-00148-1)	41.00	July 1, 1995	178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995	200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995	400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995	1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995	1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995	<b>50 Parts:</b>			
300-399	(869-026-00154-5)	21.00	July 1, 1995	1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
				200-599	(869-026-00204-5)	22.00	Oct. 1, 1995
				600-End	(869-026-00205-3)	27.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
CFR Index and Findings			
Aids .....	(869-026-00053-1) .....	36.00	Jan. 1, 1995
Complete 1996 CFR set .....		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued) .....		264.00	1996
Individual copies .....		1.00	1996
Complete set (one-time mailing) .....		264.00	1995
Complete set (one-time mailing) .....		244.00	1994
Complete set (one-time mailing) .....		223.00	1993

<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.